IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 15.7.2019

1. **FAO No. 970 of 2015(O&M)**

United India Insurance Co. Ltd. …..Appellant

VERSUS

Harbans Singh and others .....Respondents

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2. **FAO No. 1391 of 2015(O&M)**

United India Insurance Company Ltd. …..Appellant

VERSUS

Veerpal Kaur and others .....Respondents

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3. **FAO No. 1392 of 2015(O&M)**

United India Insurance Company Ltd. …..Appellant

VERSUS

Sukhwinder Kaur and others .....Respondents

4. **FAO No. 1397 of 2015(O&M)**

United India Insurance Co. ltd. …..Appellant

VERSUS

Sukhwinder Kaur and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. D.P. Gupta, Advocate for the appellant.

Mr. S.S. Brar, Advocate for the claimants in FAO Nos.1391, 1392, 1397 of 2015.

Mr. Satbir Gill, Advocate for the claimants in FAO No.970 of 2015.

Mr. S.K. Mahajan, Advocate for Marketing Board.

Mr. Rohit Arya, AAG, Haryana.

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REKHA MITTAL, J.

This order will dispose of FAO Nos.970, 1391, 1392 and 1397 of 2015 as these have emerged out of the same award dated 29.11.2014 passed by the Motor Accidents Claims Tribunal, Sirsa (in short 'the Tribunal') whereby compensation has been assessed on account of death of Ajmer Singh, Manpreet Singh @ Mandeep Singh, Buta Singh and Jasbir Singh @ Kala in a motor vehicular accident that took place on 17.09.2012 when they were traveling in Maruti Alto Car bearing No.PB-30-E-1419, driven by Jasbir Singh @ Kala son of Buta Singh. Buta Singh is the registered owner and insurer of aforesaid ill-fated car.

FAO Nos.970 and 1397 of 2015

The sole submission made by counsel for the appellant-insurance company is that since Manpreet Singh and Ajmer Singh were gratuitous passengers in the aforesaid car owned and insured by Buta Singh (since deceased), the insurance company has wrongly been fastened with liability to pay compensation.

To bring home his contention, he has referred to the insurance policy Ex.RX which is captioned as Private Car Liability Only policy in respect whereof the insured paid basic third party premium of Rs.740/- and additional premium of Rs.100/- qua compulsory P.A. to owner - driver to the extent of Rs.2,00,000/-. It is further argued that since the policy in question is not a comprehensive policy / package policy, the insurance company cannot be held liable to pay compensation for death of gratuitous passengers in the vehicle in question. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **National Insurance Co. Ltd. Vs. Balakrishnan and another, 2013 (1) RCR (Civil) 762**.

Counsel representing the respondents/claimants has supported the award with the submission that claim has been filed under Section 163-A of the Motor Vehicles Act, 1988 (in short 'the Act') and claimants are entitle to compensation on the basis of structured formula laid down in the Second Schedule appended thereto.

Be that as it may, counsel for the respondents/claimants has not disputed factual contention raised by the insurance company that the policy in question is an Act Policy or Liability Only Policy on payment of basic third party premium issued under Section 147 of the Act. Since the policy issued by the insurance company is not a comprehensive/package policy, I find merit in contention of the insurance company that liability to pay compensation cannot be saddled upon the insurance company in respect of death of gratuitous passengers in the ill-fated car. In this view of the matter, findings of the Tribunal holding the insurance company liable to pay compensation with regard to death of Ajmer Singh and Manpreet Singh are grossly erroneous and cannot be allowed to sustain, accordingly set aside.

In view of what has been discussed hereinbefore, the appeals are allowed in the aforesaid terms.

FAO No.1392 of 2015

Sukhwinder Kaur, widow of Buta Singh, was awarded compensation in respect of death of Buta Singh in motor vehicular accident dated 17.09.2012 and insurance company of Maruti Alto Car owned and insured by Buta Singh has been held liable to pay compensation to the tune of Rs.4,25,000/-

The sole submission made by counsel for the insurance company is that Sukhwinder Kaur is the claimant as well as respondent being legal heir of deceased Buta Singh. It is argued that under the policy issued by the company, the insurance company is obligated to indemnify the insured against any liability incurred by him out of use of insured motor vehicle. It is argued that after demise of Buta Singh, Sukhwinder Kaur became owner of the vehicle in question and as such has also impleaded herself on the array of respondents. It is argued that the insurance company is not liable to indemnify legal heirs of the insured for death of insured himself.

