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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.6403 OF 2015 (O&M)
DATE OF DECISION:09.05.2023

Manju Devi and others **…Appellants**
Versus
Rajesh Kumar and others **…Respondents**

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Ms. Shaveta Sanghi, Advocate,
For the appellants.

Er. Sandeep Suri, Advocate,
For respondent No.2-Insurance Company.

Mr. Nikhil Kaushik, Advocate,
For respondents No.3 and 4.

None for respondent No.1, despite service.

ARUN MONGA, J. (ORAL)

After he attended a wedding celebration where he was invited, the excitement and celebrity mood of young Sandeep, all of a 23 years himself, recently married, did not even last long enough for him to reach home. His young wife (21-year old) and two minor children, one aged 03 years and others 04-month old toddler, were waiting for him only to get news of his death caused by an unfortunate accident of the vehicle caused by collision with a tree in order to save a stray animal (blue bull/*Neel Gai*). Deceased driver Sandeep tried to save the animal while driving the Alto car in which cousin brother of the owner of the car was also sitting. Since there was no third party offending vehicle involved, the claim was filed under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Both the parties though led threadbare evidence but the claim petition was dismissed by learned

Motor Accidents Claims Tribunal, Narnaul (hereinafter referred to as" the Tribunal") summarily on ground that since the deceased was driving the car as a borrower, he stepped into the shoes of owner and was not entitled to prefer any claim for his own fault of having hit the car against the tree. More of it later. Appellants herein are widow and minor children of deceased Sandeep impugning the Award dated 15.05.2015 passed by learned Motor Accidents Claims Tribunal, Narnaul.

2. Succinct facts first. On 12.03.2012, Sandeep (since deceased) along with Parveen Kumar was coming back to Ateli in a Maruti Alto car bearing Engine No. 4800859, Chassis No.2026410 after attending a marriage function at Gurgaon. At about 5:30 a.m., when they reached in between Kishan Nagar and Gokalpur, suddenly one Boselaphus (*Neel Gai*) came on the road due to which he (Sandeep) lost balance on the vehicle and struck against a tree. Due to the collision, he received injuries and was taken to hospital where he was declared brought dead. Resultantly, the claim petition was filed.

2.1 Upon notice, respondent No.2-Insurance Company appeared and filed written statement alleging that no such accident took place on 12.03.2012. It was further pleaded that accident took place due to negligence of deceased Sandeep and the vehicle i.e Alto car was used as commercial vehicle i.e on hire and reward basis and as such, insurance company was not liable to pay any compensation.

2.2 However, none appeared for respondent No.1 (owner of the car) and he was proceeded *ex parte* before learned Tribunal.

3. From the pleadings of parties, following issues were framed by learned Tribunal:

1) Whether the accident has been caused on 12.03.2012 in the area of village Gokalpur, Police station, Ateli due to rash and negligent driving of offending vehicle i.e., Maruti Alto Car temporary registration No. HR-99-LM-3816 and caused death of Sandeep, as alleged? OPP

2) If the Issue No.1 is proved then what amount of compensation the petitioner is entitled to and from whom? OPP

3) Whether the respondent No.1 was holding a valid and effective driving licence at the time of accident? OPR

4) Whether the respondent has violated the terms and conditions of the insurance policy? OPR

5) Whether the insurer is liable to indemnify the liability of insured? OPR

6) Whether the petition not maintainable in the present form? OPR

7) Whether the petitioner has no locus standi or cause of action to file the present suit? OPR

8) Whether the petitioner has concealed true and material fact from the Tribunal and has not come with clean hands? OPR

9) Relief.

4. On appraisal of record/evidence, learned Tribunal dealt with Issue No.6 at the first instance and decided the same against the claimants and in favour of respondent No.2-Insurance Company, by holding that other issues have been rendered redundant. Consequently, claim petition was dismissed, being not maintainable.

