211

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-7450-2014 (O&M)
Date of decision: May 15, 2023

United India Insurance Company Limited

….Appellant

versus

Batheri Devi and others

….Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Vikas Mohan Gupta, Advocate
for appellant-Insurance Company.

Mr. Kapish Singla, Advocate for
Mr. Ashit Malik, Advocate for respondents No.1 to 6.

None for respondent No.7.

*****

ARUN MONGA, J. (ORAL)

Appellant before this Court is Insurance Company seeking to set aside impugned award dated 26.05.2014 rendered by learned Motor Accidents Claims Tribunal, Karnal (for brevity, "Tribunal") whereby in a claim petition under Section 163-A of the Motor Vehicles Act, 1988 (for brevity, 'Act'), compensation ofRs.7,27,008/- was awarded on account of death of Tirlok Chand.

2. Succinct facts, as noted by learned Tribunal, are as below:

"*1. The present claim petition has been filed by the claimants claiming compensation on account of the death of Tirlok Chand son of Pirthi Singh who died on 28.10.2012 on account of use of motorcycle bearing registration no. HR 06J 5098 regarding which DDR No. 18, dated 31.10.2012, was got registered in Police Station, Madhuban.*"

3. Upon notice, respondent No.7 (owner of motorcycle in question) filed written statement denying all allegations as raised in the claim petition. It was submitted that motor cycle in question was insured with appellant and thus if learned Tribunal came to the conclusion that claimants were entitled to any compensation then in that eventuality, insurance company was liable to indemnify

him. Besides, legal pleas regarding maintainability; *locus standi* etc. were also taken.

4. Appellant-Insurance Company filed its separate written statement denying accident in question and pleaded that motor cycle in question was falsely involved. It was submitted that a false DDR had been got registered by the police. All other grounds taken in the claim petition were denied. That apart, legal pleas were raised that motorcycle in question was being driven by deceased himself and, therefore, he could not have been treated as third party; that vehicle in question was being driven in contravention of the terms and conditions of insurance policy and that deceased himself was not holding a valid and effective driving licence at the time of the accident in question.

5. Learned Tribunal framed the following issues:

> "*1. Whether the accident in question took place on 28.10.2012 within the area of Police Station, Madhuban, District Karnal due to use of motorcycle bearing registration no. HR 06J 5098 thereby causing death of Tirlok Chand son of Pirthi Singh as alleged in the claim petition? OPP.*
> *2. If issue no.1 is proved in affirmative whether the claimants are entitled for compensation if so to what amount and on what terms and conditions and from whom? OPP.*
> *3. Whether the claim petition is not maintainable in its present form? OPR*
> *4. Whether the claimants have no locus standi or cause of action to file and maintain the present claim petition? OPR*
> *5. Whether the claim petition is bad for mis joinder and non joinder of necessary parties? OPR*
> *6. Whether the present petition has been filed in collusion with respondent no.1?OPR*
> *7. Relief.*"

6. On appraisal of record/ evidence, learned Tribunal decided issue No.1 in favour of claimants. Issues No.3 to 5 were decided against owner and insurer of motorcycle and issue No.6 was decided against appellant. Consequently, claimants were held entitled to compensation of Rs.7,27,008/- along with interest @ 7.5% per annum from the date of filing of claim petition till realization.

7. Learned counsel for appellant-Insurance Company contends that deceased was borrower of the motorcycle, therefore, he cannot be treated as third party. He would contend that learned Tribunal wrongly interpreted the insurance policy as a comprehensive policy whereas the same is an Act only policy.

8. On the other hand, learned counsel appearing on behalf of respondents No.1 to 6-claimants though concedes that deceased was not owner of the motorcycle and therefore, would not be covered under the insurance contract, however, he contends that claimants are otherwise entitled for compensation on the principle of no-fault liability.

9. Learned counsel for appellant-Insurance Company candidly admits that the insurance cover was a package policy for entitlement to compensation on the principle of no-fault liability and submits that the impugned Award is liable to be modified accordingly to the extent of fixed sum of Rs.50,000/-, as enumerated under Section 140 of the Act.

10. At this stage, learned counsel appearing for respondents No.1 to 6 would urge that appeal is continuation of the claim petition and date of decision of the instant appeal ought to be decisive factor and not the date of death of deceased Tirlok Chand. He would further argue that claimants are thus entitled to receive higher amount of Rs.5 Lakh, as envisaged under Section 164(1) of the Motor Vehicles Act, 2019 and they cannot be confined to Rs.50,000/-, as pleaded by learned counsel for appellant-Insurance Company.

11. On the other hand, learned counsel for appellant strenuously opposes the prayer made.

12. I have heard learned counsel for parties and perused case file.

13. Vide order dated 04.09.2014, while issuing notice of motion, recovery of the entire compensation amount under the award so far as Insurance Company was concerned, had been stayed.

14. In a similar case adjudicated by me vide FAO-390-2019 decided on 16.07.2021 titled ***Manpreet Kaur Vs. Sukhdev Singh and another***, following order was passed:

> *"23. To my mind, the ratio of Union of India v. Rina Devi (supra) was/is squarely applicable to the instant case. Here the compensation of Rs. 5,00,000/- as provided/ prescribed on the date of award of the Tribunal is higher than amount of Rs.2,05,000/- with interest awarded by the Tribunal on the basis of rate applicable on the date of death. As such, the higher of the two amounts has to be given to give effect to the mandate of beneficial legislation. To that extent, the learned Tribunal clearly fell in legal error by not granting the compensation of Rs. 5,00,000/- as duly notified by the Central Government."*

15. Section 164 of the Motor Vehicles Act, 1988 as amended by the Motor Vehicles (Amendment) Act, 2019 reads thus:

> "*164. (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or grievous hurt due to any accident arising out of the use of motor vehicle, a compensation, of a sum of five lakh rupees in case of death or of two and a half lakh rupees in case of grievous hurt to the legal heirs or the victim, as the case may be.*
>
> *(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or grievous hurt in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or of the vehicle concerned or of any other person.*
>
> *(3) Where, in respect of death or grievous hurt due to an accident arising out of the use of motor vehicle, compensation has been paid under any other law for the time being in force, such amount of compensation shall be reduced from the amount of compensation payable under this section.*"

16. In view of the consensus reached between learned counsels for both the parties with regard to entitlement to compensation on the principle of no-fault liability, I am of the view that claimants are entitled to compensation of Rs.5,00,000/-on the principle of no-fault liability. There is force in the argument of learned counsel for respondents No.1 to 6 that higher of the two amounts has to be awarded to give effect to the mandate of socio-beneficial legislation.

17. In the premise, impugned award is modified in the above terms. Modified compensation shall be payable to claimants along with interest@ 7.5% per annum, from the date of filing of claim petition till actual date of payment. Same shall be payable to claimants within a period of 2 months of their approaching the insurance company along with web print of instant order, failing which additional compensatory interest of 3% p.a. shall be paid from the date of filing of claim petition till payment. Modified compensation of Rs.5 Lakh be disbursed to claimants in terms of apportionment, as already determined by learned Tribunal.

18. In the premise, appeal is disposed of in above terms.

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

(ARUN MONGA)
JUDGE

May 15, 2023
mahavir/vandana

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No