IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3165 of 2011 (O&M)
Date of decision:30.04.2019

United India Insurance Company Limited

…. Appellant

Vs.

Baljit Kaur and others

….Respondents

CORAM : HON'BLE MR.JUSTICE ARUN KUMAR TYAGI

Present : Mr. D.P. Gupta Advocate
for the appellant.

Mr. Sarabjit Singh Khera, Advocate
for respondents No.1 to 3.

None for respondent No.4.

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ARUN KUMAR TYAGI, J.

1. The appellant-Insurance Company has filed present appeal seeking setting aside of award dated 03.02.2011 passed by the learned Motor Accidents Claims Tribunal, Gurdaspur (for short 'the Tribunal') in **MACT Case No.68 of 2009 titled as Baljit Kaur and others Vs. Balbir Chand and another** whereby compensation was awarded to claimants on account of death of Kulwant Singh alias Kanta in a motor vehicle accident, which took place on 25.04.2009.

2. For the sake of convenience the parties are referred to by their description in the claim petition.

3. Briefly stated, the facts giving rise to the present appeal are that the claimants filed petition under Section 163-A of the Motor Vehicles Act, 1988 (for short 'the M.V. Act') on the averments that on 25.04.2009 at about 9.00 p.m., Kulwant Singh alias Kanta was going on motor cycle bearing registration No.PB-58C-0950, along with Gagandeep Singh and Harpreet Singh as pillion rider. When they reached near village Rudiana, a tractor-trolley driven rashly and negligently came from the opposite side and hit their motor cycle as a result of which Kulwant Singh and others fell down and suffered injuries. Kulwant Singh died in the hospital due to the injuries suffered in the accident. Driver of the tractor-trolley fled from the spot. FIR No.39 dated 26.04.2009 was registered under Sections 279, 304-A, 337 and 427 of the Indian Penal Code (for short ‘IPC’) in Police Station Kalanaur, Gurdaspur. At the time of accident the deceased was aged about 28 years and was earning ₹3,300/- by working as labourer. As Kulwant Singh died due to accident arising out of the use of motor cycle bearing registration No.PB-58C-0950, compensation of ₹20,00,000/- may be awarded against respondent No.1-owner and respondent No.2-Insurer of the motor cycle with costs and interest.

4. Notice of the claim petition was issued to the respondents. Respondent No.1-owner of the motor cycle suffered himself to be proceeded against ex-parte. In its written statement, respondent No.2-Insurance Company took objections as to maintainability, non-joinder and mis-joinder of parties, respondent

No.1 not having valid and effective driving licence and breach of the terms and conditions of the insurance policy. Respondent No.2 also controverted the material averments made in the claim petition and denied its liability.

5. The Tribunal framed issues and recorded evidence produced by the parties. On consideration of the material on record and the submissions made by the learned counsel for the parties, the Tribunal held that Kulwant Singh alias Kanta died due to injuries suffered in accident arising out of the use of motor cycle bearing registration No.PB-58C-0950 owned by respondent No.1 and insured with respondent No.2. The Tribunal held the deceased to be aged about 28 years, assessed his income as ₹2,500/- per month, made deduction of 1/3rd towards personal expenses, applied multiplier of 17 and awarded compensation of ₹3,40,000/- to claimants with costs and interest at the rate of 6% per annum under the contractual liability of the insurance company. The Tribunal held the respondents No.1 and 2 to be jointly and severally liable for payment of the above-said compensation amount to the claimants.

6. Feeling aggrieved, the Insurance Company has preferred present appeal against the above said award.

7. I have heard arguments addressed by the learned Counsel for the appellant-respondent No.2 Insurance Company and learned Counsel for respondents No.1 to 3-claimants.

8. Learned Counsel for the appellant-Insurance Company has argued that the deceased had borrowed the motor cycle bearing

registration No.PB-58C-09-50 from its owner and stepped into the shoes of the owner. Therefore, the claim petition was not maintainable and the claimants are not entitled for payment of compensation under Section 163-A of the M.V. Act. In support of his arguments learned Counsel for the appellant-Insurance Company has relied on the judgment of Hon'ble Supreme Court in **Ningamma and another Vs. United India Insurance Co. Ltd.: 2009(3) RCR (Civil) 435.**