4.1. *Apropos* above findings, I have heard competing arguments. Learned counsel for respondent/Insurance Company supported the above finding and urged that deceased was since a borrower, therefore, he is not entitled to any benefit.

5. In the course of hearing, learned counsel appearing on behalf of appellants has placed on record copy of claim petition, reply filed

thereto and the insurance policy which are collectively annexed with the appeal and marked as Annexure-A. She has also placed on record testimony of witnesses and their cross-examination, which are collectively marked as Annexure-B.

6. A perusal of the findings returned by learned Tribunal above clearly reflects that even though other issues were framed *qua* which findings were warranted, but since Issue No.6 was decided against claimants, learned Tribunal in its wisdom chose not to render any findings on other issues and dismissed the claim petition simplicitor on the ground that respondent No.2-insurance company was not liable, since vehicle was being driven by the deceased as a borrower.

7. I am unable to sustain the finding of Tribunal which flies in the teeth of pleadings as well as absence of any evidence to sustain the same. It is not that claimants have pleaded in affirmative in the petition that deceased was a borrower and was driving the vehicle in that capacity neither is it even stated in the reply filed to the claim petition that deceased was driving as a borrower. All what has been pleaded by the insurer is that he was an unpaid driver and therefore, stepped into the shoes of owner of the car and being on parity with the owner, he was not entitled to seek any benefit under the Act, *ibid*. However, a closer scrutiny of the reply reflects that though on merits claim has been disputed but the entire emphasis is more on the maintainability of claim petition and there is no specific denial either of the occurrence of the accident or any positive assertion that the deceased was a borrower. In fact, in the course of arguments, learned counsel appearing for appellants states that in reply there is deemed admission that occurrence had indeed taken place and deceased was not a borrower of the vehicle.

8. Be that as it may, as regards deceased not being a borrower is reflective from mere fact that in the vehicle being driven by him, Parveen Kumar, maternal cousin (Maasi's son) of the owner was also sitting. Therefore, why the deceased would borrow the car to fetch a family member of owner, is beyond common sense. It does not appeal to prudence. It is obvious that Parveen Kumar, cousin of the owner, was being taken back home by deceased, who was known to the owner of car and the deceased perhaps was doing a favour to the owner to take his relative back home on his asking to drive the vehicle. The deceased had not borrowed the vehicle for his own gain. In this case, insurance policy Mark-B covers the risk of driver of the insured vehicle.

9. I am unable to convince myself with basic fallacy in the approach of learned Tribunal of being presumptive merely on the asking of respondent No.2-insurance company that deceased was a borrower, particularly when there is not even a whisper of it either in pleadings or in evidence. Speaking of evidence, reference may be had to a judgment dated 16.08.2022 rendered by a Coordinate Bench of this Court presided over by Pankaj Jain, J. in FAO No.4837 of 2013, relevant whereof is reproduced herein below:

> *"xxx*
> *10. Before deciding issue w.r.t maintainability of the petition under Section 163-A of the 1988 Act in the present case, the status of the deceased needs to be decided first. It is trite that the insurer is required to plead and prove that the deceased was borrower of the vehicle. From the record, it is evident that the appellant has not led any evidence to prove that the deceased was borrower of the vehicle. Counsel for the appellant relies upon statement of Roopa (PW1). A bare perusal thereof shall reveal that there is not even a suggestion put to her w.r.t the deceased being borrower of the vehicle. Not only this, respondent No.6 i.e owner Krishan Kumar appeared as RW-1. He was cross-examined by counsel for the appellant. No question or suggestion was put to him w.r.t the deceased being borrower of the vehicle. Thus*

to say that the deceased was borrower of the vehicle and was using the same in breach of the policy cannot be accepted in the absence of any evidence on record. In view of categoric statement made by PW-1 and in absence of any cogent piece of evidence to rebut the same it is held that the deceased was only a driver of the vehicle.

