IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No. 6472 of 2014 (O&M)
Date of Decision: February 27, 2020

M/s IFFCO TOKIO General Insurance Co. Ltd. ....Petitioner

Versus

Smt. Kavita and others ....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Rajneesh Malhotra, Advocate
for the petitioner.

Mr. Ram Avtar, Advocate
for respondents No. 1 to 3.

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Lisa Gill, J.

This writ petition has been filed seeking quashing of award dated 25.09.2013 passed by the learned Permanent Lok Adalat, Gurgaon (hereinafter referred to as 'PLA'). The petitioner - insurance company has been directed to pay a sum of ₹1,00,000/- (PA cover) in equal shares to respondents No. 1 to 3 within forty (40) days, failing which the petitioner would be liable to pay interest at the rate of 9% per annum.

Brief facts necessary for the adjudication of the case are that the applicants, who are the widow and minor children of deceased - Parmod Kumar, filed an application under Section 22C of the Legal Services Authority Act. It is averred that Parmod Kumar met with an accident on 10.09.2011 while going from village Fazilpur Jharsa to Gurgaon on a motorcycle bearing registration No. HR-26-A-8386. The motorcycle, it is averred, was borrowed by Parmod Kumar from Surinder son of Khushi Ram, who was a friend of the deceased. The motor bike skidded and Parmod Kumar fell into a ditch alongwith the motorcycle. He was admitted to Medanta 'The Medicity' Hospital at Gurgaon on the same day and ultimately succumbed to his injuries on 11.09.2011. It is stated that the motorcycle in question was duly insured with the insurance company. The premium towards personal accident cover had been paid and the applicants claimed a sum of ₹1,00,000/- alongwith interest on this count. The application was contested by the present petitioner while specifically raising an objection that petition under Section 163A of the Motor Vehicles Act (for short – 'the Act') filed by the applicant had earlier been dismissed, therefore, this application was not maintainable. It is further stated that the personal accident cover would be applicable only in case of the death or injury to the registered owner of the vehicle and not in case of the borrowers. Learned PLA after failure of conciliation, observed that the applicants were entitled to a sum of ₹1,00,000/-, as extra premium had been duly deposited paid by the owner, towards personal accident cover. Parmod Kumar having borrowed the vehicle in question had stepped into the shoes of the owner, therefore, the claimants were held entitled to a sum of ₹1,00,000/-. Aggrieved therefrom, this writ petition has been filed by the insurance company.

Notice of motion was issued in this writ petition on 03.04.2014 while relying upon the judgment of the Delhi High Court in **Oriental Insurance Company Ltd. verus Kavita Singal and others 2013 (1) AICJ 264** and operation of the impugned award was stayed as well.

I have heard the learned counsel for the parties and have perused the writ petition with their able assistance.

Learned counsel for the petitioner argues that the deceased was not the registered owner of the vehicle in question. He had admittedly borrowed the motorcycle from the registered owner. It is further submitted that the personal accident insurance cover is available only to the registered owner of the insured vehicle himself and not to any other person. There is no privity of contract between the insurance company and the deceased, therefore, the insurance company is not liable to pay compensation for his death. It is further submitted that the claimants filed claim petition under Section 163A of the Act which was dismissed on 06.12.2012 (Annexure P6). Application under Section 22C of the Legal Services Authority Act is not maintainable. It is, thus, prayed that this writ petition be allowed and award dated 25.09.2013 be set aside.

Learned counsel for respondents No. 1 to 3 has relied upon the judgment of the Hon'ble Supreme Court in **Ramkhiladi and another versus The United India Insurance Company and another** in Civil Appeal No. 9393 of 2019 decided on 07.01.2020 to submit that personal accident cover is available to the borrower as well. It is, thus, prayed that this petition be dismissed and award dated 25.09.2013 be upheld.

In the present case, it is a matter of record that premium towards personal accident cover was admittedly deposited by the owner of the vehicle i.e. Surinder son of Khushi Ram. A copy of the insurance policy reveals payment of the additional premium of ₹50 on this count. The question whether the borrower having stepped into the shoes of the owners is entitled to the fixed amount as available in terms of the policy is no longer res integra. The Hon'ble Supreme Court in the case of **Ramkhiladi** (supra) has categorically held that the legal heirs of the deceased in such cases would be entitled to the fixed amount in terms of the insurance policy. The claimants in the case of **Ramkhiladi** (supra) were held entitled to a sum of ₹1,00,000/- alongwith interest at the rate of 7.5% per annum. Learned counsel for the respondents has further submitted that dismissal of the claim petition under Section 163A of the Act (Annexure P6) does not per se bar the filing of the application under Section 22(C) of the Legal Services Authority Act where the claim has been restricted to the amount available under the personal accident cover. It is further submitted by learned counsel for the respondents that the question regarding benefit under the personal accident cover was not raised nor decided by the learned motor Accident Claims Tribunal, Gurgaon in the proceedings, which culminated in award dated 06.12.2012. A perusal of award dated 06.12.2012 reveals that this question has indeed not been raised, neither considered by the learned Tribunal. It is compensation under Section 163A of the Act, which has been rightly denied on the ground that the same cannot be available to the owner of the vehicle (or the borrower who may have stepped into his shoes) as the owner of the vehicle cannot be a claimant/recipient as liability to pay is also upon him. As noted above, entitlement of the claimants to the fixed amount as per the terms and conditions of the policy has not been determined, neither discussed.

In my considered opinion, the claimants in this case are entitled to the personal accident cover for which the premium was admittedly deposited. Respondents No. 1 to 3 are the dependent widow, minor children of the deceased – Parmod. They chose to approach the learned Permanent Lok Adalat on 13.05.2013 after dismissal of their claim petition under Section 163A of the Act. In the peculiar facts and circumstances of this case, I am not inclined to set aside the impugned award on the ground that the claimant's entitlement to the fixed amount (PA cover) as per the policy could have been agitated only in the said proceedings under the Motor Vehicles Act and even though the same has not been adjudicated therein, the claimants are estopped from agitating for the same. At the same time, I find merit in the argument raised by learned counsel for the petitioner for reduction of the rate of interest, keeping in view the prevalent rate of interest available. The same is, thus, reduced to 7.5% per annum from 9% per annum.

No other argument has been addressed.

With the abovesaid modification in the rate of interest, this writ petition is dismissed.

February 27, 2020 **(Lisa Gill)**
rts **Judge**

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