

210

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**FAO No.3328 of 2012
Date of Decision : 04.04.2019**

The Oriental Insurance Company Ltd.

Appellant

Versus

Darshana Rani and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

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

Ms. Ekta Thakur, Advocate
for respondents No.1 and 2.

AVNEESH JHINGAN, J (Oral)

The award dated 07.03.2012 passed by the Motor Accident Claims Tribunal, Chandigarh [for brevity 'the Tribunal'] has been assailed by the insurer of Scooter bearing registration No. CH-03C-4425 [hereinafter referred to as 'offending vehicle'].

The claimants have been arrayed as respondents No.1 & 2 and owner i.e. M/s Orient Coal Enterprises Pvt. Ltd., Village Dariya, U.T., Chandigarh has been arrayed as respondent No.3.

The brief facts necessary for adjudication of the present appeal are that on 11.12.2008, Amandeep Singh was riding the offending vehicle. When he reached near, Gaushala of village Mubarikpur, a stray cow suddenly came on the road, he suddenly

applied brakes and as a result, he lost the balance and struck against electric pole. He sustained injuries and ultimately succumbed to the injuries.

A claim petition under Section 163-A of the Motor Vehicles Act, 1988 [for brevity 'the Act'] was filed by parents of the deceased. The Tribunal relying upon the decision of this Court in **Oriental India Insurance Co. Ltd. Vs. Silky and another, 2011-1 (Vol. CLXI) PLR 1**, allowed the petition and awarded ₹3,88,500/- alongwith interest @ 7.5% per annum.

Learned counsel for the insurer contends that the offending vehicle was owned by a Private Limited Company and Insurance Policy was also in the name of that Company. He further contends that the deceased was either an employee or a borrower of the offending vehicle, consequently, the legal heirs of the deceased cannot claim compensation under Section 163-A of the Act. He further argues that the Tribunal erred in relying upon the decision of this Court in **Silky's case** (supra), as no extra premium has been paid in the present case to cover the risk of the driver.

Learned counsel for the claimants defends the award and argues that the deceased stepped into the shoes of the owner and hence legal heirs were entitled to the compensation.

The Supreme Court in case of **Ningamma and another Vs. United India Insurance Co. Ltd., (2009) 13 SCC 710**, dealt with the following issue:-

“13. In the light of the aforesaid submissions, the question

that falls for our consideration is whether the legal representatives of a person, who was driving a motor vehicle, after borrowing it from the real owner meets with an accident without involving any other vehicle, would be entitled to compensation under Section 163-A of MVA or under any other provision(s) of law and also whether the insurer who issued the insurance policy would be bound to indemnify the deceased or his legal representatives?”

The issue was decided and it was held as under :-

“19. We have already extracted Section 163-A of the MVA hereinbefore. A bare perusal of the said provision would make it explicitly clear that persons like the deceased in the present case would step into the shoes of the owner of the vehicle. In a case wherein the victim died or where he was permanently disabled due to an accident arising out of the aforesaid motor vehicle in that event the liability to make payment of the compensation is on the insurance company or the owner, as the case may be as provided under Section 163-A. But if it is proved that the driver is the owner of the motor vehicle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him. This proposition is absolutely clear on a reading of Section 163-A of the MVA. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under Section 163-A of the MVA.”

It was held that the owner himself cannot be a recipient of compensation as the liability to pay the same is on him. It was also held that as the borrower of the offending

vehicle also stepped into the shoes of owner, the petition under Section 163-A is not maintainable.

Learned counsel for the claimants could not dispute the fact that there was no additional premium paid to cover the risk of driver of the offending vehicle, in such circumstances, reliance of the Tribunal on the decision of this Court in Silky's case (supra) cannot be upheld.

The offending vehicle was owned by a Private Limited Company. GR-36 of India Motor Tariff is reproduced 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 traveling 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 as opted by him/her.

The term 'owner-driver' has been defined under GR-36. It states that 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 PAC. The definition clearly restricts the meaning of 'owner-driver'. It only includes owner of the insured vehicle. There is a further rider that for claiming compensation under PAC, owner should be holding an 'effective' driving licence.

Note in GR-36 states that only the registered owner in person is entitled for Personal Accident Cover if he holds an effective driving licence. The said Cover is not to be granted where the vehicle is owned by a company, a partnership firm or a similar body corporate.

In view of above, there is no question in the present case of the driver being covered under the PAC. However, it would be appropriate to invoke Section 140 of the Act. Under the said provision, the claimants would be entitled to ₹50,000/- for 'no fault liability' as provided.

The appeal is disposed of in the aforementioned

terms. The claimants shall be entitled to an amount of ₹50,000/-
under Section 140 of the Act, to be paid by the Insurer.

[AVNEESH JHINGAN]
JUDGE

April 04, 2019

pankaj baweja

1. Whether speaking/ reasoned

:

Yes
2. Whether reportable

:

Yes