IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No. 10088 of 2014 (O&M)
DECIDED ON: MARCH 19, 2019

UNITED INDIA INSURANCE CO. LTD.

APPELLANT

VERSUS

GURDEV KAUR AND OTHERS

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Lalit Garg, Advocate
for the appellant.

Mr. Ishan Cooner, Advocate for
Mr. J.S. Cooner, Advocate
for the respondents No.1 to 5.

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AVNEESH JHINGAN, J (ORAL):

The insurer of motorcycle bearing registration No. PB-08-CF-3317 (Temp.) (hereinafter referred to as 'the offending vehicle') is in appeal against award dated 16.09.2014 passed by the Motor Accident Claims Tribunal, Jalandhar (for brevity 'the Tribunal').

Claimants have been arrayed as respondents No.1 to 7 and owner of the offending vehicle has been arrayed as respondent No.8 in the appeal.

The issue raised in the present appeal is that the deceased was a borrower of the offending vehicle, his LRs cannot claim compensation under Section 163-A of the Motor Vehicles Act, 1988 (for short 'the Act'). Reliance has been placed upon the decision of the Supreme Court in "***Ningamma and another Vs. United India Insurance Co. Ltd., (2009) 13 SCC 710",***

The brief facts emanating from the record are that on 09.06.2013, Kuldeep Singh was driving the offending vehicle and his friend Mintu was a pillion rider. At about 11.00 PM they met with an accident and as a result of the accident both of them died. DDR was lodged.

A claim petition under Section 163-A of the Act was filed. In the claim proceedings the insurer of the offending vehicle raised an objection that the deceased is not a third party and claim petition is not maintainable. The Tribunal rejected the said objection and awarded a sum of ₹3,86,400/- alongwith interest @6% per annum.

Heard learned counsel for the parties and perused the record.

There is no dispute between the parties with regard to the fact that the deceased was a borrower of the offending vehicle. In such circumstance his LRs are neither entitled to the compensation under Section 163-A of the Act nor they are covered under Personal Accident Cover (PAC)

The Supreme Court in ***Ningamma's case (supra),*** states that the borrower of the vehicle cannot claim compensation under Section 163-A of the Act. It was held:-

"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, can not claim compensation under Section 163-A of the Act.

The issue now arise 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, 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 –***
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> *(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.*
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> *(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.*
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> *(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 sub-section (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 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 at this stage. Under the said provision, the claimants would be entitled to ₹50,000/- for 'no fault liability' as provided.

The claimants shall be entitled to an amount of ₹50,000/- under

Section 140 of the Act, to be paid by the Insurer.

Disposed of accordingly.

(AVNEESH JHINGAN)
JUDGE

MARCH 19, 2019
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Whether speaking/ reasoned Yes/No
Whether reportable Yes/No