Amandeep Kaur and Ors. Vs. Surjit Singh & Anr.

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Present: Mr. Ashwani Arora, Advocate
for the applicant-appellants.

Mr. Rajneesh Malhotra, Advocate
for the Insurance Company.

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Petitioners/claimants Smt. Amandeep Kaur, aged about 24 years-widow, Master Vikramjeet Singh, aged about 01 years-minor son and Smt. Amrik Kaur, aged about 50 years-mother of Gurpreet Singh, an unfortunate victim of a road side accident, had filed a claim petition under Section 163-A of the Motor Vehicles Act, for grant of compensation to the tune of Rs.30 lacs against the respondents i.e. Surjit Singh-owner and National Insurance Company Ltd., Chandigarh-insurer of Car No.PB-65-L-6822. As per case of the claimants, on 22.05.2011 at about 3.45 PM, deceased Gurpreet Singh was coming from Hemkund Sahib to Chandigarh via Rudraprayag, driving Indigo Car bearing registration No.PB-65-L-6822 and when, he reached Rudraprayag City, the car went out of control and fell in a ditch. The deceased received serious injuries and died. At the time of his death in the accident, deceased was aged about 28 years, doing private work, earning Rs.3300/- per month. The claimants were dependent upon his income. A sum of Rs.20,000/- was spent by them on his cremation. They prayed that the claim petition be accepted.

Notice of the claim petition was given to the respondents, who had appeared and filed written statements. In the written statement filed by respondent No.1, he almost conceded the case of claimants, submitting that the deceased had a valid and effective driving license to drive the car and the car was insured with National Insurance Company Ltd., Chandigarh, by way of package policy and premium for covering risk to the driver was also paid. Whereas, in the written statement filed by respondent No.2-insurance company, it had raised various legal objections and took statutory defences, contending that no compensation was payable as deceased Gurpreet Singh had stepped into shoes of owner of the vehicle.

Issues on merits were framed. The parties were given opportunities to lead evidence. After hearing arguments, the Motor Accidents Claims Tribunal, Chandigarh, vide award dated 01.08.2013 accepted the claim petition partly and awarded compensation of Rs.4,84,700/- to the claimants, payable by the respondents, however, liability of respondent No.2-insurance company was fixed upto Rs.2 lacs. The claimants were not satisfied with the amount of compensation awarded to them by the Tribunal. Similarly, respondent No.2-insurance company was also dissatisfied with the award, therefore, the claimants as well as respondent No.2 had preferred appeals before this Court, which were disposed of, vide a consolidated order passed on 24.09.2019 inasmuch as it was observed that the compensation had been awarded to the claimants as per structured formula under Section 163-A of the Motor Vehicles Act, 1988 and no fault could be found with the same, whereas, the liability of insurance company had been held to be limited upto Rs.2

lacs, which was being challenged by the claimants. The appeal filed by the insurance company was dismissed, whereas, the appeal filed by the claimants was partly allowed inasmuch as the compensation awarded to the claimants to the tune of Rs.4,84,700/- was kept intact but the interest awarded @ 6% p.a., was enhanced to 7.5% p.a., from the date of filing of claim petition till actual realization.

Now the claimants have preferred an application for review of the award, contending that though the appeal filed by the appellant/claimants has been accepted but it has not been clarified whether the entire liability of paying the compensation has been fastened on insurance company or it has been restricted to Rs.2 lacs as has been done by the Tribunal. Therefore, the application in question was filed.

Notice of that application was given to the insurance company, which has put in appearance and has filed reply thereto, praying for its dismissal.

I have heard learned counsel for the applicant/claimants as well as learned counsel for insurance company besides going through the record.

The moot question to be seen is as to whether the entire liability to pay compensation rests with the insurance company for the reason that a package policy had been taken for insurance of the vehicle and separate amount had been paid for covering risk of the driver. The car in question was owned by Surjit Singh, father of the deceased. As it comes out, the deceased son of the registered owner had borrowed the car, therefore, in terms of the law laid down by the Apex Court in **New India Assurance Company Ltd. Vs. Sadanand Mukhi, 2009(1) RCR (Civil) 817**, he stepped into shoes of the owner of the vehicle, therefore, the deceased was not travelling in the car as owner. Thus, in terms of the comprehensive/package policy where additional premium had been paid to cover risk to owner/driver, the insurance company is liable to pay the compensation. A Co-ordinate Bench of this Court in a judgment passed in FAO-3493-2012 titled **Bajaj Allianz General Insurance Company Ltd.** Vs. **Jasmer Singh & Anr.**, decided on 17.09.2014 had observed as under:-

> "*21. It needs to be emphasized that learned counsel for the appellant-Insurance Company could not dispute liability of the Insurance Company in case the vehicle was being driven by the owner himself as premium of Rs.50/- for the personal accident claim was paid. If that be so, why not the same principle should apply in case the victim is driving the vehicle under the authority of the owner. The deposit of premium for personal accident claim in the package/comprehensive policy in my view cannot be limited only to the owner as the words used in the policy to cover personal accident is described as 'owner driver'. Any other interpretation to these plain words would be restricting the authorized driving to the owner himself and such a consequence is manifestly illegal. Such an interpretation would in fact amount to a contract to pay premium for the life insurance which cannot be so as the premium has been paid for the policy issued under the Act.*
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> *22. In **Ningamma and another's case (supra)** the claim was made under Section 163-A of the Act. The policy of insurance was **"Act only Policy"** and not a*

comprehensive/package policy. The victim was travelling on Hero Honda motorcycle which he had borrowed from the real owner. Hon'ble Supreme Court held that the deceased cannot be held to be employee of the owner of the motorcycle although he was authorized to drive the said vehicle by its owner, and, therefore, he would step into the shoes of the owner of the motorbike. I am of the view that if the borrower of the vehicle steps into the shoes of owner, the terms of the policy which is comprehensive/package policy would include the personal accident claim of the person driving the vehicle provided he holds a valid licence.

*23. From the above discussion, I find that the view expressed by this Court in **Umesh Kumari's case (supra)** and **Monika's case (supra)** is more in consonance with the principle held by Hon'ble Supreme Court in **Ningamma's and Sinitha's cases (supra)** and also the purpose and object of the policy of insurance towards personal accidents. The contention, therefore, raised by the learned appellant's counsel to challenge the Award on this ground cannot be sustained."*

Therefore, the insurance company is liable to pay the entire compensation amount to the claimants. While dismissing the appeal filed by the insurance company and allowing the appeal filed by the claimants partly, such necessary clarification could not be given therein in the order. Therefore, by way of review now, the things are clarified that the payment of entire compensation amount to the claimants would be liability of respondent-insurance company.

The review application stands allowed accordingly.

21.12.2022 **(H.S. MADAAN)**
sumit.k **JUDGE**

SUMIT KUMAR
2022.12.22 15:50
I attest to the accuracy and
authenticity of this order/judgment