9. Learned Counsel for the appellant has further argued that the deceased was not covered by compulsory personal accident cover extended to owner/driver and the Insurance Company is not liable to pay any compensation to the claimants under its contractual liability in terms of the insurance policy. In support of his arguments learned Counsel for the appellant-Insurance Company has relied on the judgments of Hon'ble Coordinate Benches of this Court in **FAO No.4333 of 2009 titled The Oriental Insurance Company Ltd. Vs. Sarika and others decided on 09.09.2010; Bajaj Allianz General Insurance Company Ltd. Vs. Kanchan widow of Suresh Sethi and others : 2013 (2) PLR 563; Sushila w/o late Sh. Muna Lal Ji and others Vs. Sh. Pankaj Mahajan and another : 2013 (1) PLR 715; Cholamandlam MS General Insurance Company Ltd. Vs. Smt. Rajesh and others : 2014 (4) PLR 377; National Insurance Company Ltd. Vs. Hari Mohan and another : 2017 (1) PLR 427** and **FAO No.3137 of 2013 titled Ranjit Singh Vs. Vijay Kumar and another decided on 08.03.2018.**

10. Learned Counsel for the appellant has accordingly prayed that the impugned award may be set aside and the claim petition may be dismissed.

11. The learned Counsel for the claimants has argued that Kulwant Singh died due to accident arising out of the use of motor cycle bearing registration No.PB-58C-0950. The deceased being borrower of the motor cycle and having stepped into the shoes of the owner thereof was covered by contractual stipulation extending personal accident cover to owner-driver contained in the comprehensive insurance policy of the motor cycle. The claimants being his legal heirs are entitled for payment of compensation in discharge of its contractual liability by respondent No.2-Insruance Company under comprehensive insurance policy covering personal accident of the owner-driver. The award does not suffer from any illegality. Therefore, the appeal may be dismissed. In support of his arguments learned Counsel for the claimants has placed reliance on the judgments of Hon'ble Madhya Pradesh High Court in **Sunita Lokhande and others Vs. New India Assurance Co. Ltd. and others : 2008(3) RCR (Civil) 727** and Hon'ble Madras High Court in **C.M.A. No.2451 of 2018 titled N.Kuppu and another Vs. P.Mari and another decided on 07.01.2019.**

12. It is now well settled that the liability under Section 163-A of the M.V. Act is on the owner of the Vehicle. A person cannot be both a claimant as also a respondent liable to pay the compensation. Therefore, claim under Section 163-A of the M.V. Act can be raised

by third party only and claim by or at the behest of the owner is not maintainable under that provision. Reliance in this regard may be placed on the observations in **Oriental Insurance Company Limited Vs. Rajni Devi, 2008 ACJ 1441 (Supreme Court); Ningamma and another Vs. United India Insurance Co. Ltd.: 2009(3) RCR (Civil) 435; Smt. Asha Rani and others Vs. Shiv Ram and another : 2012 (3) PLR 277 and New India Assurance Company Limited Vs. Sewa Singh and another : 2012 (3) PLR 295.**

13. In the present case, it is not disputed that the deceased-Kulwant Singh, who was driving the motor cycle at the time of accident, had borrowed the same from respondent No.1-owner thereof. Since, the deceased had borrowed the motor cycle from respondent No.1, the deceased stepped into the shoes of respondent No.1-owner and the deceased could not be said to be third party. The observations quoted in the above judicial precedents are fully applicable to the facts of the present case and the claim petition for award of compensation against respondent No.1-owner under Section 163-A of the M.V. Act is not maintainable and the claimants are not entitled to payment of compensation under Section 163-A of the M.V. Act for death of Kulwant Singh.

14. So far as the question of contractual liability of respondent No.2-Insurance Company is concerned, a perusal of insurance policy copy Ex.R1 shows that premium of ₹176/- had been paid for own damage, premium of ₹300/- had been paid for third

party basic cover and premium of ₹50/- had been paid for compulsory personal accident cover to owner-driver of the amount of ₹1,00,000/-. The question which arises is as to whether the deceased, who had borrowed the motor cycle from respondent No.1-owner and had thereby stepped into his shoes, can be treated as owner-driver covered under the personal accident clause of the above-said insurance policy.

15. In **New India Assurance Company Ltd. Vs. Umesh Kumari and others 2010 (1) RCR (Civil) 669; New India Assurance Co. Limited Vs. Karamjit and others 2013 (2) PLR 495 (Punjab and Haryana High Court)** and **National Insurance Company Limited Vs. Bharat Singh and others 2009 (2) Law Herald 1151 (Punjab and Haryana High Court)** borrower of the vehicle from owner was treated as owner and insurance company was held liable to pay compensation payable to owner under personal accident cover extended to owner-driver.

16. However, in these cases GR-36 of the Indian Motor Tariff Regulations issued by the Tariff Committee, which regulates the grant of personal accident cover, was not noticed and the judgments in these cases do not lay down the correct law.

