IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-410-2016(O&M)

United India Insurance Company Ltd.

...Appellant

Versus

Smt.Jaspal Kaur and others

...Respondents

(2) FAO-411-2016(O&M)

United India Insurance Company Ltd.

...Appellant

Versus

Smt.Dalbir Kaur and others

...Respondents

(3) FAO-2601-2016(O&M)

Smt.Jaspal Kaur and others

...Appellants

Versus

United India Insurance Company Ltd.

...Respondent

Date of Decision:-13.2.2019

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

Present: Mr.Harsh Aggarwal, Advocate
for the appellant in FAO-410-2016 and
FAO-411-2016 and for respondent in FAO-2601-2016.

Mr.Gagandeep Singh, Advocate
for the appellants in FAO-2601-2016 and
for the respondents in FAO-410-2016 and FAO-411-2016.

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H.S. MADAAN, J.

By this order, I shall dispose of three FAOs i.e. FAO-410-2016, FAO-411-2016 filed on behalf of appellant – United India Insurance Company Ltd. and FAO-2601-2016 filed on behalf of appellants – Smt.Jaspal Kaur and others, which have arisen out of the same accident.

Briefly stated, facts of the case are that on 28.4.2014, one Jarnail Singh, aged about 35 years working as a carpenter stated to be earning Rs.3,300/- approximately, was driving a motorcycle bearing registration No.PB-05-W-1161 going from Chohla Sahib towards his village Chautala; that one Kuldeep Singh owner of the motorcycle was pillion riding thereon, who was also a carpenter stated to be earning Rs.3,300/- per month; that Baldev Singh, the real brother of the deceased Jarnail Singh was following the said motorcycle at a little distance behind; that at about 8:30/9:00 p.m., when the motorcycle of the deceased reached in front of a rice sheller of Sh.Charanjit Singh, Chairman near Nushehra Pannuaan, an unknown vehicle make either Bolero or Scorpio coming from opposite side being driven in a rash and negligent manner hit the motorcycle, resultantly, Jarnail Singh and other rider of the motorcycle Kuldip Singh suffered multiple injuries; that they were first brought to Civil Hospital Tarn Taran from where they were referred to Ranjit Hospital, Amritsar where during treatment, they succumbed to the injuries suffered by them in the accident; that an FIR No.47 dated 29.4.2014 for offences under Sections 304-A, 279, 427 IPC was registered regarding the accident at Police Station Sarhali, District Tarn Tarn on the statement of Baldev Singh.

The legal representatives of deceased Sh.Jarnail Singh namely Smt.Jaspal Kaur - wife aged about 35 years, Bikramjit Singh – son aged about 18 years, Ramanpreet Kaur – minor daughter, aged about 16 years, Jagjit Singh – minor son aged about 14 years and Smt.Gurdeep Kaur – mother aged about 70 years had brought a claim petition under Section 163-A of the Motor Vehicles Act against United India Insurance Company through its Divisional Manager being insurer of the motorcycle bearing registration No.PB-05-W-1161.

The legal representatives of deceased Sh.Kuldip Singh namely Smt.Dalbir Kaur - wife aged about 32 years, Vishal Singh– son aged about 18 years, Sunil Singh – minor son aged about 16 years and Santosh Kaur – minor daughter aged about 15 years had also brought a claim petition under Section 163-A of the Motor Vehicles Act against United India Insurance Company through its Divisional Manager being insurer of the motorcycle abovesaid.

In the said claim petitions, the claimants had contended that both the deceased were aged about 35 years and earning Rs.3,300/- each every month.

On notice, the respondent Insurance Company appeared through counsel and filed written statements contesting the claim petitions taking preliminary objections that the petitions were not maintainable; that the driver of the motorcycle was not having a valid driving licence; that the alleged driver was not not owner of the motorcycle and the claim petitions were bad for non-joinder and misjoinder of the necessary parties. On merits, denying the remaining assertions in the claim petitions, the respondent prayed for their dismissal.

After contest, the claim petitions were allowed by Motor Accidents Claims Tribunal, Tarn Taran and separate awards dated 9.10.2015 were passed and compensation of Rs.5,21,000/- was awarded in each petition to the petitioners/claimants with interest and cost.

The claimants/petitioners Jaspal Kaur and others of MACP No.06 of 24.3.2015 being dissatisfied with the said Award and insurance company being dissatisfied with both the Awards have filed separate appeals before this Court.

Notice of the appeals was issued to the respondents, who put in appearance through counsel.

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

Learned counsel for the appellant – Insurance company has contended that the deceased Jarnail Singh was driving the motorcycle as a borrower, in that way, he had stepped into the shoes of the owner/insured and was not entitled to compensation against the appellant – Insurance Company in terms of authority ***Ningamma & Anr. Versus United India Insurance Co. Ltd., 2009(3) RCR(Civil) 435***. As regards deceased Kuldip Singh, learned counsel for the appellant has submitted that the deceased was owner of the vehicle and he being himself insured was not entitled to get any compensation under Section 163-A of the Motor Vehicles Act except a sum of Rs.1 lac towards personal accident claim.

