IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1955-2022(O&M)
Reserved on : 14.12.2022
Date of Decision: 09.01.2023

Oriental Insurance Company Limited …Appellant

Versus

Manish Kumar and ors ...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Vinod Chaudhri, Advocate for the appellant.

****

<u>HARKESH MANUJA, J.</u>

Present appeal lays challenge to an award dated 11.02.2022 passed by the learned Motor Accident Claim Tribunal, Amritsar (hereinafter referred to as 'Tribunal'), whereby, a sum of Rs.5,00,000/- has been awarded as compensation in favour of all the claimants with a further direction that in case the compensation is not deposited within two months, the same shall accrue an interest @ 6% per annum from the date of filing of petition till actual realization.

Brief facts, which led to the filing of present appeal are that on the fateful day of 01.08.2017, Pooja Rani (deceased) along with her husband- Ramesh Kumar (Driver-Owner-Respondent No 5) , sons Manish Kumar, Yansh, Veegal and daughter Neha Kumari, were going from Kandwal towards Pathankot in their Car bearing registration No. PB-02-CX-1395 (hereinafter referred as offending vehicle). At about 1:20 PM, when they reached the area of kandwal, the driver i.e. respondent No.5 who was driving the car at a very high speed lost its control and collided with tree, as a consequence thereof, Pooja Rani died on the spot and respondent No.1&2 suffered multiple injuries. In this regard, an FIR No. 242 dated 01.08.201, u/s 304-A, 279,337 and 338 IPC was got registered at Police Station, Noorpur.

In the claim petition filed by the claimants/ respondents No. 1 to 5, learned Tribunal having held that as the claim petition was filed under Section 163-A, it was immaterial whether there was any negligence on part of driver/ Respondent No 5, granted compensation of Rs.5,00,000/-.

Present appeal has been filed by the Insurance Company for setting aside the award passed by the learned Tribunal, on the issue of liability.

Plea raised by the appellant- Insurance Company is that the deceased, being the wife of a tort feaser, could not be considered a third party and Insurance Company cannot be called upon to indemnify the insured-husband who himself was negligent in causing the accident.

Having heard learned counsel for the appellant and gone through the paperbook, I do not find any substance in the arguments raised by the learned counsel for appellant/ Insurance Company. In view of judgment of Hon’ble Apex Court in **"National Insurance Company Ltd. vs Balakrishnan & Another"** in CIVIL APPEAL NO. 8163 OF 2012, it has been authoritatively settled that in case of injury or death of owner / driver / occupant of the car or motorbike, Insurance Company is liable if policy of the vehicle is a ‘compressive/ package policy’ but Insurance Company is not liable if it is only an ‘act policy’. Concluding para of the aforementioned judgement is worth reproducing here:

> *"21. In view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive/package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an "Act Policy" stands on a different footing from a "Comprehensive/Package Policy". As the circulars have made the position very clear and the IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a "Comprehensive/Package Policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the "Act Policy" which admittedly cannot cover a third party risk of an occupant in a car. But, if the policy is a "Comprehensive/Package Policy", the liability would be covered. These aspects were not noticed in the case of Bhagyalakshmi (supra) and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as the IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same."*

Apart from that, reliance can also be placed on the judgement of a co-ordinate Bench of this Court in **"Manpreet Kaur vs Sukhdev Singh and another"** reported as 2021 (4) R.C.R. (Civil) 71, where, in view of distinct, separate and independent legal status of the claimant/mother, her claim was allowed when the owner/driver of the offending vehicle was father himself. Therefore, the argument that the owner himself being a tort feaser does not hold substance as claim petition has been filed by the legal heirs of the deceased/mother to the exclusion of their father, who being a separate legal entity from the father, the claimants being children are fully vested with lawful rights to claim compensation on account of death of their mother.

In view of the aforementioned legal position, the present case boils down to the point as to whether the policy of the vehicle was "an act policy" or "a comprehensive policy". It is an admitted fact that the policy taken for the vehicle was a comprehensive policy and therefore, Insurance Company is liable to pay the compensation even if deceased is considered to be the owner of the vehicle.

Resultantly, the present appeal is dismissed in limine with no orders as to costs.

Pending application(s), if any, shall also stand disposed of.

09.01.2023 **(HARKESH MANUJA)**
anil **JUDGE**

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*