IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-6984-2015(O&M)
Date of Decision: 08.12.2023

Oriental Insurance Company Ltd.

....Appellant

Versus

Usha Rani and Ors.

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. R.C.Gupta, Advocate
for the appellant-insurance company.

Mr. Amarjit Singh Virk, Advocate for the respondents.

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AMARJOT BHATTI, J.

1. The appellant-insurance company has filed the present appeal against impugned award dated 16.07.2015 passed by learned Motor Accident Claims Tribunal, Kurukshetra vide which the claim petition filed by the claimants/respondents No.1 to 3 seeking compensation on account of death of Surinder Kumar in a motor vehicular accident under Section 163-A of Motor Vehicles Act, 1988 was allowed and the claimants were granted compensation to the tune of Rs.4,05,000/-.

2. The facts of the case are that Usha Rani, her minor sons namely Jitender Kumar and Parmod Kumar through their mother being their next friend and natural guardian filed claim petition under Section 163-A of Motor Vehicles Act, 1988. As per the facts, Surinder Kumar was 44 years old at the time of accident and he was working as driver on a three-wheeler. His monthly income was mentioned as Rs.3,300/- per month. On the fateful date of 19//20.04.2014 at about 12:30 AM the author

of the FIR was going from Pipli to his house in Sham Colony on a three-wheeler. His brother Surinder Kumar was going ahead on other three-wheeler bearing No.HR-65-4828. He was also going towards Sham Colony and when he reached in front of H.P.Petrol Pump, the said three-wheeler driven by his brother got imbalanced and turned turtle. In this accident his brother Surinder Kumar received head injury and other injuries on his body. The police was informed, his brother was taken to LNJP Hospital, Kurukshetra from where he was referred to PGI, Chandigarh and ultimately, he succumbed to the injuries on his way to PGI, Chandigarh. Regarding this accident DDR was lodged at Police Station Sadar Thanesar on 20.04.2014. The claimants claimed compensation to the tune of Rs.10,00,000/- from the respondents along with interest @ 18% per annum with costs.

3. Notice of the claim petition was given to the respondents. The respondent No.1 filed his written statement admitting the claim of claimants whereas the insurance company filed separate written statement taking preliminary objection that a false claim petition has been filed by the claimants in collusion with respondent No.1 to grab compensation. The claim petition is not maintainable, the claimants have no *locus standi* to file this claim petition and they are estopped by their own act and conduct from filing this case. The driver of said three-wheeler bearing registration No.HR-65-4828 was not holding a valid driving license. It was being driven in contravention of the terms and conditions of insurance policy. There was no compliance of Section 158(6) of Motor Vehicle Act. In case the claimants were found entitled to get compensation then they cannot be granted interest more than 5% per annum. On merits, the facts

were denied. It was further alleged that the deceased was not working as a driver, his income was also wrongly reflected in the claim petition. No accident took place as alleged in the claim petition and a false DDR No.33 dated 20.04.2014 was lodged by the police in connivance with the claimants to grab compensation. Denying all the facts in the petition it was prayed that claim petition may kindly be dismissed with costs.

4. From the pleadings of the parties, following issues were framed by the Tribunal on 29.11.2014:-

(1) Whether the accident resulting into death of Surinder Kumar took place due to use of Three wheeler bearing registration No.HR-65-4828? OPP

(2) Whether claimant is entitled to the compensation as prayed for from the respondents? OPP.

(3) Whether there was a violation of the terms and conditions of the insurance policy and respondent No.2 is not liable to pay any compensation? OPR.

(4) Relief.

5. In order to prove the claim petition, the claimants Usha Rani and Kailash Chand stepped into the witness box as PW-1 and PW-2 respectively and tendered documents Exhibit P1 to Exhibit P-3 and closed their evidence.

6. In order to rebut the case of the claimants, the respondent No.1 has tendered documents Exhibit R1 to Exhibit R4 and closed his evidence. Respondent No.2-insurance company examined Rajesh Kumar, Licensing Clerk, Licensing Authority Thanesar as RW1 and tendered documents Exhibit R5 and R6 and closed the evidence.

