IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-4567 of 2004 (O&M)
DATE OF DECISION : 05.08.2020

Chander Bhan and another …Appellants

Versus

Ram Sewak and another …Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present : Mr. P.R.Yadav, Advocate,
for the appellants.

None for respondent No.1.

Mr. Ravinder Arora, Advocate,
for respondent No.2-Insurance Company.

KARAMJIT SINGH, J.

The appellants/claimants have filed this appeal against the award dated 19.07.2004 passed by the Motor Accident Claims Tribunal, Sonepat (hereinafter referred to as 'the Tribunal'), whereby, the claim petition filed by them under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as, 'the Act') for grant of compensation on account of death of their son, Jaidev, in a motor vehicle accident, was dismissed.

The claim of the appellants as pleaded in the claim petition was that their son Jaidev was working as a driver with Sanjay Kumar, resident of Rohini, New Delhi. Sanjay Kumar was running a travel agency in the name of Shiva Travels. On 29.10.1998, Sanjay Kumar received a telephone call from a person, namely, Ravi, who asked him to arrange a vehicle to go to Rajasthan. On 30.10.1998, Sanjay Kumar arranged the Tata Sumo bearing registration No.DL-3CJ/5108 belonging to respondent No.1-Ram Sewak Gupta, to take

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aforesaid Ravi to Rajasthan. Sanjay Kumar deputed Jaidev to drive the said vehicle with a direction to him to take the aforesaid customer to Rajasthan. But Jaidev did not return even after 4-5 days, on which Sanjay Kumar lodged FIR No.858/98 in Police Station Badli with regard to missing of Jaidev and Tata Sumo bearing registration No.DL-3CJ/5108. On 05.11.1998, the police of Kolwa, District Dausa (Rajasthan) found dead body of a person, who was murdered by strangulation. FIR No.175/98 was registered in Police Station Kolwa with regard to the said murder. Postmortem examination on the dead body was conducted. In September, 2001, Police arrested Ravi @ Preetish Sharma, son of Satpal Sharma, resident of Delhi and during the investigation, he disclosed to the police that on 30.10.1998, he had booked Tata Sumo bearing registration No.DL-3CJ/5108 with Sanjay Kumar to go to Rajasthan and on the way, he murdered Jaidev, who was driving the said vehicle. The said accused identified the photographs of Jaidev and he also admitted that he had murdered Jaidev with the help of co-accused, Rahul, with a motive to steal the aforesaid vehicle. On completion of investigation, the police presented challan against Ravi @ Preetish Sharma.

As per claimants, deceased Jaidev was 25 years of age and he was driver by profession and his monthly income was Rs.3,500/- per month. Tata Sumo bearing registration No.DL-3CJ/5108, in which Jaidev was murdered, was owned by respondent No.1 and it was insured with respondent No.2-Insurance Company. Hence, the claim petition was filed for grant of compensation as per schedule given under Section 163-A of the Act.

The claim petition was contested by respondent No.2-Insurance Company, while, respondent No.1 was proceeded against *ex parte*. In its written statement, respondent No.2 took preliminary objections regarding the

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maintainability of the claim petition and also regarding validity of the driving licence of the driver of the vehicle in question. On merits, it was denied that at the time of alleged incident, motor vehicle was driven by Jaidev. It was pleaded that no accident involving vehicle bearing registration No.DL-3CJ/5108, ever took place. The death of Jaidev was not as a result of any motor vehicle accident. No information regarding the aforesaid incident was ever given to the answering respondent by the claimants or insured. The other averments of the claim petition were denied, being wrong and it was prayed that the claim petition be dismissed.

On the pleadings of the the parties, following issues were framed by the Tribunal:-

1. Whether Jaidev deceased died due to the injuries caused in accident by use of vehicle registration No.DL-3CJ-5108 which was owned by respondent No.1? OPP.
2. Whether claimants are entitled to the compensation. If so, to what extent of amount and to whom? OPP.
3. Whether the deceased was not having a valid driving licence? OPR(2)
4. Relief.

Petitioner No.1, himself, appeared in the witness box as PW1 and also examined PW2-Surender Singh, Ahlmad, of the court concerned. The claimants also tendered into evidence, the application (Exhibit P1), copy of summon (Exhibit P2), copy of report under Section 173 Cr.P.C (Exhibit P3) and copy of postmortem report of Jaidev (Exhibit P4). On the other hand, counsel for respondent-Insurance Company tendered copy of insurance policy (Exhibit R1).

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After hearing learned counsel for the parties, the Tribunal decided Issue No.1 against the claimants by holding that they had failed to prove that their son Jaidev was murdered while plying Tata Sumo bearing registration No.DL-3CJ/5108. While deciding Issue No.3, the Tribunal held that Insurance Company has miserably failed to prove that the deceased was not holding a valid driving licence. While deciding Issue No.2, the Tribunal assessed the monthly income of the deceased as Rs.2,200/- per month and also concluded that the deceased was 25 years of age at the time of his death. The Tribunal dismissed the claim petition, in the light of its findings regarding Issue No.1, vide award dated 19.07.2004.