Xxx

21. It is thus clear that the proposition of law as laid down by the Apex Court in the series of the cases starting from Dhanraj's case to Ningamma's case is, that where the policy does not cover the owner but only covers third party, owner or any other person claiming under him cannot maintain petition under Section 163-A of the 1988 Act. In other words the statute provides for the 'statutory liability' which is limited to cover loss of third party. At the same time the statute does not prohibit 'contractual liability' which is over and above the statutory liability. Whether the duty of the insurer is only to indemnify loss of third party or he is required to indemnify even the owner/driver shall depend upon the terms of the policy. Where the policy is merely a statutory policy obviously the same will fall within the ratio of law laid down in Dhanraj's case (supra) and the insurer shall be liable to indemnify only the third party and owner shall be precluded from maintaining a petition under Section 163-A of the 1988 Act. However, where the policy is a comprehensive policy and the contracting parties have agreed to travel beyond the mandatory requirement of Section 146 of the 1988 Act and insurer agrees to indemnify the owner and has accepted premium for such contract to indemnify, the case would not be hit by law laid down in Dhanraj's case (supra). The parties shall be bound by the contract of insurance. In the case of ICICI Lombard General Insurance Company Limited v. Jagdish- FAO No.2466 of 2010 (O&M), Co-ordinate Bench of this Court held that –

> *"12. The reading of the judgment of the Hon'ble Supreme Court in the case of Ningamma & Anr. V. United India Insurance Co. Ltd (supra) shows, that the Hon'ble Supreme Court also held, that under the Motor Vehicle Act the owner of the vehicle cannot claim compensation for himself but the Hon'ble Supreme Court further held, that the parties would be governed by the terms of their policy. It is not in dispute, that the policy taken out by the claimant was comprehensive policy covering all types of risks. Once in the police the respondent/claimant was entitled to claim the compensation under the insurance policy then it cannot be said that the learned Tribunal committed an error in granting the compensation for the injuries suffered under the comprehensive policy"*

10. I am in respectful agreement with the observation made herein above. In the present case also, there is no evidence at all, plausible or otherwise, which is suggestive that the deceased was a borrower. It is only in the course of arguments that such a stand has been taken. It is, therefore, held that the deceased was the driver of vehicle and not a borrower. Hence, claim petition could not have been dismissed on a ground that the deceased was a borrower of the vehicle.

11. In support of his contentions, leaned counsel for respondent-Insurance Company has placed reliance on the Apex Court judgment titled "***Ningamma and another v. United India Insurance Company Limited***"[1], relevant extract whereof, for ready reference, is reproduced hereunder:

> "*xxx*
> *14. Section 163-A of the MVA was inserted by Act 54 of 1994 by way of a social security scheme. It is needless to say that the said provision is a code by itself. The said provision has been inserted to provide for a new predetermined structured formula for payment of compensation to road accident victims on the basis of age/income of the deceased or the person suffering permanent disablement. In view of the language used in said section there could be no manner of doubt that the said provision has an overriding effect as it contains a non obstante clause in terms whereof the owner of the motor vehicle or the authorized insurer is liable to pay compensation in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.*
> *Xxx"*

12. Furthermore, as regards the reliance of learned counsel for respondent-insurance company for the contention that any unpaid driver is to be treated as a borrower, was also not the issue before the Apex Court. It was established on the evidence on record that in ***Ningamma's case***

[1] ***2009(13) SCC 710***

ibid, the deceased was actually a borrower and therefore, the legal heirs were not held to be claimant within the meaning of Section 163-A of the Act.

13. Reverting now to the admissibility of claim on the ground of non-occurrence of the accident, as has been argued by learned counsel for respondent-insurance company, though there is no finding *qua* the same, I am proceeding to deal with and record a finding on Issue No.1 which learned Tribunal chose not to do as noted above. Reference may be had to testimony of PW-1 ESI Jagdish, wherein he has stated as below:

> *"PW1 ESI Jagdish No.525, PS Ateli on SA*
>
> *I have brought original DDR register of DDR No.25 dated 12.03.2012 as per our record the certified copy of DDR which is Ex.P1 is correct as per our record.*
>
> *Xxx by counsel for respondents.*
>
> *I have no personal knowledge about this case. In this case no investigation was conducted by me nor I joined the investigation."*

14. That apart, Exhibit P-1, which is a report registered by the police when the accident took place accompanied by the post mortem report and clearly establish the factum of accident. The testimony of official witnesses from police station remained unimpeached in the cross-examination. Accordingly, *qua* Issue No.1, it is held that accident indeed took place involving offending vehicle which was insured with respondent No.2-insurance company.

