

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No.6450 of 2012 (O&M)
Date of Decision: 09.05.2019

Manjit and others

Appellants

Versus

Jagdish Kumar and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Ekta Thakur, Advocate
for the appellants.

Mr. R.K. Bashamboo, Advocate
for the respondent No.2.

AVNEESH JHINGAN, J (Oral):

This appeal is against award dated 02.03.2012 passed in MACT Case No.530 of 2009 by the Motor Accident Claims Tribunal, Chandigarh [for brevity 'the Tribunal'] dismissing the claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 [for brevity 'the Act'] relying upon the decision of the Supreme Court in **Ningamma and another Vs. United India Insurance Co. Ltd., (2009) 13 SCC 710**, holding that the deceased was not a third party and he was borrower of motorcycle.

Brief facts of the case are that on 03.12.2009, Charanjit was riding motorcycle bearing registration No. CH-24T-4187 alongwith Hari Chand, who was the pillion rider. When they reached near T-Point near Chunni Khurd, the motorcycle developed sudden mechanical defect and went out of control. In the meantime, another vehicle struck the motorcycle from behind. Both the riders of the

motorcycle sustained injuries. They were taken to PGI, Chandigarh where they succumbed to the injuries. FIR No.168, dated 04.12.2009 was registered at Police Station Bassi Pathana.

Learned counsel for the appellants contends that the deceased was a third party as the registered owner of the motorcycle is respondent No.1. In the alternative, she argues that deceased being driver stepped into the shoes of the owner, hence entitled to amount due under Personal Accident Cover (PAC).

The contention raised by learned counsel for the appellants is not well founded. The issue that the borrower of the vehicle cannot claim compensation under Section 163-A of the Act, is settled by the Supreme Court in **Ningamma's case** (supra).

Learned counsel for the appellants has not been able to dispute the fact the vehicle was not owned by the deceased. The Supreme Court in **Ningamma's case** (supra) 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 representatives of the deceased step into the shoes of the owner of the motor vehicle, hence, could not claim compensation under Section 163-A of the Act.

The issue now arises is that once it is held that borrower steps into the shoes of owner can a contrary stand be taken that borrower will not be covered under PAC.

The answer is yes, he will not be covered under PAC.

It would be appropriate at this stage to quote Sections 140 and 163-A of the Act and GR-36.

“140. Liability to pay compensation in certain cases on the principle of no fault –

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicles shall, or, as the case may be, the owners of

the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty – five thousand rupees.

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under subsection (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force :

Provided that the amount of such compensation to be given under any other law shall be reduced from the

amount of compensation payable under this section or under section 163 – A.

163 – A. Special provisions as to payment of compensation on structured formula basis –

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation. – For the purposes of this subsection, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923.

(2) In any claim for compensation under subsection (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.

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 borrower of vehicle is not covered under the PAC.

The term 'owner-driver' has been defined under GR-36. It states "Compulsory Personal Accident Cover shall be applicable under both cases i.e. Liability Only and Package policies. The owner of insured vehicle holding an 'effective' driving licence 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 for 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. This further clarifies that representative of the owner will not fall within the ambit of PAC.

The term 'owner-driver' has been defined, hence, no word can be added or deleted from the definition to extend the benefit to claimant so that the term 'owner-driver' can be stretched to mean owner or driver. Hence, the appellants are not entitled to receive any compensation under 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. However, the claimants shall be entitled to an amount of ₹50,000/- under Section 140 of the Act, to be paid by the Insurer.

May 09, 2019

pankaj baweja

[AVNEESH JHINGAN]

JUDGE

1. Whether speaking/ reasoned

:

Yes
2. Whether reportable

:

Yes