IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-6403-2011(O&M)
Date of decision:-2.11.2019

M/s The New India Assurance Company Ltd., Jind

...Appellant

Versus

Smt.Santro and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.R.K. Bashamboo Advocate
for the appellant.

Mr.S.N. Pillania, Advocate
for respondents No.1 and 2.

Mr.Munish Kumar Garg, Advocate and
Mr.Ashish Pundir, Advocate
for respondent No.3.

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H.S. MADAAN, J.

Briefly stated, the facts of the case are that petitioners/claimants Smt.Santro – mother and Sh.Balwan Singh – father of Anil, an unfortunate victim of a road side accident had brought a claim petition under Section 163-A of the Motor Vehicles Act against the respondents i.e. Ramesh – owner and New India Assurance Company Ltd. - insurer of motorcycle bearing registration No.HR-31D-0769, claiming compensation to the tune of Rs.20 lakhs with interest.

As per the version of the petitioners/claimants on 17.10.2006 at about 10:30 a.m. deceased Anil was going from Jind to Rohtak on motorcycle bearing registration No.HR-31D-0769; he was driving that motorcycle, on which one Tarun Kumar was a pillion rider; when they had reached near Bhiwani Minor in the area of village Lakhan Majra, then all of a sudden, he lost balance due to bad condition of the road, resultantly he fell down along with his motorcycle and suffered injuries; his friends Amit and Robin, who were following his motorcycle shifted him to PGIMS, Rohtak but he succumbed to his injuries there; postmortem examination on his dead body was conducted at General Hospital, Rohtak; a DDR No.18 dated 17.10.2006 was lodged in Police Station Lakhan Majra.

According to the claimants/petitioners, the deceased was a student of B.Tech IIIrd Year and used to earn Rs.3,000/- by doing tuition work; a sum of Rs.50,000/- was spent on transportation of his dead body and performing his last rites. The claimants/petitioners prayed that the claim petition be accepted.

On notice, both the respondents appeared and filed separate written statements contesting the claim petition.

In the written statement filed by respondent No.1, he denied the contents of the claim petition stating that his motorcycle had been taken by the deceased, who was a friend of his nephew Amit Kaushik in the evening of 16.10.2006 and it was returned to him after one week. According to him the deceased was holding a valid and effective driving licence and the motorcycle was insured with respondent No.2 at the relevant time, therefore, the compensation, if any was to be paid by the insurance company.

In the written statement filed by respondent No.2 – insurance company, it denied the involvement of the motorcycle in question in the accident contending that a false DDR had been got registered by the police with the ulterior motive to get compensation from the insurance company and it was not liable to pay any amount to the claimants towards compensation for the reason that the deceased was not holding a valid and effective driving licence at the relevant time and the motorcycle was being driven in contravention of terms and conditions of the insurance policy.

In the end, both the respondents prayed for dismissal of the claim petition.

Issues on merits were framed and the parties were afforded adequate opportunities to lead evidence.

After hearing arguments, the Motor Accidents Claims Tribunal, Jind (hereinafter referred to as the Tribunal) accepted the claim petition partly vide award dated 3.8.2011 and awarded compensation of Rs.2,42,000/- with interest at the rate of 9% per annum from the date of filing of the petition till the realization of the amount to be apportioned among the claimants equally, payable by both the respondents jointly and severally.

This award left the insurance company aggrieved and it has approached this Court by way of filing the present appeal praying that the same be accepted, the impugned award be set aside and the appellant – insurance company be absolved of its liability to pay compensation to the claimant.

Notice of the appeal was given to respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

The main thrust of arguments advanced by learned counsel for the appellant – insurance company was that the deceased cannot be held to be a third party, therefore the claimants were not entitled to get any compensation from the insurance company. In support of his contentions, he has referred to citation ***New India Assurance Co.Ltd. Versus C.M. Jaya, 2002(2)RCR(Civil) 22*** by the Apex Court wherein dealing with a comprehensive insurance policy, the Apex Court had observed that mere being comprehensive of an insurance policy coverage of third party risk does not automatically become unlimited; it covers only maximum of statutory liability and damage to the insured vehicle up to the assessed value at the time of insurance.

Learned counsel for the appellant - insurance company further relied upon judgment ***Sushila w/o late Sh.Muna Lal Ji and others Versus Sh.Pankaj Mahajan and another***, X-Obj.No.86-CII of 2011(O&M) and FAO No.4848 of 2010 decided on 10.12.2012 by a Single Bench of this Court, wherein it was observed that the third party itself has a particular technical connotation in the field of insurance. The first party is the insured and the second party is the insurer. The third party is a person, who is not the insurer or the insured. The driver is not a third party. A driver has his own status and obtains a right to claim as third party if yet another vehicle was involved or he claims as party vis-a-vis his employer in his status as workman. To claim compensation on behalf of driver as third party for claim arising on account of user of his own vehicle with no other vehicle intervening is a misunderstanding of the law of insurance and the law of Motor Vehicles Act.