Aggrieved by the said award, the present appeal has been filed by the appellants/claimants.

Learned counsel for the appellants, while challenging the award, contended that Jaidev was murdered while he was driving Tata Sumo bearing registration No.DL-3CJ/5108. The police investigated the matter and submitted report (Exhibit P-3) under Section 173 Cr.P.C against the culprits, with regard to aforesaid murder. The copy of the postmortem report of the deceased is Exhibit P-4. Learned counsel for the appellants further argued that Jaidev was murdered in order to steal the aforesaid Tata Sumo. As Jaidev died due aforesaid incident arising out of use of motor vehicle, the appellants, being his parents, are entitled to get compensation under Section 163A of the Act. In support of arguments, learned counsel for the appellants referred to **Rita Devi (Smt.) and others Vs. New India Assurance Co. Ltd. and another, (2000) 5 Supreme Court Cases 113**, wherein, one Dasarath Singh was a driver of an autorickshaw owned by Lalit Singh. The said vehicle was insured with New

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India Assurance Company Limited. The vehicle in question was hired by some unknown passenger, who had stolen the same after murdering its driver Dasarath Singh. The legal representatives of Dasarath Singh filed claim petition under Section 163A of the Act, which was allowed by the Tribunal. The appeal filed by the Insurance Company was allowed by the Hon'ble High Court, while holding that there was no motor accident as contemplated under the Act. The appeal filed against the said judgment was allowed by the Hon'ble Apex Court, while concluding that the death of the driver was caused due to accident arising out of the use of motor vehicle.

Learned counsel for the appellants further argued that the Tribunal, while deciding Issue No.2 assessed the total amount of compensation as Rs.1,05,800/-. The deceased was 25 years of age and as such, multiplier of 18 was applicable in the present case, as per the law laid down by the Hon'ble Apex Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) R.C.R.(Civil) 77**. The claimants are also entitled to get compensation worth Rs.70,000/- under conventional heads, as per the law laid down in **National Insurance Company Ltd. Vs. Pranay Sethi and another, 2017(4) R.C.R (Civil) 1009**. Learned counsel for the appellants further contended that accordingly the amount of compensation of Rs.1,05,800/- assessed by the Tribunal, while deciding Issue No.2 requires to be enhanced. Learned counsel for the appellants, while concluding the arguments, prayed that the appeal be allowed, accordingly.

On the other hand, learned counsel for the Insurance Company supported the impugned award passed by the Tribunal. It was contended that the claim petition was not maintainable as Jaidev had not died in a motor

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vehicle accident. It was further contended that it was not a third party claim. As per the claimants, Tata Sumo bearing registration No.DL-3CJ/5108 owned by respondent No.1-Ram Sewak, was borrowed/hired by Sanjay Kumar, who further handed over the said vehicle to deceased Jaidev. In this manner, the deceased stepped into the shoes of respondent No.1. Learned counsel for the Insurance Company further argued that as the vehicle was given on hire basis to Sanjay Kumar, respondent No.1 violated the terms and conditions of insurance policy (Exhibit R-1).

Learned counsel for the Insurance Company further argued that in the claim petition, it was specifically pleaded that the monthly income of the deceased was Rs.3,500/-, which comes out to be more than Rs.40,000/- per annum. So, as per 2nd Schedule of the Act, the claim petition filed by the appellants under Section 163A of the Act, was not maintainable. Learned counsel for the Insurance Company at the end submitted that the appeal deserves to be dismissed, being devoid of merits.

I have considered the submissions made by the learned counsel for the parties.

The claimants are parents of deceased Jaidev. Also, there is no dispute regarding the fact that the vehicle in question was owned by respondent No.1-Ram Sewak. As per insurance policy (Exhibit R1), the said vehicle was insured with respondent No.2. While deciding Issue No.3, the Tribunal came to the conclusion that deceased was having a valid and effective driving licence at the relevant time. The said finding has not been challenged in any manner by the insurer in the present appeal.

The Tribunal while deciding Issue No.2, observed that the deceased must be earning Rs.2,200/- per month. The said finding was not

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challenged by the Insurance Company, by way of cross appeal. The occurrence was of 1998 and the deceased was working as a driver. So, the Tribunal correctly assessed the monthly income of the deceased as Rs.2,200/- and, accordingly, the annual income of the deceased comes out to be Rs.26,400/-, which was less than the upper limit of Rs.40,000/- per annum, as prescribed under the 2nd Schedule of the Act. So, the contention raised by learned counsel for the Insurance Company that the claim petition is not maintainable as the annual income of the deceased was more than Rs.40,000/-, is not acceptable.

