IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-5662-2013 (O&M)

National Insurance Company Ltd.

...Appellant

Versus

Amandeep Kaur and others

...Respondents

(2) FAO-5894-2013 (O&M)

Amandeep Kaur and others

...Appellants

Versus

Surjit Singh and another

...Respondents

Date of Decision:- 24.09.2019.

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

Present: Ms. Vandana Malhotra, Advocate for the appellant in FAO-5662-2013 and for respondent No.3 in FAO-5894-2013.

Mr. Ashwani Arora, Advocate for the appellants in FAO-5894-2013 and for respondent Nos.1 to 3 in FAO-5662-2013.

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H.S. MADAAN, J.

Petitioners/claimants Smt. Amandeep Kaur, aged about 24 years-widow, Master Vikramjeet Singh, aged about 01 years-minor son and Smt. Amrik Kaur, aged about 50 years-mother of Gurpreet Singh, an unfortunate victim of a road side accident, had filed a claim petition under Section 163-A of the Motor Vehicles Act, for grant of compensation to the tune of Rs.30 lacs against the respondents i.e. Surjit Singh-owner and National Insurance Company Ltd., Chandigarh-insurer of Car No.PB-65-L-6822. As per version of claimants, on 22.05.2011 at about 3.45 PM, deceased Gurpreet Singh was coming from Hemkund Sahib to Chandigarh via Rudraprayag, driving Indigo Car bearing registration No.PB-65-L-6822 and when, he reached Rudraprayag City, the car went out of control and fell in a ditch. The deceased received serious injuries and died. At the time of his death in the accident, deceased was aged about 28 years, doing private work, earning Rs.3300/- per month. The claimants were dependent upon his income. A sum of Rs.20,000/- was spent by them on his cremation. They prayed that the claim petition be accepted.

On being put to notice, both the respondents appeared and filed written statements. In the written statement filed by respondent No.1, he almost conceded the case of claimants, contending that the deceased had a valid and effective driving license to drive the car and the car was insured with National Insurance Company Ltd., Chandigarh, by way of package policy and premium for covering risk to the driver was also paid. In the written statement filed by respondent No.2-insurance company, it had raised various legal objections and took statutory defences, contending that the claim petition had been filed by the claimants in collusion with respondent No.1-owner of the car. Gurpreet Singh-deceased was himself at fault since the accident had taken place due to his negligence. Therefore, no compensation was payable.

Moreover, deceased Gurpreet Singh had stepped into shoes of owner of the vehicle, refuting the remaining assertions, such insurance company prayed for dismissal of the claim petition.

On pleadings of the parties, the following issues were framed:-

1. Whether the accident dated 22.05.2011, resulting in death of Gurpreet Singh occurred out of use of vehicle No.PB-65-L-6822? OPP.
2. Whether the claimants are entitled for compensation for the death of Gurpreet Singh, if so, to what extent and from whom? OPR.
3. Whether the driver of offending vehicle was not holding a valid and effective driving license on the date of accident and the vehicle was being driven in violation of terms and conditions of the insurance policy? OPR2.
4. Relief.

The parties led evidence in support of their respective claims. After hearing arguments, the Motor Accidents Claims Tribunal, Chandigarh (for short 'the Tribunal') decided issue No.1 in favour of claimants, issue No.2 was decided, finding that the claimants were entitled to recover the compensation of Rs.4,75,200/- but insurance company was liable to the extent of Rs.2 lacs only and vide award dated 01.08.2013, the claim petition was accepted partly and compensation of Rs.4,84,700/- was awarded to the claimants, payable by the respondents, however, liability of respondent No.2-insurance company was fixed upto Rs.2 lacs. The claimants were granted interest @ 6% p.a. on the compensation amount from the date of order till realization. The amount was ordered to be shared as follows:-

Claimant No.1 (widow) = Rs.2,84,700/-
(including consortium)

Claimant No.2 (minor son) = Rs.1 lakh
Claimant No.3 (mother) = Rs.1 lakh

It was further directed that share in compensation of major claimants shall be paid in cash, whereas, those of minor-claimant No.2 be deposited in his name in the form of fixed deposit in some nationalized bank in a scheme fetching maximum interest to be released to him on his attaining majority.

