IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-3268-2002 (O&M)

National Insurance Company Limited

...Appellant

VERSUS

Mrs.Shela Pandit and another

...Respondents

(ii) FAO-3270-2002 (O&M)

National Insurance Company Limited

...Appellant

VERSUS

Miss Preeti Pandit and others

...Respondents

Date of Decision: September 25, 2024

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.D.P.Gupta, Advocate
for the appellant.

None for the respondents.

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ARCHANA PURI, J.

These are two appeals filed by appellant-National Insurance Company Limited to assail the Award dated 28.02.2002 passed by learned Motor Accident Claims Tribunal, whereby, compensation was granted to the claimants, on account of injuries sustained by Shela Pandit and on account of death of Surinder Nath Sharma, in a motor vehicular accident.

The facts germane, to be noticed, are as follows:-

That, on 08.09.1994, Surinder Nath Sharma had proceeded from Delhi to Chandigarh, while driving car bearing registration No.CH-01A-6663. His wife Madhu Sharma, daughter Anu Priya Kalhan and sister Shela Pandit were travelling with him in the car in question. When they reached near Gulmarg Hotel, G.T. Road, about 2 kms. before Nilokheri, a truck was seen coming from the opposite direction. Surinder Nath Sharma took his car to the left side and tried to stop it, but all of a sudden, it struck at the back of the truck bearing registration No.HRR-1671, which was standing on the pucca road, without lights and indicators of the parking. The claimants, in the respective claim petitions had asserted about the accident to have taken place, due to rashness and negligence of the aforesaid truck.

Also, they asserted that owner, driver and the insurance company of the truck were liable to make the payment of compensation. In the alternative, it was submitted that if the Tribunal comes to the conclusion that the accident was caused due to the negligence of the driver of the car, an Award be passed against the insurance company of the car i.e. National Insurance Company Limited, which was impleaded as respondent No.4 before learned Tribunal.

Four separate claim petitions were filed for seeking compensation, on account of death of Surinder Nath Sharma as well as injuries sustained by other occupants of the car. However, relevant for the purposes of disposal of the present appeals, is MACT No.41/08.03.1995, which was filed by Shela Pandit, to seek compensation, on account of injuries sustained by her, in the accident in question and also MACT No.43/08.03.1995, which was filed by Miss Preeti Pandit, Mrs.Anu Kalhan and Mrs.Madhu Sharma, being daughters and wife of Surinder Nath Sharma, who died in the accident in question.

At this juncture, it is pertinent to mention that at the time of institution of the claim petitions, the owner and driver of truck bearing registration No.HRR-1671, namely Vijay Singh and Ajay Kumar, were impleaded as respondents No.1 and 2 by the claimants. Respondent No.3 was named as insurance company of the truck bearing registration No.HRR-1671, which was to be disclosed by respondents No.1 and 2. Even, National Insurance Company Limited, insurer of car bearing registration No.CH-01A-6663, was impleaded as respondent No.4, in all the claim petitions.

However, it is pertinent to mention that during the pendency of the claim petition before learned Tribunal, learned counsel for the claimants, on 27.07.1999, had given up respondents No.1 and 2, as unnecessary parties. Said respondents No.1 and 2 are the owner and driver of the truck bearing registration No.HRR-1671. When the owner and driver of the alleged offending truck were given up as unnecessary parties, the name of respondent No.3, i.e. insurer of the said truck, remained undisclosed on the record. Consequently, only respondent left was respondent No.4-National Insurance Company i.e. the insurer of car bearing registration No.CH-01A-6663. Shela Pandit was arrayed as owner of the car in question, in the petitions, other than the one filed by her.

Anyhow, National Insurance Company Limited had contested the claim petitions. Rather, it took the plea that the claimants had no cause of action as against the insurance company of the car, as it was admitted in the claim petition that the accident had taken place, due to negligence, on the part of driver of the truck bearing registration No.HRR-1671. All other averments, on merits, were also denied and thus, a prayer was made for dismissal of the claim petitions.

Also, further it is pertinent to mention that claim petition i.e. MACT No.43/08.03.1995, which related to death of Surinder Nath Sharma, was initially filed under Section 166 of the Motor Vehicle Act, but it was thereafter, converted into 163-A of the ibid Act, vide order dated 15.11.1999. All the other claim petitions were filed under Section 166 of the ibid Act. All the claim petitions were consolidated, issues were framed and evidence was adduced.

