392

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3756-2011 (O&M)
Date of Decision : 14.09.2022

IFFCO-TOKIO General Insurance Company Ltd. ...... Appellant

Versus

Vinod and another ...... Respondents

CORAM : HON'BLE MR. JUSTICE JAGMOHAN BANSAL

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Present : Mr. Ankur Gupta, Advocate
for the appellant.

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JAGMOHAN BANSAL , J(ORAL)

1. The appellant-Insurance Company through the instant appeal is seeking setting aside of award dated 21.02.2011, passed by Motor Accident Claims Tribunal, Kurukshetra (for short "Tribunal") whereby learned Tribunal in MACT case No.47 of 2010 has awarded a sum of Rs.80,000/- to respondent No.1-claimant Vinod alongwith interest @ 7% per annum.

2. The brief facts emerging from record are that on 08.04.2009, Vinod-respondent No.1/claimant alongwith his mother Smt. Roshni Devi was going from Village Bandrana to a temple in Village Hathira on motorcycle bearing registration No.HR-07-H-5861. On the way, one unknown TATA Magic came from backside and hit their motorcycle. Respondent No.1 and his mother Smt. Roshni Devi fell down on the road and suffered multiple injuries. The respondent No.1 of the present appeal was not owner of the motorcycle.

3. The respondent No.1 preferred claim petition under Section 163-A of the Motor Vehicles Act, 1988 (for short "1988 Act") seeking

compensation on account of injuries sustained by him. It is apt to mention here that claim petition was filed under Section 163-A of 1988 Act and it was filed against the owner of motorcycle and insurer. The claim was not filed against owner/driver/insurer of TATA Magic which allegedly hit motorcycle of respondent No.1.

4. Learned counsel for appellant contended that in view of judgment of Hon'ble Supreme Court in ***Ramkhiladi and another vs. United India Insurance Company and another (2020) 2 SCC 550***, the respondent No.1 was not entitled to compensation and learned Tribunal has wrongly awarded a sum of Rs.80,000/-.

5. Nobody has appeared on behalf of respondents. The matter was listed on 05.09.2022 and on the said date also, nobody put in appearance on behalf of respondents.

6. It is very old matter, thus, this Court is left with no option except to decide the appeal on the basis of available record and assistance of learned counsel for the appellant.

7. I have perused record of the case and judgment of Hon'ble Supreme Court in ***Ramkhiladi's case (supra).***

8. As per the aforesaid judgment, driver or owner of the vehicle cannot lodge/claim complaint against the insurer or owner of vehicle whereas claim under Section 163-A of 1988 Act can be lodged against insurer or owner of another vehicle. The liability in case of absence of another vehicle is confined to terms and conditions of the contract.

9. I have gone through the insurance policy and as per policy, a sum of Rs.50/- was charged on account of personal accident and maximum liability was fixed Rs.1,00,000/-. It is not a case of death whereas

respondent No.1 was injured in the accident. This Court, while issuing notice of motion in the present appeal had stayed the operation of award in excess of Rs.25,000/ on 26.05.2011. Having regard to terms and conditions of the policy, interest of justice and judgment of Hon'ble Supreme Court in ***Ram Khiladi's case (supra),*** the present appeal deserves to be allowed and accordingly allowed on the legal issue, however, this Court is of the considered opinion that it would be in the interest of justice if respondent No.1 is awarded a sum of Rs.25,000/- instead of Rs.80,000/- as awarded by learned Tribunal.

10. Accordingly, the amount of compensation is reduced from Rs.80,000/- to Rs.25,000/-. The appellant-insurer is directed to make payment with interest as awarded by learned Tribunal within a period of 08 weeks from today. It is made clear that amount already paid would be deducted from compensation awarded.

11. The appeal is disposed of in view of above terms.

14.09.2022 **(JAGMOHAN BANSAL)**
mamta **JUDGE**

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