7. After hearing the arguments advanced by learned counsel for both the parties, the claim petition filed by the claimants was allowed by passing impugned award dated 16.07.2015 vide which the compensation was awarded to the tune of Rs. 4,05,000/- as detailed therein by holding the liability of both the respondents as joint and several along with interest @ 9% per annum from the date of institution of the petition till realization of Award amount. Feeling aggrieved of this Award, the present appeal has been preferred by appellant/Insurance Company.

8. I have heard the arguments of learned counsel for the appellant-insurance company. He argued that the impugned Award dated 16.07.2015 passed by learned Motor Accident Claims Tribunal, Kurukshetra suffers from material illegality and irregularity. The Tribunal has committed error while granting compensation to the claimants as the facts and the evidence were not property appreciated. The claimants have filed the claim petition under Section 163-A of Motor Vehicles Act. There is no convincing evidence on record to show that the deceased lost his life in a motor vehicular accident with the involvement of three-wheeler No.HR-65-4828. The claimants and respondent No.1 have connived together to grab compensation from the insurance company. The respondent No.1 has admitted the claim of claimants and further stepped into the witness box on their behalf. In fact there is breach of terms and conditions of insurance policy. The deceased was not having a valid effective driving license to drive the three-wheeler. The said three-wheeler was having 3rd party insurance policy. In the absence of valid driving license the driver is not covered under the provisions of insurance policy, therefore, no liability can be fastened upon the insurance company.

Learned counsel for the insurance company pointed out that in case it is found that the deceased driver was covered under the insurance policy then as per the terms of insurance policy he is not entitled to receive compensation beyond Rs.2,00,000/-. Therefore, the compensation awarded by the learned Motor Accident Claims Tribunal, Kurukshetra vide Award dated 16.07.2015 may kindly be set aside and the claim petition filed by the claimants under Section 163-A of Motor Vehicles Act may kindly be dismissed.

9. On the other hand, learned counsel for the respondents took the stand that it is a case under Section 163-A of Motor Vehicles Act, therefore, rash and negligent driving is not required to be proved on record. The respondent No.4 who has now expired, was respondent No.1 in the claim petition and stepped into the witness box as PW-2, where he confirmed that his brother Surinder Kumar was driving his three-wheeler by taking it on rent. It is argued that in the insurance policy proved on record as Exhibit P-3 premium was paid for the owner and driver. Therefore, the insurance company is liable to pay compensation as per the terms of insurance policy. It is argued that the verification report of driving license of Surinder Kumar is proved on record as Exhibit R-5, according to which he was having a valid driving license to drive motorcycle, scooter, car, jeep which was valid up to 30.06.2018. Therefore, the objections raised by learned counsel for the insurance company does not hold any ground. The compensation was rightly awarded in favour of the claimants and the appeal preferred by the insurance company deserves dismissal.

10. I have considered the arguments and have gone through the record carefully. Regarding the accident which took place on the

intervening night of 19/20.04.2014, DDR No.33 dated 20.04.2014 was registered. Copy of said DDR is Exhibit P-2. As per the facts narrated in this case, in the mid night Surinder Kumar was going towards Sham Colony and when he reached in front of H.P. Petrol Pump he lost balance and the three-wheeler No.HR-65-4828 driven by him turned turtle. In this accident, he received head injury and injury on other parts of the body. He was taken from one hospital to the other but on the way he succumbed to the injuries. Copy of his post mortem report is Exhibit P-1. DDR No.33 dated 20.04.2014 was recorded on the statement of Kailash Chand-respondent No.1. The present claim petition has been field under Section 163-A of Motor Vehicles Act. Therefore, only accident as well as involvement of three-wheeler No.HR-65-4828 is to be seen and the claimants are not required to prove rash and negligent driving. The accident and the involvement of aforesaid three-wheeler is duly proved on record from the testimony of Kailash Chand-respondent No.1 who stepped into the witness box as PW-2. Kailash Chand is the brother of deceased Surinder Kumar who lost his life in the accident. It has come in the cross examination of Kailash Chand PW-2 that he is having two three-wheelers and three-wheeler No.HR-65-4828 was taken on rent by his brother Surinder Kumar. It was further stated that he i.e. Surinder Kumar was driving three-wheeler for the last 15 years. Moreover, three-wheeler is not a vehicle which anybody will borrow from other, as it is done some times in the case of a scooter or a car. Therefore, deceased Surinder Kumar was driver of three-wheeler No.HR-65-4828 which met with an accident, regarding which the present claim petition has been filed.