On appraisal of the evidence, brought on record, learned Tribunal concluded that there was composite negligence, on the part of driver of the car and also of the driver of the truck, due to which, the accident had occurred and the negligence of both the vehicles was assessed to the ratio of 50:50 and thereupon, the compensation was worked upon, qua claim petition bearing MACT No.40, 41 and 42. So far as MACT No.43 is concerned, the same was filed by the legal heirs of Surinder Nath Sharma under Section 163-A. However, learned Tribunal, while considering the findings recorded in the other claim petitions about the accident to have taken place due to composite negligence, on the part of the driver of car as well as driver of the truck in question, had also made National Insurance Company Limited, insurer of the car bearing registration No.CH-01A-6663, which was respondent No.4, to be liable to make payment of 50% of the compensation. The compensation was awarded in all the four claim petitions.

To challenge the impugned Award, the National Insurance Company has filed four appeals i.e. FAOs No.3267, 3268, 3269 and 3270 of 2002. However, during the pendency of the proceedings, the National Insurance Company had withdrawn two appeals i.e. FAOs No.3267 and 3269 of 2002.

Now, the insurance company is contesting FAO-3268-2002, which relates to the compensation awarded to Shela Pandit, on account of injuries sustained by her and FAO No.3270-2002, which relates to compensation granted, on account of death of Surinder Nath Sharma, in the accident in question.

In pursuance of the notice issued, the respondents did not make appearance and as such, they are proceeded against ex-parte.

Learned counsel for the appellant-insurance company heard.

At the very outset, learned counsel for the appellant-insurance company has assiduously submitted that FAO-3270-2002, relates to MACT No.43, filed by daughters and widow of Surinder Nath Sharma and this claim petition is under Section 163-A of the Motor Vehicles Act. Also, while making reference to policy Ex.R5, learned counsel submits that Shela Pandit was the owner of the car bearing registration No.CH-01A-6663. At the time of accident, the said car was being driven by Surinder Nath Sharma, who was brother of Shela Pandit. He was the permissive user of the car, at the relevant time and therefore, he stepped into the shoes of the owner. That being so, he cannot be considered as a 3rd party to the car bearing registration

No.CH-01A-6663 and therefore, the claim under Section 163A of the Motor Vehicles Act, is not maintainable and on this score, the claimants of MACT No.43 are not entitled to any compensation and also further, no such liability can be fastened upon the National Insurance Company, in the capacity of being insurer of the car bearing registration No.CH-01A-6663.

So far as, to challenge the compensation granted to Shela Pandit, owner of the car bearing registration No.CH-01A-6663, learned counsel for the insurance company has also made reference to insurance policy Ex.R5 and submits that though, the validity of the policy covers the date of accident, but however, the amount of premium paid was only basic premium and for own damage claim. No added premium was paid for personal accident benefit and therefore, on account of injuries sustained by the owner of the car, the insurance company cannot be made liable to pay the compensation.

In view of the submissions made aforesaid and as already observed, it is pertinent to mention that there were two vehicles involved in the accident in question. One was truck bearing registration No.HRR-1671 and the other was car bearing registration No.CH-01A-6663. The driver and owner of the aforesaid truck were initially impleaded as respondent No.1 and 2. However, during the pendency of the claim petitions, they were given up and they were not served and consequently, the name of insurer of the truck in question, as such, has not come on record. However, the insurer of the car bearing registration No.CH-01A-6663 was impleaded as respondent No.4 and the liability to the extent of 50% has been fastened upon it, on the basis of composite negligence, to be to the ratio of 50:50 of both the drivers of the car as well as the truck.

Once the owner and driver of the alleged offending truck have been given up by the claimants, for all intents and purpose, there was no claim against the truck bearing registration No.HRR-1671.

From the material coming forth, it stands established that Shela Pandit is the owner of the car bearing registration No.CH-01A-6663 and that being so, deceased Surinder Nath Sharma, being permissive user, had stepped into the shoes of owner of the car in question, driven by himself and in this scenario, the question arises, whether the insurer of the vehicle, driven by deceased himself, would be liable to pay the compensation under Section 163A of the ibid Act. Thus, the question is, whether the deceased not being the 3rd party to the car bearing registration No.CH-01A-6663, being in the shoes of owner, can maintain the claim under Section 163A of the ibid Act, from the owner of the said vehicle.