15. In claims under section 163A (now renumbered 164) there is no requirement to prove anybody's negligence for the accident. While framing issue No. 1, the learned Tribunal wrongly included a requirement of proof of rashness and negligence of the driver resulting into accident.

In view of the foregoing discussion, it is held that the claimants have proved that the death of Sandeep arose out of the use of the insured vehicle. That satisfies the requirements of the section ibid.

16. For better appreciation of facts, Section 163-A of the Act is reproduced herein below:

> *"163-A. Special provisions as to payment of compensation on structured formula basis- (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 permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, 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 permanent disablement in respect of which the claim has been made was due t any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.*
>
> *(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."*

17. Coming now to quantum of liability, controversy *qua* which is no more *res integra*. Reference may be had to the Apex Court judgment titled "***Ram Khiladi and another v. United India Insurance Company and anothe***r[2], relevant whereof is reproduced herein below :

> "*xxx*
> *5.8 However, at the same time, even as per the contract of insurance, in case of personal accident the owner-driver is entitled to a sum of rs.1 lakh. Therefore, the deceased, as observed hereinabove, who would be in the shoes of the owner shall be entitled to a sum of Rs.1 lakh, even as per the contract of insurance. However, it is the case on behalf of the original claimants that there is an enhancement to the 2nd Schedule and a fixed amount of Rs.5 lakh has been specified in case of death and therefore the claimants shall be entitled to Rs.5 lakh. The same cannot be accepted. In the present case, the accident took place in the year 2006 and even the Judgment and Award was passed by the learned Tribunal in*

[2] *(2020-1) 197 The Punjab Law Reporter 395*

the year 2009, and the impugned Judgment and Order has been passed by the High Court in 10.05.2018, i.e., much prior to the amendment in the 2nd Schedule. In the facts and circumstances of the present case, the claimants shall be entitled to the benefit of the amendment to the 2nd Schedule. At the same time, as observed hereinabove, the claimants shall be entitled to Rs.1 lakh as per the terms of the contract of insurance, the driver being in the shoes of the owner of the vehicle.

5.9 Now, so far as the submission made on behalf of the claimants that in a claim under Section 163A of the Act mere use of the vehicle is enough and despite the compensation claimed by the heirs of the owner of the motorcycle which was involved in the accident resulting in his death, the claim under Section 163A of the Act would be maintainable is concerned, in view of the decision of this Court in Rajni Devi (supra), the aforesaid cannot be accepted.

In Rajni Devi (supra), it has been specifically observed and held that the provisions of Section 163A of the Act cannot be said to have any application with regard to an accident wherein the owner of the motor vehicle himself is involved. After considering the decisions of this Court in the cases of Oriental Insurance Co. Ltd. V. Jhuma Saha (2007-2) 146 PLR59 (SC), (2007) 9 SCC263, Dhanraj (supra); National Insurance Co. Ltd. V. Laxmi Narain Dhut 92007-2)146 PLR 522 (SC), (2007) 3 SCC 700 ad Prem kumari v. Prahlad Dev (2008) 3 SCC 193, it is ultimately concluded by this Court that the liability under Section 163A of the Act is on the owner of the vehicle as a person cannot be both, a claimant as also a recipient and therefore, the heirs of the owner could not have maintained the claim in terms of Section 163 A of the Act. It is further observed that, for the said purpose, only the terms of the contract of insurance could be taken recourse to. In the recent decision of this Court in the case of Ashalata Bhownik (supra), it is specifically held by this Court that the parties shall be governed by the terms and condition of the contract of insurance. Therefore, as per the contract of insurance, the insurance company shall be liable to pay the compensation to a third party and not to the owner, except to the extent of Rs.1 lakh as observed herein above."

