IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-6467-2018 (O&M)
Date of Decision: February 06, 2023

Reliance General Insurance Company Ltd. … Appellant

Versus

Krishna alias Krishan and others …Respondents

2. FAO-6544-2018 (O&M)

Reliance General Insurance Company Ltd. … Appellant

Versus

Bhola Ram and others …Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Sanjeev Kodan, Advocate for the appellant.

Mr. Deepinder Singh, Advocate for respondent No.1.

DEEPAK GUPTA, J.(Oral)

In both these appeals, Insurance Company is aggrieved by a common award dated 12.07.2018 passed by learned Motor Accident Claims Tribunal, Faridabad (hereinafter referred as 'the Tribunal') granting compensation of ₹12,99,100/- (on account of death of Monu @ Satpal) in MACT petition No.28 of 2016, titled as ***"Bhola Ram and others v Sh. Inderjeet and others";*** and compensation of ₹51,400/- on account of injuries to the claimant in MACT petition No.68 of 2016, titled as ***"Krishna alias Krishan v Sh. Inderjeet and others".***

2. Facts, in brief, are that a motor vehicular accident took place on 20.10.2015 when Monu @ Satpal (since deceased) along with Inderjeet, Sachin and Krishana @ Krishan were travelling in a private passenger car bearing No.DL-9CF-7697 being driven by Inderjeet. The accident is alleged to have occurred due to negligence of car driver, who

hit to a motor cycle and then to a tree, causing death of Monu @ Satpal; injuries to Krishna @ Krishan. Parents and sister of Monu @ Satpal filed a compensation on account of death of said Monu @ Satpal, whereas Krishna @ Krishan claimed compensation for the injuries. Both the petitions were contested by the driver, owner and insurer of the car; and driver and owner of the motor cycle. After taking necessary evidence, the Tribunal awarded the compensation as per the details given earlier and held that accident occurred due to rash and negligent driving of car driver only and that it is the insurer of the said car, who was liable to reimburse the compensation payable by the insured i.e. owner of the said car.

3. Before this Court, learned counsel for the appellant-Insurance Company neither raised the issue of negligence nor of the amount of compensation. The only point urged by learned counsel is that the offending car was insured by way of an Act/statutory policy only; that deceased Monu @ Satpal as well as injured Krishna @ Krishan were occupying the said car and so Insurance Company cannot be held liable because no separate premium was paid by the occupants of the said car. Reliance has been placed upon the judgment of the Hon'ble Supreme Court of India in case of ***"National Insurance Company Ltd. v. Balakrishnan"*** 2013(2) PLR 1, wherein it was held that Insurance Company will be liable to pay only if the policy taken by the owner of the car was comprehensive/package policy and not if the policy taken was Act policy. Reliance had been placed by the Hon'ble Supreme Court of India on earlier authority rendered in ***"United India Insurance Company Ltd. v. Tilak Singh and others"*** 2006(4) SCC 404.

4. The above said issue has been considered as a threat bear by a co-ordinate Bench of this Court in case of ***"Shiv Lochan Singh Bhola v. National Insurance Co. Ltd."*** 2018(1) R.C.R. (Civil) 559, wherein it is held as under:-

> ***"Act Policy and Comprehensive Policy***
> *The provisions of Motor Vehicle Act, 1988 make a positive provision of compulsory insurance of a motor vehicle before bringing it on the road. Still further the Act makes a compulsory provision for covering of all claims qua third party in case of damages arising from an accident involving such an insured vehicle.* ***Hence the attempt of the insurance companies to avoid statutory liability by creating artificial distinction of Comprehensive/Package policy and the alleged 'Act only policy' does not stand legal scrutiny under the provisions of the New Act. Needless to say that qua the claim for damages to third party liability; every policy has to be taken as 'Act Policy' only, since it is mandatory to be issued by the Insurance Company and it is mandatory to be obtained by the owner of the vehicle under the provisions of the Motor Vehicle Act.*** *In that sense every policy, qua third party, can be said to be and has to be only an 'Act Policy'. Under the provisions of the Old Act since the vehicles other than the vehicles for carrying passengers for hire or reward (i.e. private passenger car/motor cycle) were excluded from the Compulsory Insurance. So the Insurance Companies were very much right in creating category of 'Act Policy' and 'Comprehensive Policy'; where separate premium was charged for covering the unpaid or gratuitous passengers in private passenger car and pillion rider on a motor cycle.* ***But since under the provisions of the New Act, as discussed above, due to not carrying forward the Proviso (ii) of Section 95 (1)(b)(i) of Old Act in Section 147(1)(b)(i) of the New Act, even the unpaid passengers in private passenger car and a pillion rider on a Motor Cycle are also covered within the scope of Compulsory Insurance required by Section 147(1)(b)(i) of the Act, therefore, to cover such unpaid passengers and pillion rider, no separate premium is required to be paid and hence no distinction can be made on the basis of description of policy as 'Comprehensive Policy/Package Policy' or 'Act only***

> ***policy'.*** *May be, the insurance company can create another class of policy called as 'Comprehensive' or 'Package Policy' for covering some extra risk like qua the driver, conductor or employee of the owner, which are still excluded from Compulsory Insurance by virtue of Proviso(i) of Section 147(1)(b), by charging some extra premium. But that classification created by the insurance company can not be made a ground by it for avoiding liability arising from an insured vehicle, qua the damages to the third party, including passengers in private passenger car/pillion rider on a Motor Cycle. Needless to say that insurance company can charge only a single consolidated premium for covering all risks qua third party, since it is compulsory and consolidated insurance for covering all third party claims under the provisions of the Motor Vehicles Act. Insurance company is not entitled and authorised to create differential policies even for third party claim cover, by categorizing the separate amounts of premium to be charged from the insured.* ***Once the third party insurance is compulsory, it is compulsory for all purposes and for all persons falling in definition of third party. Hence the distinction of 'Act only Policy' and 'Package Policy' do not hold good; qua covering the claim for the damage caused to third party, which include the passengers in a private passenger car and a pillion rider on a Motor Cycle.”***
>
> *[Bold portion emphasised by this court]*

5. This Court in ***“United India Insurance Company v. Guddi Devi and others”*** (FAO No.376 of 2021 (O&M), decided on 03.02.2023) has also subscribed to the same view, which has also been followed by other co-ordinate Benches of this Court in cases of ***“New India Assurance Co. Ltd. vs Seema Devi and others”*** (FAO No.333 of 2017 decided on 28.05.2019) and ***“The New India Assurance Company Limited vs Smt. Kaushal Virmani and others”*** (FAO NO.2264 of 2000, decided on 01.06.2022). In ***Shiv Lochan's case (supra)*** as well as ***Guddi Devi's case (supra),*** due reference has been made to ***Balakrishanan's***

case (supra) and Tilak Singh's case (supra) rendered by the Hon'ble Supreme Court and as to how those are not applicable to the facts of this case.

6. In view of the aforesaid facts and circumstances, there is no merit in any of the aforesaid appeals. As such, both the appeals are dismissed.

Photocopy of this order be placed on the connected case file.

February 06, 2023 **(DEEPAK GUPTA)**
sarita **JUDGE**

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