The claimants were dissatisfied with the amount of compensation awarded to them by the Tribunal and they have filed an appeal before this Court. Similarly, the insurance company was also dissatisfied with the award and has preferred an appeal. Notice of both the appeals were given to respective respondents, who have put in appearance.

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

As far as the amount of compensation awarded by the Tribunal to the claimants, it has been done as per structured formula under Section 163-A of the Motor Vehicles Act and no fault can be found with the same but then the liability of the insurance company has been held to be limited upto Rs.2 lacs, which is being challenged by the claimants.

Learned counsel for the appellants/claimants has contended that he had sought information from United India Insurance Company, Sector-17A, Chandigarh under Right to Information Act, posing a question as to what is the separate premium if any charged for the risk of the unpaid driver covered under package policy for two wheelers and he was informed that that the cover is automatic and no separate premium is required. He has referred to authority **United India Insurance Company Ltd. Vs. Kusum Sood and others, 2008 ACJ 2601** by a Division Bench of this Court, wherein it was observed that when a insurance policy covered third party risk and the owner while driving the vehicle had died in the accident, the insurance company was liable to pay compensation. It was clarified that the term 'driver' as appearing in the insurance policy would not necessarily mean a person, who is an employee of the owner or who happens to be at the wheel of the vehicle at the time of accident, but the necessary implication is that the person to whom the vehicle belongs, is also the intended driver for the same, and would be covered under the risk clause of the policy. He had further referred to judgment **Bajaj Allianz General Insurance Company Ltd. Vs. Jasmer Singh and another** in FAO-3493-2012 by a Co-ordinate Bench, wherein it was held as under:-

> "*21. It needs to be emphasized that learned counsel for the appellant-Insurance Company could not dispute liability of the Insurance Company in case the vehicle was being driven by the owner himself as premium of ₹ 50/- for the personal accident*

claim was paid. If that be so, why not the same principle should apply in case the victim is driving the vehicle under the authority of the owner. The deposit of premium for personal accident claim in the package/comprehensive policy in my view cannot be limited only to the owner as the words used in the policy to cover personal accident is described as 'owner driver'. Any other interpretation to these plain words would be restricting the authorized driving to the owner himself and such a consequence is manifestly illegal. Such an interpretation would in fact amount to a contract to pay premium for the life insurance which cannot be so as the premium has been paid for the policy issued under the Act.

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."*

Thus, I find that the deceased is also covered by the risk, it being a package policy. Though, learned counsel for the insurance company has referred to a judgment Oriental Insurance Co. Ltd. Vs. Kavita Singal & Ors. 2012 AAC 757, contending that the personal accident cover is available only to the owner of the insured vehicle holding effective driving license and not to any third party driving the vehicle. However, I find that this judgment is not applicable to the facts of the present case. Learned counsel for insurance company has further referred to judgments **New India Assurance Co. Ltd. Vs. Veerpal Kaur and Ors. 2011(2) PLR 694, New India Assurance Co. Ltd. Vs. Sadanand Mukhi, 2009(1) RCR (Civil) 817, Ningamma & Anr. Vs. United India Insurance Co. Ltd., 2009(3) RCR (Civil) 435 and Cholamandlam MS General Insurance Co. Ltd. Vs. Smt. Rajesh & Ors. in FAO-3764-2010** decided on 14.05.2014 but those are also not helpful to the case of insurance company in any manner due to different facts and circumstances of the case and the context, in which such observations had been made.

The deceased in this case was son of the registered owner of the car and he had taken the car under his authority, therefore, he is taken to be covered by the risk of the owner/driver as provided under the policy. Under Section 163-A of the Motor Vehicles Act, the only thing to be seen is as to whether the accident had taken place by use of a motor vehicle and question of rashness and negligence is not to be probed. Therefore, the appeal i.e. FAO-5662-2013 filed by the insurance company lacks merit and the same is dismissed, whereas, the appeal filed by the claimants i.e. FAO-5894-2013 is partly allowed, inasmuch as though the compensation awarded to claimants at Rs.4,84,700/- is kept intact but rate of interest awarded @ 6% p.a., is enhanced to 7.5% p.a., that too, from the date of filing of claim petition till actual realization. However, the directions with regard to apportionment of the compensation shall remain as such.

24.09.2019 **(H.S. MADAAN)**
sumit.k **JUDGE**

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No