119

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

**FAO NO. 762 OF 2021**
**DATE OF DECISION : 04.03.2022**

**The New India Assurance Company Limited …Appellant**

**Versus**

**Birmati and others …Respondents**

**AND**

**FAO NO. 3023 of 2021**

**New India Assurance Company Limited …Appellant**

**Versus**

**Shakuntala and others …Respondents**

**CORAM : HON'BLE MR. JUSTICE ARUN MONGA**

Present : Mr. Vinod Chaudhari, Advocate,
for the appellant in FAO-762-2021.

Mr. Paul S. Saini, Advocate,
for the appellant in FAO-3023-2021.

Ms. Akshita Chauhan, Amicus Curiae.

***ARUN MONGA, J. (ORAL)***

Vide this common order, I intend to dispose of afore-mentioned two appeals filed by the insurance company, as facts are analogous and common questions of law are involved therein. For reference, the facts are being taken from FAO No. 762 of 2021.

2. The Insurance company is in appeal before this Court against compensation of Rs. 1,00,000/- awarded by the learned Motor Accident Claims Tribunal, Jhajjar (for short 'the Tribunal') in a claim under section

163-A of the Motor Vehicles Act, 1988 to the mother, widow and two minor children of the deceased/victim who died in a motor vehicular accident.

3. Succinct facts shorn of unnecessary details are that Anil Kumar deceased had borrowed motor cycle bearing registration No. HR-14M-8691 from registered owner Devender Kumar respondent No.5 herein. By driving it on 20.06.2017, Anil Kumar was on way to village Surkhpur from village Bhadani for distributing milk. Near Dariya Bhatta, a donkey suddenly came on the road and collided with the motor cycle. As a result, the deceased fell down and sustained injuries. Coincidentally, his brother Sunil was also going to the same village on another motorcycle at the same time and was behind the deceased at that time. Anil Kumar was taken to PGIMS, Rohtak from where he was later shifted to Balaji Action Medical Hospital, Delhi. During treatment thereon 28.06.2017 the accident victim died. A complaint/DD No.19 dated 29.06.2017 was lodged at police station on the statement of Sunil, brother of the deceased. On these facts, the mother, widow and two sons, being the heirs of the deceased, filed claim petition before with learned Tribunal.

4. In the written statement filed by the contesting respondent/ Insurance Company, the claim was resisted, *inter-alia*, on the preliminary objections of maintainability; including outright denial of the accident in question. It was also pleaded that false DDR was registered by the petitioners in collusion with the real brother of the deceased with the local police. Insurance company was not liable to pay since there was violation of the terms and conditions of the insurance policy. It was also pleaded that the deceased victim did not have a valid driving license.

5. From the pleadings of the parties, following issues were framed :

> *1) Whether the accident resulted into the death of Anil son of Sh. Mahender Singh has occurred due to involvement/ use of the vehicle i.e motorcycle bearing registration No. HR-14M-8691 by respondent No.1, as alleged ? OPP*
>
> *2) If Issue No.1 is proved in affirmative, whether the petitioners are entitled to compensation, if so, to what amount and from whom ? OPP*
>
> *3) Whether the respondent No.1 was not holding valid driving license on the date of alleged accident and whether respondent No.1 has contravened the terms and conditions of the insurance policy, if so, its effect ? OPR-2*
>
> *4) Relief.*

6. Based on the respective evidence adduced by the parties, the learned Tribunal decided issues No.1 and 3 were in favour of the claimants in totality and issue No.2 against the appellant. Vide the impugned order, it awarded compensation of Rs. 1,00,000/- to the claimant/respondents No.1 to 4.

7. Aggrieved, the Insurance Company is in appeal before this Court.

8. I have heard the learned counsel for the appellants and have also been assisted by Ms. Akshita Chauhan learned Amicus Curiae.

9. Admittedly, the vehicle involved in the accident was insured with the appellant. GR 37 of the Indian Motor Tariff reproduced in connected memo of appeal (FAO No. 3023/2021) speaks of Compulsory Personal Accident Cover for Owner-Driver. It is not the insurer's case that the insurance policy did not cover the risk of personal accident of the owner or that the accident had resulted from the rash or negligent driving of the deceased. Obviously, the insurance policy covered the risk.

10. Anil Kumar borrower of the vehicle and after death, his legal representatives (claimant-respondents No.1 to 4 herein) stepped into the shoes of the owner of the vehicle (respondent No.5 herein). Hence their claim for compensation would be governed by and depend upon the terms of contract of insurance. That apart, the appellant-insurance company itself having taken a specific plea that deceased Anil i.e driver of the motorcycle had stepped into the shoes of its owner, cannot be permitted to take a contradictory stand to the effect that for purpose of determination of its contractual liability, the deceased was a stranger to the contract of insurance and that he or his heirs could not invoke the terms and conditions of the insurance contract. The appellant cannot blow hot and cold together.

11. In this connection, it will be useful to notice the view taken by a co-ordinate bench of this Court in FAO No. 7088/2011 decided on 13.12.2013, of which the relevant part is as under:

> *"21. The claim of the LRs of the deceased driver who borrowed the vehicle from the registered owner is negatived only on the ground that the driver who borrowed the vehicle had stepped into the shoes of the owner. The insurance Company cannot avoid its liability once for all on the plea that the owner of the vehicle had not sustained injury driving the vehicle for making a claim under personal accident coverage. In other words, the insurance company cannot be permitted to blow hot and cold. In my considered view, once the driver of the borrowed vehicle from the owner has become the owner of the vehicle for all practical purposes, then the insurance company is liable to pay compensation to the owner under the personal accident coverage…."*

12. As noted above, it is not the appellant's case that the insurance policy did not cover the risk of personal accident of the owner or that the insurer's liability for such risk was less than Rupees one lakh.

Obviously, the insurance policy covered the risk of personal accident of the owner of the vehicle. Further, in the absence of any plea or proof to the contrary, it is obvious that the liability for personal accident undertaken by the insurer was not less than Rupees one lakh. No rashness or negligence is attributed to deceased for the accident. His driving licence has been alleged or produced.

13. In **Dhanraj v. New India Assurance Co. Ltd. 2004 AIR SCW 5438,** it had not been shown that the insurance policy covered any risk for injury to the owner himself. In **Appaji (since deceased) and another v. M. Krishna and another 2004 ACJ 1289** the Court opined that Parliament did not intend to provide for compensation to the person responsible for the accident on structured formula. These judgments relied upon by the learned counsel for appellant are not applicable to the different facts of present case.

14. Accordingly, it is held the deceased who was driving the borrowed vehicle had stepped into the shoes of the owner including his right to invoke insurer's contractual liability for personal accident and that the heirs of the deceased were/are entitled to recover compensation from the insurer for the death of the victim of accident in terms of the insurance contract with the owner of the vehicle.

15. As a result of the above discussion, no ground is made out for interference with the impugned award. Accordingly, the appeals are dismissed.

16. Copy of this order be placed on the file of FAO No. 3023 of 2021.

17. The Court records its deep appreciation for the valuable assistance rendered and inputs provided by Ms. Akshita Chauhan, learned Amicus Curiae in the disposal of these appeals.

**MARCH 04, 2022** **(ARUN MONGA)**
Shalini **JUDGE**

**Whether speaking/reasoned : Yes/No**

**Whether reportable : Yes/No**