IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 22.04.2019

(i) FAO No.5815 of 2014 (O&M)

National Insurance Company Ltd.

.......Appellant

Versus

Smt. Ranjana alias Komal and others

......Respondents

(ii) FAO No. 3161 of 2015 (O&M)

Smt. Ranjana alias Komal and others

.......Appellants

Versus

Vijay Kumar Midha and another

......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Neeraj Khanna, Advocate and
Mr. Ravinder Arora, Advocate
for Insurance Company.

Mr. Vinod K. Kanwal, Advocate
for Mr. Ashit Malik, Advocate
for the appellant in FAO No. 3161 of 2015
and for respondents No.1 to 4 in FAO No. 5815 of 2014.

AVNEESH JHINGAN, J.(oral)

This order shall dispose of two cross appeals bearing FAO Nos. 5815 of 2014 and 3161 of 2015.

The claimants and the insurer of Car bearing registration No. DL-0CD-8801 (for short 'the car) are in cross appeals against the award dated 10.3.2014 passed by the Motor Accident Claims Tribunal,

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Kurukshetra (for short 'the Tribunal') in MACT Case No. 398 of 2013.

The brief facts necessary for adjudication of the present appeals are that on 6.8.2012, Gaurav Kumar alongwith Anil Kumar, Sharesht @ Surinder, Avtar Singh and Baby Ayush were going in a car from village Kaul to Radaur, District Yamuna Nagar to attend the marriage of Sanejev Kumar. On 7.8.2012, when they were returning back, the car which was being driven by Manoj Kumar, struck against a stationary truck from behind. The truck was parked in the middle of the road without any indicator. As a result of the accident, Manoj Kumar received fatal injuries and lost his life.

A claim petition under Section 163-A of Motor Vehicles Act, 1988 (for short 'the Act') was filed. The Tribunal after considering the facts and circumstances of the case, awarded a sum of ₹ 6,85,800/- along with interest @ 7.5% per annum. The amount awarded included a sum of ₹ 1,00,000/- for loss of consortium, ₹ 1,00,000/- for loss of care and guardian and ₹ 25,000/- for funeral expenses.

Lerned counsel for the insurer argues that the Tribunal erred in awarding compensation under Section 163-A of the Act as the deceased was the borrower of the vehicle. The contention raised is that inspite of the fact that separate premium was paid for personal accident cover (PAC), the deceased would not be covered under the PAC as he was the borrower.

Learned counsel for the claimants contended that the deceased stepped into the shoes of the registered owner, atleast the amount of PAC i.e. ₹ 2 lakh be awarded to the claimants.

The only issue for consideration in the present appeal is 'whether a borrower of vehicle is covered under PAC or not?'

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The issue that the borrower of a vehicle will also be covered under the PAC or not, is based on the decision of the Supreme Court in ***Ningamma and another Vs. United India Insurance Co. Ltd.,*** 2009 (13) SCC 710.

Supreme Court 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

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2019.04.26 13:03
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> 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 arise is that once it is held that borrower steps into the shoes of owner can a contrary stand be taken by insurance company 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

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2019.04.26 13:03
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default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (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 formuala 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 sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s

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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

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2019.04.26 13:03
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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.

It is not disputed that in the present case, that extra premium was paid for PAC for owner-driver. The term 'owner-driver' has been defined under GR-36. It states "Compulsory Personal Accident Cover shall be applicable under both policies i.e. Liability Only and Package policies. The owner of insured vehicle holding an 'effective' driving license is termed as Owner-Driver for this purposes. 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 licnese.

Note in GR-36 states that only the registered owner in person is entitled for Personal Accident Cover if he holds an effective driving license. 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.

However, at this stage 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.

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The award dated 10.3.2014 is modified to the extent that the claimants would be entitled to ₹ 50,000/- for no fault liability. As the car was insured, the insurer would be liable to pay the said amount.

The appeal filed by the insurance company appeal is allowed and the appeal filed by claimants is dismissed.

(AVNEESH JHINGAN)
JUDGE

22.04.2019
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Whether speaking/reasoned Yes
Whether Reportable: Yes

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