IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No. 255 of 2015 (O&M) and
XOBJ-116-CII-2015

Date of decision : November 26, 2019

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Future Generali India Insurance Co. Ltd.,
............Appellant

Versus

Amarawati and others
...........Respondents

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BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Vishal Aggarwal, Advocate for the appellant.

Mr. Jagram Singh Cooner, Advocate for respondents no. 1 to 4.

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RITU BAHRI, J.

Appellant-Future Generali India Insurance Company Limited (hereinafter referred to as `the Insurance Company') has come up in appeal against the award dated 03/11/2014 passed by the Motor Accidents Claims Tribunal, Patiala (hereinafter referred to as `the Tribunal') in a claim petition filed under Section 163-A of the Motor Vehicles Act by respondents No. 1 to 4/claimants/cross objectors for claiming compensation on account of the death of Mukesh Kumar, son of Sh. Ram Kumar in a motor vehicle accident on 07/11/2012. By way of this award, compensation of Rs.3,64,500/- has been awarded to the claimants No. 1 and 2.

Cross objections have been filed by the claimants for enhancement of the compensation awarded by the Tribunal in the claim petition filed by them on account of the death of Mukesh Kumar.

Briefly stated, the facts of the case, as pleaded by the claimants are that on 07/11/2012, Mukesh Kumar had gone to village Rata Tibbi, District Panchkula to attend the marriage of his friend on motorcycle make Hero Honda Karisma bearing registration No. GJ-2EL-2752. When he reached near high school Gobindpur, District Panchkula, his motorcycle got imbalanced and struck against an electric pole. Resultantly, he fell down along with his motorcycle and sustained multiple grievous injuries. He died at the spot on account of those injuries. The DDR regarding the said accident was lodged with the police station, Raipur vide DDR No. 23 dated 07/11/2012. Motorcycle in question was owned by Vinayak Prashar respondent No. 1 and insured with respondent No. 2. Claimants filed a claim petition under Section 163-A of the Motor Vehicles Act to claim compensation on account of death of Mukesh Kumar.

Upon notice, respondent No. 1 did not appear despite service and was proceeded against ex parte vide order dated 07/04/2014. Respondent No. 2 appeared and filed written statement submitting therein that the present claim petition was not maintainable under Section 163 A of the Motor Vehicles Act as the deceased was not third party and he himself was driving the motorcycle at the time of the accident. It was further submitted therein that the deceased had borrowed the motorcycle from respondent no.1 and as such he had stepped into the shoes of respondent no.1 and no compensation should be granted on account of his death.

After considering respective submissions made by counsel for the parties and going through the evidence placed on record, the Tribunal held that the deceased Mukesh Kumar, had stepped into the shoes of owner of the motorcycle which was comprehensively insured with respondent No. 2-Insurance company. As such insurance company was also liable to pay personal accident loss to the legal heirs of deceased on account of his death. Reference was made to a judgment of this court in the case of ***Bajaj Allianz General Insurance Co. Ltd. versus Anil Kumar and others 2014 (1) PLR 129***, wherein it was held that the deceased being borrower of the vehicle from the owner has to be termed as owner itself and there being comprehensive policy where additional premium had been paid to cover the owner and driver, the said policy would cover the claim of the claimants in that situation and the insurance company was held liable to pay compensation. Reference was also made by the Tribunal to a judgment of this Court in the case of ***New India Assurance Company Limited versus Umesh Kumari and others 2010 (1) PLR 675*** wherein, deceased was the son of owner of the offending vehicle. It was held that he stepped into the shoes of the owner by borrowing the vehicle with permission of the owner. Deceased cannot be treated as third party. Deceased being son of the owner has to be termed as owner itself. Comprehensive policy would cover the claim of the claimant. Appellant insurance company was held liable to pay the compensation. In the present case, it was observed by the tribunal that the claimants have been able to prove that deceased died in a motor vehicle accident while driving motorcycle bearing registration No. GJ-2 EL-2752 on 07/11/2012. Resultantly, the claimants were held entitled to receive compensation to the tune of Rs.3,64,500/-.

Counsel for the insurance company contended that the deceased borrowed motorcycle from its owner i.e respondent No. 1. As such, he had stepped into the shoes of owner and claimants were not entitled to get any compensation as claims under Section 163-A of the Motor Vehicles Act pertains to third party claims. It was vehemently contended that the insurance company was not liable to pay any compensation as deceased was not third party. Counsel for the insurance company made a reference to a judgment of this Court in the case of ***Reliance General Insurance Company Limited versus Tej Pal alias Teja Ram and others 2018 (2) PLR 303,*** wherein it was held that the definition clearly restricts meaning of owner driver. It only includes owner of insured vehicle. The owner driver has been defined, hence, no word can be added or deleted from definition to extend benefits to claimant so that term owner driver can be stretched to mean owner or driver. Reference was also made by him to a judgment of Hon'ble the Supreme Court of India in the case of ***Ningamma and another versus United India Insurance Company Limited 2009 (3) RCR (civil) 435,*** wherein it has been held that if death of owner is occurred while driving his own vehicle, his legal heirs are not entitled to claim compensation under Section 163 A of Motor Vehicles Act, likewise if a borrower of vehicle died in the accident his legal heirs are also not entitled to claim compensation under Section 163 A as borrower will be considered owner of the vehicle. It was held in paragraph 19 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....'

In the present case, deceased-Mukesh Kumar had gone to attend the marriage of his friend on motorcycle which was owned by one Vinayak Prasher and was insured with respondent no.2. Hence, the deceased was a borrower and stepped into the shoes of owner Vinayak Prasher. Applying the ratio of the judgment of Hon'ble the Supreme Court in the ***Ningamma's case (supra),*** the claim petition was not maintainable under Section 163-A of the Motor Vehicle Act for seeking compensation.

Thus, in view of all that has been discussed above and in view of the judgment in ***Ningamma's case (supra)***, the appeal of the appellant is being allowed and the cross-objections filed by the claimants are hereby being dismissed. An amount of Rs.25,000/- which was deposited by the Insurance Company at the time of filing the appeal shall be released to it.

November 26, 2019 **(RITU BAHRI)**
ritu **JUDGE**

Whether speaking/reasoned	Yes
Whether reportable	No