IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

262 FAO-724-2015 (O&M)

Date of decision: 01.10.2019

ORIENTAL INSURANCE COMPANY LTD ... Appellant

Versus

KAUSHLYA DEVI AND ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Ms. Vandana Malhotra, Advocate for the appellant.
None for the claimants.

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REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against award dated 18.11.2014 passed by the Motor Accidents Claims Tribunal, Ropar whereby compensation has been assessed on account of death of Jaspal Kumar Saini in a motor vehicular accident that took place on 28.08.2013 and compensation has been awarded to the tune of Rs.2,68,500/- payable with interest.

Counsel for the appellant has assailed the award primarily on two counts. It is argued that as deceased Jaspal Kumar Saini was a borrower of the motorcycle owned by Lakhbir Singh respondent No.3, he would step into shoes of the insured and claimants are not entitle to compensation by way of indemnification from the insurance company. For this purpose, reference has been made to judgment of Hon'ble the Supreme Court **Ningamma and another Vs. United India Insurance Co. Ltd., 2009(13) SCC 710**. Another submission made by counsel is that Jaspal Kumar Saini was the driver of motorcycle on which two persons were travelling on its pillion seat, therefore, negligence is liable to be attributed to the deceased himself and as such, the claimants cannot be allowed to take advantage of negligent act of the deceased and claim compensation from the insurance company.

There is no representation on behalf of the respondents/claimants. Sh. Rishabh Gupta, Advocate appointed as amicus curiae is also not present in the Court.

Counsel for the appellant, in response to a query recorded in order dated 06.09.2019 passed by this Court, would inform that the policy issued by the insurance company is a comprehensive policy. When the case is examined in the light of judgment of this Court **ICICI Lombard General insurance Company Ltd. Vs. Mehrana and ors., FAO No.792 of 2018, decided on 06.08.2018** affirmed by Hon'ble the Supreme Court in SLP(C) No.5252/2019, there is no escape from conclusion that insurance company cannot escape liability to pay compensation to the claimants in discharge of its obligation under the package/comprehensive policy.

So far as plea of the insurance company with regard to negligence of the deceased, the question of negligence cannot be gone into in a petition filed under Section 163-A of the Motor Vehicles Act, 1988. In this context, reference can be made to judgment of Hon'ble the Supreme Court **United India Insurance Company Ltd. Vs. Sunil Kumar and another, 2018(1) RCR (Civil) 680** whereby earlier decision of the Apex Court in **National Insurance Company Ltd. Vs. Sinitha and ors., 2012(2) SCC 356** has been held to be no longer a good law. In this view of the matter, contention raised by counsel in this regard is of no legal consequence.

No other point has been raised.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed.

01.10.2019 **(REKHA MITTAL)**
ashok **JUDGE**

Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No