52 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. FAO-5031-2015 (O&M)
Date of decision: 03.02.2020

United India Insurance Company Limited ....Appellant

versus

Monika and others ....Respondents

2. FAO-6585-2015

Monika and others ....Appellants

versus

Ashwani Kumar and another ....Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Ram Avtar, Advocate
for the appellant (in FAO-5031-2015) and
for respondent No.2 (in FAO-6585-2015).

Mr. Vipul, Advocate for
Mr. Nitin Mittal, Advocate
for respondents No.1 to 4 (in FAO-5031-2015) and
for the appellants (in FAO-6585-2015).

Mr. Narender Pal Bhardwaj, Advocate
for respondent No.5 (in FAO-5031-2015) and
for respondent No.1 (in FAO-6585-2015).

FATEH DEEP SINGH, J.(ORAL)

In both the above detailed first appeals, same orders having arisen out of a common award dated 20.04.2015 passed by the Court of the learned Motor Accident Claims Tribunal, Ambala, are being jointly disposed off together for the sake of brevity.

One of the appeals i.e. FAO-5031-2015 filed by M/s United India Insurance Company Limited and the another one i.e. FAO-6585-2015 filed by the claimants who happens to be the dependants of the deceased, Ashok Kumar.

Heard both the sides and perused the records.

The only moot point that has arisen in this case is if the deceased, Ashok Kumar, who was driving on 16.03.2011, the borrowed motorcycle, bearing registration No.HR-01T-2112 owned by Ashwani Kumar then, respondent No.1 and insured with M/s United India Insurance Company Limited then, respondent No.2, now the appellant is, if the insurer, is liable to pay the compensation in terms of Section 163-A of the Motor Vehicles Act, 1988 (in short 'the Act').

Sh. Ram Avtar, Advocate for the appellant, does not displace the fact that the ill-fated vehicle, at the time of the alleged accident, was under insurance coverage of the insurer-appellant. The contentions of learned counsel for the appellant that a borrower is not covered by the insurance claimed and, therefore, the appellant/insurer is not liable to pay the compensation amount, needs to be answered.

Admittedly, the motorcycle was under insurance policy which covers Personal Accident (PA) cover under Motor Policy.

> ***"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."*

The position of law on this point has been well enunciated which is relied upon by Mr. Vipul, Advocate for Mr. Nitin Mittal, Advocate for the claimants in "***Ramkhiladi and another versus The United India Insurance Company and another"*** in **Civil Appeal No.9393 of 2019**.

> *5.6 "In view of the above and for the reasons stated above, in the present case, as the claim under Section 163-A of the Act was made only against the owner and insurance company of the vehicle which was being driven by the deceased himself as borrower of the vehicle from the owner of the vehicle and he would be in the shoes of the owner, the High Court has rightly observed and held that such a claim was not maintainable and the claimants ought to have joined and/or ought to have made the claim under Section 163-A of the Act against the driver, owner and/or the insurance company of the offending vehicle i.e. RJ 29 2M 9223 being a third party to the said vehicle."*

and to similar affect is a ratio of this Court laid down in a judgment titled as "***Sushila versus Pankaj Mahajan and another***" in **FAO No.4848-2010** wherein, a similar situation and where this Court has recorded as under:-

> *13. "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. The optional cover could include unnamed passenger in a private vehicle also. (The question of unlimited liability or extent of liability for a passenger in a private vehicle has come through independent directions relating to package policy but they are not discussed here as not relevant to our case). VII. Decisions cited, how inapplicable to the issues involved."*

and which is the ratio relied upon in the impugned award. The contentions of Mr. Vipul, Advocate for Mr. Nitin Mittal, learned counsel for the claimants/appellants-Monika and others that there ought to be enhanced compensation does not augurs well for the claimants/appellants, since the compensation has been awarded by virtue of revision Section 163-A of the Act and, therefore, how there has been misinterpretation of the provisions could not be shown to this Court by the claimants/appellants. Since, the liability clause limits the compensation to the extent of Rs.1 lakh, therefore, the claimants are not entitled to any enhanced payment and it has been rightly held so in the impugned award and from which, it flows that the insurer cannot escape its liability to pay compensation in view of the stipulation enshrined in the policy in light of the same both the appeals stand disposed off accordingly.

(FATEH DEEP SINGH)
JUDGE

03.02.2020
Neha

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No