Learned counsel for the appellant has further pressed into service authority ***National Insurance Co. Ltd. Versus Ashalata Bhowmik and Ors., 2018(4) RCR(Civil) 211*** by the Apex Court wherein it was observed that the claimant cannot maintain a claim on the basis of his own fault or negligence and argued that even when he himself may have caused the accident on account of his own rash and negligent driving, he can nevertheless make insurance company to pay for same. It was further observed that when the accident had taken place due to rash and negligent driving of the vehicle by deceased and no other vehicle was involved in the accident, the deceased being owner of the offending vehicle was not third party within meaning of the Act and LRs of the deceased could not have maintained claim petition under Motor Vehicles Act. He further cited authority ***New India Assurance Company Ltd. Versus Sadanand Mukhi and others, 2009(1) RCR(Civil) 817*** by Hon'ble Apex Court where while dealing with a case when a motorcycle duly insured by owner was being driven by son of the insured, when it met with an accident and said son of the owner died, the reason for the mishap was that a stray dog had come in front of the motorcycle, in that way, the accident had taken place by use of vehicle and not by negligence of the driver; the owner was not entitled to any claim since son of owner was not a third party in relation to Insurance Company.

In *Ningamma & Anr. Versus United India Insurance Co.*

Ltd.(supra) it was observed that when a owner dies while driving his own vehicle, his legal representative was not entitled to claim compensation under Section 163-A of the Motor Vehicles Act and likewise if a borrower of the vehicle died in accident, his legal heirs also not entitled to claim compensation under Section 163-A since the borrower will be considered owner of vehicle.

On the other hand, learned counsel appearing for the respondents/claimants has referred to citation ***United India Insurance Co. Ltd. Versus Sunil Kumar and Anr., 2018(1) RCR(Civil) 680*** by the Apex Court wherein it was observed that in a claim petition under Section 163-A of Motor Vehicles Act for compensation on structured formula basis, an insurer cannot allowed to raise defence of negligence on the part of victim in claim proceedings under Section 163-A of the Motor Vehicles Act.

After hearing the rival contentions, I find that the Tribunal has rightly come to the conclusion that the claimants are entitled to get compensation under Section 163-A of the Motor Vehicles Act. The motorcycle in question at the relevant time was being driven by Jarnail Singh on which Kuldip Singh was a pillion rider. Kuldip Singh was owner of the motorcycle in question. Though the contention of the insurance company is that Jarnail Singh had borrowed the motorcycle from Kuldip Singh, as such stepped into his shoes and cannot claim compensation from the insurance company but then learned counsel for the claimants contended the Jarnail Singh came within definition of a third party and since additional premium had been paid, the LRs of Kuldip Singh are also entitled to compensation more particularly when as has been held by the Tribunal that the accident had not taken place on account of any wrongful driving of motorcycle by Jarnail Singh but due to rash and negligent driving of an unknown Bolero or Scorpio vehicle regarding which formal FIR No.47 dated 29.4.2014 had been registered.

The authorities referred to by learned counsel for the appellant – insurance company are not applicable due to different facts and circumstances and the context in which such observations had been made. Both the petitions having been filed under Section 163-A of the Motor Vehicles Act were required to be decided in terms of the structured formula. The Tribunal has admittedly deviated from that formula.

As far as the claim petitions with regard to deaths of deceased Jarnail Singh and Kuldeep Singh, taking their age as 40 years each and monthly income as Rs.3,300/- per month each, making deduction of 1/3rd each of amount towards personal expenses, dependency of claimants was taken to be Rs.2,200/- per month, annual dependency to be Rs.26,400/- (2200 x 12) and multiplier of 15 was correctly applied in terms of the second schedule, total compensation payable in that regard come out to be Rs.3,96,000/- (26,400 x 15).

However, when it came to granting compensation under the head of loss of consortium and towards funeral expenses, the Tribunal granted amount much more than it should have done. As per the schedule under Section 163-A for loss of consortium Rs.5,000/- at the most could have been granted and towards funeral expenses Rs.2,000/- could have been granted. In addition to that Rs.2,500/- were to be granted under the head loss of estate. Therefore, total compensation in each claim petition worked out to be Rs.4,05,500/- (3,96,000 + 5,000 + 2,000 + 2,500). The wrong done by the Tribunal in that regard is to be undone.

Thus, FAO-410-2016 and FAO-411-2016 filed by the insurance company are allowed partly and compensation awarded in both the petitions is reduced to Rs.4,05,500/- from Rs.5,21,000/-. Other terms and conditions including the apportionment of compensation shall remain as such as given in the award.

Whereas FAO-2601-2016 filed by the claimants Jaspal Kaur and others for enhancement of compensation is not found to have any merit and the same stands dismissed.

13.2.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No