17. The relevant part of GR-36 of the Indian Motor Tariff Regulations provides as under:-

> "**GR.36.** Personal Accident (PA) Cover under Motor Policy (not applicable to vehicles covered under Section E, F and G of Tariff for Commercial Vehicles)

A. Compulsory Personal Accident Cover for Owner-Driver Compulsory Personal Accident Cover shall be applicable under both Liability Only and Package policies. The owner of insured vehicle holding an 'effective' driving license is termed as Owner-Driver for the purposes of this section.

Cover is provided to the Owner-Driver whilst driving the vehicle including mounting into/dismounting from or travelling in the insured vehicle as a co-driver.

NB. This provision deals with Personal Accident cover and only the registered owner in person is entitled to the compulsory cover where he/she holds an effective driving license. Hence compulsory PA cover cannot be granted where a vehicle is owned by a company, a partnership firm or a similar body corporate or where the owner-driver does not hold an effective driving license. In all such cases, where compulsory PA cover cannot be granted, the additional premium for the compulsory P.A. cover for the owner-driver should not be charged and the compulsory P.A. cover provision in the policy should also be deleted. Where the owner-driver owns more than one vehicle, compulsory PA cover can be granted for only one vehicle asopted by him/her.

x x x x x x x x x x”

18. A perusal of GR-36 of the Indian Motor Tariff Regulations shows that compulsory personal accident cover enures for the benefit only of the registered owner-driver holding effective driving licence and the expression owner-driver refers to the person who is the owner and driver himself and cannot be interpreted to mean owner or driver. Therefore, a driver of the vehicle who is not the registered owner will not be entitled to the benefit of compulsory personal accident cover. A borrower of the vehicle, treated to have stepped into the shoes of the owner so far as claim to compensation under Section 163-A of the M.V. Act is concerned, also does not fall within the ambit of contractual stipulation of insurance policy

extending compulsory personal accident cover to owner-driver due to not being the registered owner himself.

19. In **FAO No.1773 of 2010 titled Bajaj Allianz General Insurance Company Limited Vs. Jagdish Singh decided on 09.12.2010** Hon'ble Coordinate Bench of this Court, while relying on **Ningamma's Case (Supra),** had taken the view contrary to that taken in **Umesh Kumari's Case (Supra)** and held that the personal accident cover is only for the owner-driver named in the policy and cannot extend to any other person and the borrower of the vehicle is not covered under the same. This view has been followed in **Cholamandlam MS General Insurance Company Ltd. Vs. Smt. Rajesh and others : 2014 (4) PLR 377; National Insurance Company Ltd. Vs. Hari Mohan and another : 2017 (1) PLR 427**and **FAO No.3137 of 2013 titled Ranjit Singh Vs. Vijay Kumar and another decided on 08.03.2018** where, while relying on GR 36 of the Indian Motor Tariff Regulations, Hon'ble Coordinate Benches of this Court have held that borrower cannot get the benefit of personal accident cover which is restricted to the registered owner-driver.

20. In view of the above referred settled position of law, observations in **Sunita Lokhande and others Vs. New India Assurance Co. Ltd. and others : 2008(3) RCR (Civil) 727** and **C.M.A. No.2451 of 2018 titled N.Kuppu and another Vs. P.Mari and another decided on 07.01.2019** relied upon by the learned

counsel for the claimants are not applicable to the facts of the present case and are not of any help to the claimants.

21. It follows from the above discussion that the deceased-Kulwant Singh being borrower of the motor cycle in question from respondent No.1-owner is not covered by the contractual stipulation extending personal accident cover under the insurance policy to owner-driver and therefore, the claimants are not entitled to payment of any compensation even in discharge of contractual liability of respondent No.2-Insurance Company under the insurance policy.

22. However, in view of the provisions of Section 140 of the M.V. Act and observations in **Eshwarappa @ Maheshwarappa and Anr. Vs. C.S. Gurushanthappa and Anr. 2010(8) SCALE 263** and **Bajaj Allianz General Insurance Company Ltd. Vs. Kanchan w/o Suresh Sethi and others : 2013 (2) PLR 563** the claimants are entitled to payment of compensation of ₹50,000/- as the statutory minimum payable under no fault liability.

23. In view of the above discussion, the appeal is allowed and the impugned award dated 03.02.2011 is set aside restricting the liability of respondent No.2-Insurance Company to amount of ₹50,000/- payable under Section 140 of the M.V. Act. Respondent No.2-Insurance Company is directed to pay the amount of ₹50,000/- to the claimants with interest at the rate of 9% per annum from the date of filing of the petition till realization. Amount of ₹25,000/- deposited at the time of filing of the appeal, if already paid to the

claimants, shall be liable to be deducted from the above-said amount.

(ARUN KUMAR TYAGI)
JUDGE

30.04.2019
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No