11. Learned counsel for the insurance company has firstly raised

the issue that Surinder Kumar was not holding a valid driving license to drive a three-wheeler. It is not disputed that Surinder Kumar was having a driving license to drive motorcycle, scooter, car, jeep which was valid up to 30.06.2018. The verification report is Exhibit R-5. The insurancy company took this stand that there is no endorsement in the driving license that he was competent to drive a three-wheeler which is a passenger carrying vehicle. I have considered the arguments advance by learned counsel for the insurance company. As per the registration certificate of aforesaid three-wheeler Exhibit R1, the gross weight of the vehicle is 750 Kg. Section 2(21) of the Motor Vehicles Act, 1988 defines that light motor vehicle means a transport vehicle or omnibus, the gross vehicle weight of either of which or a motor car or tractor or road roller the unladen weight of any of which does not exceed 7500 KG. In the case in hand, the gross unladen weight of the three-wheeler is mentioned as 750 KG. Therefore, it is covered under light motor vehicle and Surinder Kumar was having a valid driving licence to drive light motor vehicle. Considering these facts, the learned Motor Accident Claims Tribunal, Kurukshetra rightly decided issue No.3 against the insurance company and in favour of the claimants.

12. The learned counsel for the insurance company further raised the issue that in the case in hand three-wheeler No.HR-65-4828 was insured vide insurance policy Exhibit R-3 i.e. Liability Only Policy-Zone-C and it covered only the 3rd party. Surinder Kumar was driving the aforesaid three-wheeler, therefore, he was not covered under this 3rd party insurance policy. I have gone through the recitals in the insurance policy Exhibit R-3. As per the insurance police, the sitting capacity including the

driver is mentioned as 3+1. There is a specific driver's clause which provide that a person driving holds an effective driving license at the time of accident and is not disqualified from holding or obtaining such a license as detailed in the said clause. The schedule of premium further shows that premium was paid for owner/driver to the tune of Rs.100/-. Therefore, I do not find any merit in the arguments advanced by learned counsel for the insurance company that the driver of three-wheeler was not covered under the insurance policy Exhibit R-3. The insurance policy was valid from 12.07.2013 to 11.07.2014 as detailed therein, whereas the accident took place on the intervening night of 19/20.04.2014. Therefore, the said accident took place during the period of aforesaid insurance policy Exhibit R-3.

13. The learned counsel for the insurance company further raised the issue that quantum of compensation awarded in favour of the claimants is towards the higher side. I have considered this aspect of the present case. The terms of insurance policy Exhibit R-3 specifically provided limit of liability which runs as under:-

> *"Under Section II-1(i) in respect of any one accident: as per Motor Vehicles Act, 1988. Under Section II-1(ii) in respect of any one claim or series of claims arising out of one event is Rs.750000/- P.A. Cover under Section III for Owner-Driver (CSI) :Rs.200000/-."*

As per the insurance policy, the limit of liability for compensation to be paid to owner-driver is to the tune of Rs.2,00,000/-. Therefore, the learned Motor Accident Claims Tribunal, Kurukshetra while granting compensation has awarded quantum of compensation as per the Second Schedule of Section 163-A of Motor Vehicles Act i.e. "*Schedule for compensation for third party Fatal Accidents/injury cases claims.*"

Considering the terms and conditions of insurance policy, the liability of insurance company to pay compensation to the claimants is only to the extent of Rs.2,00,000/-.

With this observation, the Award dated 16.07.2015 passed by the learned Motor Accident Claims Tribunal, Kurukshetra stands modified by reducing the quantum of compensation to the tune of Rs.2,00,000/- which the claimants are entitled to receive in the same proportion as awarded by the learned Motor Accident Claims Tribunal, Kurukshetra.

Accordingly, the appeal preferred by the insurance company is partly accepted with the aforesaid modification.

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

The photocopy of record received from the Tribunal be sent back to the concerned quarter.

08.12.2023 **(AMARJOT BHATTI)**
Sunil Devi **JUDGE**

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