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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5479-2017 (O&M)
DATE OF ORDER: 20.12.2022

National Insurance Company Ltd.

…..Appellant

Vs.

Parkashi Devi and another

…..Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: Mr. Aseem Aggarwal, Advocate for the appellant.

Mr. Ashish Gupta, Advocate for respondent No.2/driver and owner of offending vehicle.

Mr. Kapish Singla, Advocate for Mr. Ashit Malik, Advocate for respondent No. 1/ claimant.

Nidhi Gupta, J.

This is an appeal filed by the Insurance Company against the Award dated 06.03.2017 passed by the Motor Accident Claims Tribunal, Karnal (hereinafter referred to as "the Tribunal") in MACT Case No.043 of 2016 filed by the respondent No.1/claimant/mother of the deceased, under Section 163-A of the Motor Vehicle Act, 1988 (hereinafter referred to as "the Act"). Ld. Tribunal, after appraisal of the pleadings and evidence on record, awarded a total compensation of Rs.

5,73,800/- to the claimant, to be paid jointly and severally by the appellant and respondent No. 2 herein.

Brief facts of the case are that on 18.04.2016 the deceased-Ashwani was pillion riding on the motorcycle bearing registration No.HR-75-B-6911 (hereinafter referred to as 'the offending vehicle'), being driven by one Balinder son of Rajpal (respondent No.2 herein) who is the driver and owner of the offending motorcycle. It is the pleaded case of the claimant that the said motorcycle was being driven at a moderate speed on the left side of the road by observing traffic rules when suddenly a stray cow came on the road and the motorcycle struck against the stray cow due to which they lost balance and the motorcycle fell into the ditch near the road and the head of deceased-Ashwani struck against a *safeda* tree. Thereafter Ashwani was shifted from place of occurrence to Government Hospital, Karnal where he succumbed to his injuries and was declared dead by the doctors. Thereafter, matter was reported to local police by DDR No.15 dated 18.04.2016.

Upon appraisal of all the facts, evidence and pleading on record, the learned Tribunal framed the following issues:-

1. Whether the deceased Ashwani son of Ranbir Singh had died in a road side accident which took place on 18.04.2016 at about 11:00 AM within the jurisdiction of P.S. Sadar, Karnal, while using the motor cycle bearing No.HR-75-B-6911 by the respondent No.1? OPP.

2. If issue No.1 is proved in affirmative, whether the claimant Parkashi Devi is entitled for compensation on account of death of deceased

Ashwani son of Ranbir Singh, if so to what amount and on what terms and conditions and from whom? OPP

3. Whether the respondent No.1 was not having a valid and effective driving licence at the time of this accident and the vehicle in question was being plied, if so to what effect? OPR

4. Whether the vehicle in question was being plied without a valid policy and in contravention of terms and conditions of the policy, if so to what effect? OPR.

5. Relief.

Learned Tribunal held that perusal of the Insurance Policy Exhibit R-5 shows the same to be a two-wheeler certificate-cum-policy schedule (comprehensive package) and therefore the offending vehicle was comprehensively insured. Meaning thereby that it covered the risk of pillion rider. As per sub-section 2 of Section 163A of the Act, the claimant is admittedly not required to plead or prove that the death was due to any wrongful act or neglect or default of the owner of the vehicle or of any other person. It is only to be proved that the death of deceased took place arising out of the use of the motor vehicle in question. Accordingly, the learned Tribunal held that the deceased had died in the accident in question as reflected in post-mortem report Exhibit P-3. By way of the impugned Award the learned Tribunal held the appellant-Insurance Company liable to pay the insurance amount inview of evidence in the form of copy of registration certificates Exhibit R-1 and Exhibit R-2 showing that the respondent No.2 was the registered owner of the offending vehicle; copy of insurance cover note (Ex.R-3); and copy of insurance policy (Exhibit R-5) showing that the appellant-Insurance Company was the insurer of the offending motorcycle at the time of accident in question; copy of driving licence (Exhibit R-4) to show that respondent No.2 was having valid and effective driving licence on the date in question.

It is however submitted by learned counsel for the appellant Insurance Company that the ld. Tribunal is in patent error in holding the appellant liable to pay compensation as on the date in question i.e. 18.04.2016 the offending vehicle was not registered. Ld. Counsel refers to Exhibit R-1 which shows that it is merely a temporary registration certificate which had expiredon 16.10.2015. It is accordingly submitted that the Tribunal has misread the evidence on record and is therefore, in error in holding the appellant-Insurance Company liable to make the payment as it is clear from the above that the respondent No.2 had violated the terms and conditions of the Insurance Policy as it had no valid registration on the date of the accident.

In response, Learned counsel for the respondent-claimant is unable to controvertthe above facts and on the contrary submits that no future prospects and even no consortium have been granted to the claimants. However, this is not the claimant's appeal.