Another submission made by counsel is that Sukhwinder Kaur cannot enforce liability of the insurance company in respect of compulsory P.A. to owner - driver to the extent of Rs.2,00,000/-. It is argued that admittedly, Buta Singh was not driver of the vehicle at the time of unfortunate occurrence. According to counsel that as per terms and conditions contained in the Liability Only Policy, the cover is subject to (a) the owner - driver is the registered owner of the vehicle insured; (b) the owner - driver is the insured named in the policy and (c) the owner - driver holds an effective driving licence, in accordance with the provisions of Rule 3 of the Central Motor Vehicles Rules, 1989, at the time of accident. It is further argued that in view of above, it can safely be inferred that P.A. cover qua owner-driver to the tune of Rs.2,00,000/- is available if the owner himself was the driver of the insured vehicle and he was holding an effective driving licence. In support of his contention, he has relied upon judgments of this Court **Sajida and others Vs. Sabnam and another, 2018 ACJ 1110; Reliance General Insurance Company Ltd. Vs. Jaswinder Pal Kaur and others, FAO No.1840 of 2015 decided on 22.08.2017** and **Sushila Vs. Sh. Pankaj Mahajan and another, 2012 (57) RCR (Civil) 252.**

Counsel representing the respondents/claimants has supported the award with the submission that insurance company has rightly been fastened with liability to pay compensation assessed by the Tribunal.

Indisputably, additional premium was paid for P.A. cover qua owner - driver and liability is limited to the tune of Rs.2,00,000/-. There is no doubt that Buta Singh was not driver of the vehicle at the time of unfortunate occurrence.

In **Sajida and others case** (supra), this Court has held, in para 13 and 14, reads thus:-

> "13. Perusal of the insurance policy Ex.R1 would make it evident that it was two-wheeler package policy whereby the insured/owner paid net premium of Rs.819/- including Rs.84/- towards service tax. There is no dispute between the parties that the insured paid a premium of Rs.50/- for compulsory P.A. cover for owner driver. In Sushila and other's case (supra), this Court in para 11 of the judgment, on a detailed consideration of the Indian Motor Tariff Regulations issued by the Tariff Committee particularly GR-36 providing for personal accident cover for owner – driver has held in para 13 that the reference to owner – driver must be understood as owner who is capable of driving and who is driving the

vehicle at the relevant time. It shall not be understood as owner – driver (owner or driver). This is evident from regulations that require that owner – driver to be duly licensed to drive the vehicle. Similarly, in Cholamandlam MS General Insurance Company Limited vs Rajesh and others, FAO No.3764 of 2010 decided on 14.05.2014, this Court refused to rely upon the judgment in New India Assurance Company Limited vs Umesh Kumari and others", 2010(1) RCR (Civil) 669 by taking into consideration GR-36 which was not considered in Umesh Kumari and other's case (supra).

14. Counsel for the claimants has not made any submissions that GR-36 of the Indian Motor Tariff cannot be taken into consideration for the purpose of deciding if the personal accident cover for owner driver would also include within its sweep owner or driver. Taking into consideration the consistent view of this Court in the judgments relied upon by counsel for the insurance company, assigning a legal and valid reason to differ with the earlier view in Umesh Kumari and other's case (supra), I find merit in the contention of the insurance company that the claimants cannot derive advantage to their contention from the judgment in Umesh Kumari and other's case (supra) to claim compensation even by invoking the provisions of Section 163-A of the Act."

When the case is examined in the light of judgment **Sajida and others' case** (supra), I find merit in contention of the insurance company that claimant is not entitle to compensation from the insurance company even by invoking the special contract of P.A. cover for owner-driver on payment of Rs.100/- as premium. In this view of the matter, findings of the Tribunal holding the insurance company liable to pay compensation cannot be allowed to sustain and are accordingly set aside.

For the foregoing reasons, the appeal is allowed in the aforesaid terms.

FAO No.1391 of 2015

Counsel for the insurance company would argue that the Tribunal has wrongly fastened liability to pay compensation of Rs.4,25,000/- with regard to death of Jasbir Singh @ Kala son of Buta Singh. It is submitted that he being son of the insured just stepped into the shoes of insured, therefore, cannot be treated as third party. For this purpose, reliance has been placed upon judgment of Hon'ble the Supreme Court **Ningamma and another Vs. United India Insurance Co. Ltd., 2009(3) RCR (Civil) 435.** In addition, it is argued that the claimants cannot even press for grant of compensation by invoking special contract covering compulsory PA to owner – driver to the tune of Rs.2,00,000/- on payment of premium of Rs.100/-. It is argued that benefit of special contract can be derived only if the owner-driver is the registered owner and insured of the vehicle. It is further argued that since Jasbir Singh @ Kala was neither the registered owner nor the insured of the vehicle aforesaid, claimants cannot cover their case within the purview of special contract covering PA to owner - driver.

Counsel representing the claimants/respondents has supported the award.

Indisputably, Jasbir Singh @ Kala was the son of Buta Singh, registered owner/insured of aforesaid car. The question for consideration is, whether the Tribunal has rightly extended benefit of special contract covering risk of injury or death of owner- driver.

On due consideration of observations made in **Sajida and others case** (supra) reproduced hereinbefore in FAO No.1392 of 2015, I find merit in contention of the appellant that the insurance company has wrongly been fastened with liability to pay compensation much less to the extent of Rs.4,25,000/- when otherwise the PA cover for owner – driver is limited to the tune of Rs.2,00,000/-. In this view of the matter, findings of the Tribunal holding the insurance company liable to pay compensation cannot be allowed to sustain and accordingly set aside.

For the foregoing reasons, the appeal is allowed in the aforesaid terms.

JULY 15, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no