In the claim petition under Section 163-A of the Act, there was no need for the claimant to plead or establish the negligence and/or that the death in respect of which the claim was sought to be established was due to neglect or default of the owner of the vehicle.

As per the claimants, FIR No.858/98 was registered under Sections 365/302/201/34/ 120-B of the Indian Penal Code, on the basis of the statement of Sanjay Kumar. On completion of investigation, the police submitted a report under Section 173 Cr.P.C against the assailants in the court concerned. The copy of the said report is Exhibit P3, which was proved by PW2, being the Alhmad of the court concerned. As per the said police report, assailants were travelling in Tata Sumo bearing registration No.DL-3CJ/5108, which was driven by Jaidev and they stopped at one *dhaba* and mixed some poison in the food of Jaidev and, thereafter, took him in the same vehicle and strangulated him to death, while travelling in the said vehicle and, thereafter, threw his dead body and then took away the vehicle in question. So, it stand proved that Tata Sumo bearing registration No.DL-3CJ/5108 was hired by certain persons with the object to steal the vehicle and they killed its driver, Jaidev, and then sped away along with vehicle. So, as per the law laid down by the Hon'ble Apex

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Court in ***Rita Devi's case (supra)***, the aforesaid incident resulting in death of Jaidev, is covered under Section 163A of the Act.

It is case of the claimants that the vehicle in question was borrowed by Sanjay Kumar from respondent No.1. Sanjay Kumar further handed over the said vehicle to deceased Jaidev, who was driving the same at the time of aforesaid incident, which resulted in his death. In case of **Ningamma Vs. United India Insurance Company Ltd., 2009(3) R.C.R. (Civil) 435**, the Hon'ble Apex Court has held that the owner of the vehicle or his representatives or the borrower of the vehicle cannot raise a claim for an accident, in which there was no negligence on the part of the insured vehicle. In the aforesaid decision, the Hon'ble Apex Court has held that the borrower of the vehicle stepped into the shoes of the owner and, therefore, the borrower of the vehicle or his representatives are not entitled to compensation from the insurer under the Act.

In the case in hand, deceased Jaidev stepped into the shoes of the borrower, being his authorized representatives/employee and thus, further stepped into the shoes of owner and, therefore, cannot be considered as third party. So, in the light of the law laid down by the Hon'ble Apex Court in ***Ningamma's case (supra)***, the appellants are not entitled to any compensation from the insured vehicle under Section 163-A of the Act, they being not the third party.

However, in the present case, the parties shall be governed by the terms and conditions of the contract of insurance, as has been held by the Hon'ble Apex Court in **Ramkhiladi and another Vs. United India Insurance Company and another, 2020(1) R.C.R. (Civil) 638** and **National Insurance**

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Company Limited Vs. Ashalata Bhowmik and others, 2018(4) R.C.R. (Civil) 211. As per the insurance policy (Exhibit R1), the driver of the vehicle was also covered under the insurance policy regarding which, premium of Rs.15/- was paid by the insured. So, the insurance policy (Exhibit R1) also covered personal accident claim of the driver of the insured vehicle, i.e., Tata Sumo bearing registration No.DL-3CJ/5108.

As per the insurance policy (Exhibit R1), limits of the liability were as follows:-

a) Limit of the amount of the Company's liability under Section II-I(i) in respect of any one accident as per Motor Vehicle Act, 1988.

b) Limit of the amount of the Company's liability under Section II-I(ii) in respect of any one claim or series of claims arising out of one event Rs.6000.

However, insurance policy (Exhibit R1) is silent regarding limit of personal accident cover for registered owner/driver. The aforesaid limit of Rs.6,000/-, as mentioned in Exhibit R1, appears to be in respect of damage of any property, as has been provided under Section 147(2)(b) of the Act. However, the present case is relating to death of the driver of the aforesaid Tata Sumo. In the present days, the maximum liability for such personal accident claim is approximately Rs.2,00,000/- against premium of Rs.50/-. Also in 1998, when the accident in question took place, “No Fault Liability” in case of death, was Rs.50,000/- under Section 140 of the Act. In these circumstances as in the present case, insurance policy (Exhibit R1) does not prescribe any limit of liability with regard to death in case of personal accident claim, so this Court is of the view that the indemnification extended to personal accident of the deceased-Jaidev was limited to Rs.50,000/-, under the contract of insurance.

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The appellants are entitled to get the said amount towards compensation, in the present case.

In the light of the above, this appeal is disposed of with costs and it is held that claimants are entitled to get amount of Rs.50,000/-, in equal shares, as compensation from both the respondents along with interest at the rate of 6% per annum from the date of filing of this appeal till its realization. The liability of the respondents is joint and several.

(KARAMJIT SINGH)
JUDGE

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Whether speaking/non-speaking	:	Yes/No
Whether reportable	:	Yes/No

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