211

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

****

FAO No.5135 of 2015 (O&M)
Date of Decision: 05.02.2019

Kuldip Kaur and others

Appellants

Versus

Jai Pal and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. R.K. Agnihotri, Advocate
for the appellants.

None for respondents No.1 and 2.

Mr. Naveen Kapur, Advocate
for respondent No.3.

****

AVNEESH JHINGAN, J (Oral):

The present appeal has been filed against award dated 23.02.2013 passed by the Motor Accident Claims Tribunal, Karnal (for brevity 'the Tribunal').

The brief facts of the case are that Dharampal lost his life in a motor vehicular accident which took place on 24.08.2010. The vehicle involved in the accident was motorcycle bearing registration No. HR-05X-5617. Dharampal was driving the motorcycle which was owned by Jai Pal (arrayed as respondent No.1). The said motorcycle was hit by an unknown vehicle. The accident proved fatal for Dharampal.

A claim petition under Section 163-A of the Motor Vehicles Act, 1988 [for brevity 'the Act'] was filed by legal heirs of the deceased. In the claim petition it was pleaded that earning of the deceased was ₹10,000/- per month and he was engaged in selling clothes. The claim petition was dismissed by the Tribunal on the grounds that claimants failed to substantiate the fact that the accident took place on account of use of motorcycle and further that he died due to accidental injuries. The Tribunal relied upon the Post Mortem Report, wherein it was mentioned that cause of death is drowning. The Tribunal further considered the fact that earning claimed of the deceased is more than ₹40,000/- per annum. Aggrieved of the dismissal of the claim petition, the present appeal has been filed.

Heard learned counsel for the parties and perused the paper book.

Learned counsel for the appellants contends that the Tribunal erred in holding that the accident never took place on account of use of motorcycle in question. He relies on the Post Mortem Report wherein it is mentioned in one of the column that after suffering from injuries in a motor vehicular accident, the deceased fell in water. Further, it is argued that the insurance policy was a comprehensive policy which covers the deceased also who was borrower of motorcycle.

The contention raised by learned counsel for the appellants lacks merit. Under Section 163-A of the Act the onus on the claimants was to establish that the vehicle i.e. motorcycle bearing registration No. HR-05X-5617 was involved in the accident. Learned counsel for the appellants has not been able to point out any reliable evidence adduced before the Tribunal to show the involvement of said motorcycle in the accident. He further relies on statement of PW-1 Kuldeep Kaur, but he is not able to dispute the fact that she was not an eye-witness to the accident. Apart from this, the income of the deceased was pleaded as ₹10,000/- per month. The claim under Section 163-A of the Act can be filed by the claimants where income of the deceased is less than ₹40,000/- per annum.

Be that as it may, there is no dispute on the fact that deceased was a borrower of the motorcycle owned by Jai Pal. A borrower of vehicle cannot claim compensation under Section 163-A of the Act.

The Supreme Court in case of ***Ningamma and another Vs. United India Insurance Co. Ltd., 2009 (13) SCC 710*** 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 claimed compensation under Section 163-A of the MVA."

The contention raised by learned counsel for the appellants that the deceased was covered under Personal Insurance Cover (PAC) as it was a comprehensive policy lacks merit in view of GR-36, which is reproduced below:-

***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 ownerdriver 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.*

It is not disputed that in the present case, extra premium was paid for PAC for owner-driver. The term 'owner-driver' has been defined under GR-36. It states that 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 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 under 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.

No interference is called for in the award of the Tribunal.

The appeal is dismissed.

[AVNEESH JHINGAN]
JUDGE

February 05, 2019
pankaj baweja

1. Whether speaking/ reasoned : **Yes**/ No
2. Whether reportable : **Yes**/ No