Learned counsel for the appellant – insurance company has further placed reliance upon a judgment by a Co-ordinate Bench of this Court i.e. FAO-930-2014 titled ***Reliance General Insurance Company Limited Versus Nirmala Devi and others*** decided on 6.4.2018, wherein it was observed that a driver obtains a right to claim as third party if another vehicle was involved or he claims as party viz-a-viz his employer in his status as workman and compensation cannot be claimed from the insurance company by invoking the provisions of Section 163-A of the Motor Vehicles Act.

Another judgment referred to by learned counsel for the appellant – insurance company was ***Ningamma and another V. United India Insurance Co. Ltd., 2009 ACJ 2020*** wherein while dealing with a question whether legal representatives of a person driving a vehicle after borrowing it from the owner meets with accident without involving any other vehicle would be entitled to claim compensation under Section 163-A, the answer was held to be in negative observing that the borrower steps into shoes of the owner and the owner cannot himself be a recipient of compensation as liability to pay the same is on him.

On the other hand, learned counsel for the respondents No.1 and 2 has vehemently defended the award stating that the Tribunal was justified in allowing the claim petition and granting compensation to the petitioners/claimants and no fault can be found with the same. In support of his contentions, he has referred to authority ***New India Assurance Company Ltd. Versus Umesh Kumari and others, Vol.CLVII(2010-1), Punjab Law Reporter 675*** by a Single Judge of this Court wherein it was observed that when the premium towards compulsory PA to the owner-cum-driver was paid, that would obviously means to cover owner or driver of the vehicle, therefore deceased cannot be treated as a third party being son of the owner and has to be termed as owner itself as he has stepped into the shoes of the owner by borrowing the vehicle with permission of the owner, in that way the insurance company was liable. Learned counsel for the respondents/claimants further referred to the order passed by the Apex Court vide which the Special Leave to Appeal (Civil) No(s).4980/2010 filed against this judgment had been dismissed.

Learned counsel for the respondents/claimants further referred to judgment ***Bajaj Allianz General Insurance Company Ltd. Versus Jasmer Singh and another, 2015(3) RCR(Civil) 325*** by a Co-ordinate bench of this Court wherein it was observed in paras No.22 and 23 as under:

> 22. In Ningamma and another's case (supra) the claim was made under Section 163-A of the Act. The policy of insurance was "Act only Policy" and not a comprehensive/package policy. The victim was travelling on Hero Honda motorcycle which he had borrowed from the real owner. Hon'ble Supreme Court held that the deceased cannot be held to be employee of the owner of the motorcycle although he was

authorized to drive the said vehicle by its owner, and, therefore, he would step into the shoes of the owner of the motorbike. I am of the view that if the borrower of the vehicle steps into the shoes of owner, the terms of the policy which is comprehensive/package policy would include the personal accident claim of the person driving the vehicle provided he holds a valid licence.

23. From the above discussion, I find that the view expressed by this Court in Umesh Kumari's case (supra) and Monika's case (supra) is more in consonance with the principle held by Hon'ble Supreme Court in Ningamma's and Sinitha's cases (supra) and also the purpose and object of the policy of insurance towards personal accidents. The contention, therefore, raised by the learned appellant's counsel to challenge the Award on this ground cannot be sustained.

The instant policy being a comprehensive policy, the insurance company cannot escape its liability to pay compensation to the claimants.

It is the specific case of the claimants that the deceased was aged about 20 years and was a student of B-Tech IIIrd Year. PW1 Balwan Singh, petitioner/claimant No.2, father of the deceased has stated that deceased used to earn Rs.3,000/- per month by doing tuition work.

Though no student, who might have been getting tuition from the deceased was examined but then a young boy could be expected to contribute to the family kitty by his efforts by rendering services to his parents or by earning from odd jobs so as to share the financial burden of his parents and to stand on his own feet. Such efforts quantified to be Rs.3,000/- cannot be ignored. Though the Tribunal has taken notional income of the deceased to be Rs.15,000/- per annum considering that he was not actually doing any work and has not made any deduction towards personal expenses but at the same time has not granted any compensation under the head funeral expenses and loss of estate, I find that the compensation of Rs.2,42,000/- awarded on account of death of young student cannot be said to be on higher side. Therefore, I do not see any reason to reduce the compensation in any manner.

The appeal stands dismissed accordingly.

2.11.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No