18. Perusal of the aforesaid clearly reflects that in case in hand before the Apex Court since the decision of appeal before learned trial Court was rendered prior to amendment and therefore, benefit of comprehensive cover under the insurance policy out of Rs.1 lakh was being given. In this context, I am guided by my earlier judgment rendered

in "***Manpreet Kaur v. Sukhdev Singh and another***"[3], relevant part whereof reads thus:

> "*xxx*
> *22. In the case in hand, the Tribunal vide its order dated 05.10.2018, awarded compensation of Rs. 2,00,000/- for death, obviously as per the unamended Second schedule. Notwithstanding, that during the pendency of the claim petition before the Tribunal, vide notification dated 22.05.2018 the Second Schedule to the Act had already been amended, and by then the prescribed rate of Rs. 5,00,000/- had become applicable.*
> *Xxx*"

19. Furthermore, a co-ordinate Bench of this Court in FAO No.271 of 2003 decided on 17.04.2023 titled "***Inder Singh (deceased) through legal heirs and others v. Charanjit Singh and others***", has held that appeal is nothing but continuation of proceedings initiated under Section 163-A of the Act which is a piece of social and welfare legislation enacted to provide relief to victims of road side accidents/their family members. Therefore, in the present case, compensation deserves to be granted as per the amendment of the Schedule carried out in the year-2019.

20. In the parting, I may hasten to add here that parents of deceased were though claim petitioners before learned Tribunal but it appears that they chose not to press their claim seeking any benefit as neither they stepped into the witness box nor otherwise it is pleaded in the claim petition that they were dependent on the deceased and in any case father himself being an earning member of the family and was not dependent at the time of death of deceased.

20.1. As regards mother, no doubt she suffered immense pain and agony on the untimely death of her young son. Award of compensation

[3] ***2021 (4) RCR (Civil) 71***

under conventional heads and principles of giving proportionate compensation are not to be applied where compensation is awarded under Section 163-A (Section 164 after 2019 amendment) of the Act and in the absence of any evidence on record *qua* their dependency, I do not find any ground to grant any compensation to the parents/respondents No.3 and 4 herein, particularly when they have chosen not to file appeal against dismissal of the claim petition which clearly suggests that they have acquiesced to the non-grant of compensation. Though it is pleaded in the petition that they were dependent on deceased but, as stated earlier, neither any of them stepped into the witness box nor have they taken any steps to file appeal, which is deemingly suggestive that they acquiesced to the non-grant of compensation.

21. Even in the present appeal, they never requested to be transposed as appellants and it is only the widow, who has been pursuing her cause and had to make them as pro forma party per legal requirement, since they were petitioners before learned Tribunal.

22. As an upshot of the above discussion, impugned Award dated 15.05.2015 is set aside. Instant appeal is partly allowed and appellants are held entitled to a lump-sum of Rs.5 lakh along with interest @ 7% per annum from the date of filing the claim petition till its realization. At the time of filing the claim petition in July, 2012 claimants Ms Ankita and Ms. Pawani daughters of the deceased were aged 3 years and 04 months respectively. Since the sudden death of her husband on 12.03.2012, Manju Devi appellant No. 1 must have been and would still be suffering economic hardship and passing hard times. It would, therefore, be appropriate if now she is paid the whole of compensation amount with interest, to ameliorate her economic hardship

and suffering and for the upbringing and education of her minor daughters. Ordered accordingly. The amount of compensation with interest shall be payable to appellants within a period of 2 months of their approaching respondent No.2-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 actual payment.

23. Disposed of, in above terms.

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

MAY 09, 2023 **(ARUN MONGA)**
Shalini **JUDGE**

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