

**FAO No. 8031 of 2015 and
FAO No. 1864 of 2016**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO No. 8031 of 2015
DECIDED ON: MAY 15, 2019**

L&T GENERAL INSURANCE CO. LTD

.....APPELLANT

VERSUS

JASVIR KAUR & ORS

.....RESPONDENTS

AND

2.

FAO No. 1864 of 2016

JASAVIR KAUR AND OTHERS

.....APPELLANTS

VERSUS

CHUHAR SINGH & ANR

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Subhash Goyal, Advocate
for the appellant in FAO No. 8031 of 2015 and
for respondent No.2 in FAO No. 1864 of 2016.

Mr. B.S. Mittal, Advocate
for the appellants in FAO No. 1864 of 2016 and
for respondents No.1 to 3 in FAO No. 8031 of 2015

None for respondent No.4.

AVNEESH JHINGAN, J (ORAL)

Aggrieved of the award dated 22.09.2015 passed by the Motor Accident Claims Tribunal, Sirsa (for brevity 'the Tribunal') in MACT Case No. 45 of 2015 under Section 163-A of the Motor Vehicles Act, 1988 (for short the 'Act'), two separate appeals have been filed. One appeal i.e. FAO No. 8031 of 2015 has been filed by the insurer and in other i.e. FAO No. 1864 of 2016 the claimants are in appeal. As both the appeals arise out of same accident and one award, these are being disposed of vide common order.

The facts of the case are that on 07.08.2013, Malook Singh was driving the tractor bearing registration No. HR-25D-0413 (hereinafter referred to as 'tractor') owned by respondent No.1 (before the Tribunal). The tractor was loaded with sand and on its way it turned turtle. As a result thereof, Malook Singh came underneath the tractor and succumbed to the injuries. His body was taken to Community Health Centre, Dabwali for getting conducted postmortem. DDR No. 17, dated 07.09.2012 was registered in Police Station City Dabwali.

A claim petition under Section 163-A of the Act was filed by the legal representatives of the deceased.

In the claim proceedings, it was pleaded that the deceased was working as a driver with respondent No.1 i.e. owner of tractor and used to earn ₹3300/- per month. The said averment was denied by respondent No.1. The claimants failed to prove that the deceased was employed as a driver by respondent No.1. The Tribunal further relied upon the proceedings initiated under Section 174 of the Code of Criminal Procedure 1973, Ex.P-3, wherein, it was *prima-facie* shown that the deceased had borrowed the tractor from

respondent No.1 and dismissed the claim petition was dismissed relying upon the decision of the Supreme Court in *Ningamma and another Vs. United India Insurance Co. Ltd., (2009) 13 SCC 710.*

There was a premium paid for Personal Accident Cover (PAC), the Tribunal held that borrower had stepped into the shoes of the owner and awarded a sum of ₹2,00,000/- under PAC.

Heard learned counsel for the parties and perused the relevant documents produced by them.

Learned counsel for the insurer argues that the deceased was not owner-cum-driver of tractor, he was not entitled to PAC.

Learned counsel for the claimants contends that the deceased had stepped into the shoes of the owner, he was duly covered under PAC. He further argues that the Tribunal erred in not awarding compensation under Section 163-A of the Act.

There is no challenge by the claimants to the fact that the deceased was the borrower of tractor. The issue now arises is whether the legal heirs of the borrower can claim compensation under Section 163-A of the Act or not.

The Supreme Court in *Ningamma's case* (supra) 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.”

It was held that the borrower stepped 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 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 as under:-

“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 default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under subsection (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 formula 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 subsection, “permanent disability” shall have the same meaning and extent as in the Workmen’s 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 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”.*

The borrower is not covered under the PAC. The term 'owner-driver' has been defined under GR-36. It states “Compulsory Personal Accident Cover shall be applicable under both cases i.e. Liability Only and Package policies. The owner of insured vehicle holding an 'effective' driving licence 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 put by Note in GR-36 that for claiming

compensation for PAC, owner should be holding an 'effective' driving licence.

The PAC 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. The appellants are not entitled to receive any compensation under PAC.

However, 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. The amount is to be paid by insurer.

In compliance of order dated 18.02.2016, the insurer has already deposited ₹50,000/- along-with interest.

In view of the above discussion, the appeal filed by the claimants is dismissed and the appeal filed by the insurer is partly allowed.

Vide order dated 18.02.2016, the insurer was directed to deposit ₹50,000/- along-with interest and rest of the amount was directed to be kept in FDR.

The insurer shall be entitled to get the refund of amount kept in FDRs alongwith the interest earned on the amount by keeping it in FDR.

MAY 15, 2019
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned ***Yes***
Whether reportable ***Yes***