It is inter-alia, submitted by ld. Counsel for the respondent No. 2-driver/owner of the offending vehicle that defence is available to the appellant-company only u/s 149 of the Act, and therefore, no recovery rights should be granted to the appellant against the respondent No. 2. In support, ld. Counsel relies upon three judgments passed by this Court in **FAO No.2433 of 2018 (O&M) titled as "Reliance General Insurance Company Limited Vs. Karnail Kaur and others"; FAO No.2749 of 2016 (O&M) titled as "National Insurance Company Ltd. Vs. Jaspal Kaur @ Jaspreet Kaur @ Jass and others" and FAO No.5692 of 2017 (O&M) & FAO No.5698 of 2017 (O&M); FAO-5693 OF 2017 (O&M); FAO-8617-2017 titled as "National Insurance Company Ltd. Vs. Sukhpal Singh And Ors.; National Insurance Company Ltd. Vs. Gurpeet Singh And Ors. & Sukhpal Singh And Others Vs. Jagwinder Singh And Ors. respectively",** wherein it is broadly held that '*non-registration of vehicle is not one of the defences enumerated under Section 149(2) of the Act; Non-registration of vehicle does not amount to breach of insurance policy'.*

I have heard learned counsel for the parties. On facts, it is not in doubt that the learned Tribunal has misread the evidence on record as from a bare perusal of Exhibit R-1 and Exhibit R-2 it is clear that the respondent No.2-owner and driver of offending vehicle did not possess a valid registration on the date of accident 18.4.2016. Ex. R1 is the Temporary Certificate of Registration of the offending vehicle which was issued on 17.9.2015 and was valid up to 16.10.2015. Ex. R2 is the Certificate of Registration of the offending vehicle which was valid from 27.7.2016 up to 16.9.2030. It is therefore, clear that on the date of the accident on 18.4.2016, the offending vehicle was not properly registered. Clearly, on facts it is established that respondent No. 2 herein/owner and driver of the offending vehicle has violated the terms of the insurance policy.

Further, as regards the legal position in such-like cases, in my view, the present case stands squarely covered by decision rendered by 3-Judge Bench of Hon'ble Supreme Court in '**United India Insurance Co. ltd. Vs Sushil Kumar Godara' Lawfinder doc. Id # 1888156'** wherein their Lordships, placing reliance on other decisions of the Hon'ble Supreme Court in '**Narinder Singh Vs New India Assurance Co. ltd. And others' (2014) 9 SCC 324,** and **'Naveen Kumar versus national Insurance Company Limited - RP 250 of 2019 decided on 26.11.2019'** have categorically enunciated as follows:

> *11. In Narinder Singh (supra), the claim was in the context of an accident, involving a vehicle, the temporary registration of which had expired. This Court held that the insurer was not liable, and observed that:*
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> *"12. A bare perusal of Section 39 shows that no person shall drive the motor vehicle in any public place without any valid registration granted by the registering authority in accordance with the provisions of the Act.*
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> *13. However, according to Section 43, the owner of the vehicle may apply to the registering authority for temporary registration and a temporary registration mark. If such temporary registration is granted by the authority, the same shall be valid only for a period not exceeding one month. The proviso to Section 43 clarified that the period of one month may be extended for such a further period by the registering authority only in a case where a temporary registration is granted in respect of chassis to which body has not been attached and the same is detained in a workshop beyond the said period of one month for being fitted with a body or unforeseen circumstances beyond the control of the owner.*
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> *14. Indisputably, a temporary registration was granted in respect of the vehicle in question, which had expired on 11.1.2006 and the alleged accident took place on 2.2.2006 when the vehicle was without any registration. Nothing has been brought on record by the appellant to show that before or after 11.1.2006, when the period of temporary registration expired, the appellant, owner of the vehicle either applied for permanent registration as contemplated under Section 39 of the Act or made any application for extension of period as*

temporary registration on the ground of some special reasons. In our view, therefore, using a vehicle on the public road without any registration is not only an offence punishable under Section 192 of the Motor Vehicles Act but also a fundamental breach of the terms and conditions of policy contract."

12. In Naveen Kumar (supra), NCDRC decided a reference, to its bench, and held that:

"9. For the reasons stated hereinabove, the reference is answered in following terms:-

(i) If a vehicle without a valid registration is or has been used/driven on a public place or any other place that would constitute a fundamental breach of the terms and conditions of the contract of insurance even if the vehicle is not being driven at the time it is stolen or is damaged:

(ii) If a vehicle without a valid registration is used/driven on a public place or any other place, it would constitute a fundamental breach of terms and conditions of the policy even if the owner of the vehicle has applied for the issuance of a registration in terms of S.41 of the Act before expiry of the temporary registration, but the regular registration has not been issued".

Further, reference may also be made to another 3-Judge Bench judgment of the Hon'ble Supreme Court in case of **'United India Insurance Company Limited versus Shila Dutta and others' (2011) 10 SCC 509**where their Lordships of the Supreme Court have interalia held that '*Insurer, if impleaded as party – respondent by claimants themselves, or under Section 170 of MACT, held, can contest claim petition by raising all grounds without being restricted to grounds available and Section 149(2)'.*

Accordingly, in view of the factual and legal position as discussed hereinabove, the present appeal is allowed. The appellant is directed to release the amount of compensation as granted by the ld. Tribunal to the claimant/respondent No. 1 herein, however, is granted right to recover said amount from the respondent No. 2 – driver and owner of offending vehicle.

Pending applications if any stand disposed of.

20.12.2022 **(Nidhi Gupta)**
Sunena **Judge**

Whether speaking/reasoned	**Yes/No**
Whether reportable	**Yes/No**