It is pertinent to mention that owner-Shela Pandit, has nowhere denied about the car to be driven by her brother Surinder Nath Sharma, at the relevant time and she has also not disputed about the permission having not been given by her, for the use of vehicle in question. Thus, deceased Surinder Nath Sharma, can be said to be permissible user of the said car. That being so, beneficial reference is made to ***Ramkhiladi and another vs. The United Insurance Company and another, 2020(1) RCR (Civil) 638***, wherein, the Hon'ble Supreme Court had held that where the compensation is claimed only against the owner and insurer of the vehicle, which was driven by the deceased, the deceased steps into the shoes of owner of the vehicle and not being 3rd party, the claim is not maintainable. In the said judgment, reliance was placed upon ***Ningamma vs. United India Insurance Co. Ltd. 2009 (3) RCR (Civil) 435*** and ***New India Assurance Co. Ltd. vs. Sadanand Mukhi 2009 (1) RCR (Civil) 817*** and it was observed, as herein given:-

> *"5.4 An identical question came to be considered by this Court in the case of Ningamma (supra). In that case, the deceased was driving a motorcycle which was borrowed from its real owner and met with an accident by dashing against a bullock cart i.e. without involving any other vehicle. The claim petition was filed under Section 163A of the Act by the legal representatives of the deceased against the real owner of the motorcycle which was being driven by the deceased. To that, this Court has observed and held that since the deceased has stepped into the shoes of the owner of the vehicle, Section 163A of the Act cannot apply wherein the owner of the vehicle himself is involved. Consequently, it was held that the legal representatives of the deceased could not have claimed the compensation under Section 163A of the Act. Therefore, as such, in the present case, the claimants could have even claimed the compensation and/or filed the claim petition under Section 163A of the Act against the driver, owner and insurance company of the offending vehicle i.e. motorcycle bearing registration No. RJ 29 2M 9223, being a third party with respect to the offending vehicle. However, no claim under Section 163A was filed against the driver, owner and/or insurance company of the motorcycle bearing registration No. RJ 29 2M 9223. It is an admitted position that the claim under Section 163A of the Act was only against the owner and the insurance company of the motorcycle bearing registration No. RJ 02 SA 7811 which was borrowed by the deceased from the opponent-owner Bhagwan Sahay. Therefore, applying the law laid down by this Court in the case of Ningamma (supra), and as the deceased has stepped into the shoes of the owner of the vehicle bearing registration No. RJ 02 SA 7811, as rightly held by the High Court, the claim petition under Section 163A of the Act against the owner and insurance company of the vehicle bearing registration No. RJ 02 SA 7811 shall not be maintainable.*
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> *5.5 It is true that, in a claim under Section 163A of the Act, there is no need for the claimants to plead or establish the negligence and/or that the death in respect of which the claim petition is sought to be established was due to wrongful act, neglect or default of the owner of the vehicle concerned. It is also true that the claim petition under Section 163A of the Act is based on the principle of no fault liability. However, at the same time, the deceased has to be a third party and cannot maintain a claim under Section 163A of the Act against the owner/insurer of the vehicle which is borrowed by him as he will be in the shoes of the owner and he cannot maintain a claim under Section*

163A of the Act against the owner and insurer of the vehicle bearing registration No. RJ 02 SA 7811. In the present case, the parties are governed by the contract of insurance and under the contract of insurance the liability of the insurance company would be qua third party only. In the present case, as observed hereinabove, the deceased cannot be said to be a third party with respect to the insured vehicle bearing registration No. RJ 02 SA 7811. There cannot be any dispute that the liability of the insurance company would be as per the terms and conditions of the contract of insurance. As held by this Court in the case of Dhanraj (supra), an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. In the said decision, it is further held by this Court that Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

5.6 In view of the above and for the reasons stated above, in the present case, as the claim under Section 163A of the Act was made only against the owner and insurance company of the vehicle which was being driven by the deceased himself as borrower of the vehicle from the owner of the vehicle and he would be in the shoes of the owner, the High Court has rightly observed and held that such a claim was not maintainable and the claimants ought to have joined and/or ought to have made the claim under Section 163A of the Act against the driver, owner and/or the insurance company of the offending vehicle i.e. RJ 29 2M 9223 being a third party to the said vehicle."

In view of the giving up of the owner and driver of the truck bearing registration No.HRR-1671 by the claimants, for all intents and purposes, it is to be considered that claim petitions were filed against the insurer of the car bearing registration No.CH-01A-6663. That being so, the deceased, being the permissive user, had stepped into the shoes of owner i.e. Shela Pandit and being so, the claim under Section 163A of the Motor Vehicles Act, is not maintainable, as the deceased could not be considered as 3rd party, vis-a-vis, the alleged car.

Therefore, the claim petition MACT No.43 is not maintainable qua death of Surinder Nath Sharma and precisely, on this account, **FAO-3270-2002** is hereby allowed and the findings qua grant of compensation are reversed and MACT No.43/08.03.1995 stands dismissed.

Now, coming to FAO-3268-2002, relating to the compensation awarded to Shela Pandit, owner of the car bearing registration No.CH-01A-6663. As observed aforesaid, Shela Pandit is the owner of the aforesaid car. Ex.R5 is the insurance policy of the said car. The period of validity of the insurance policy covers the date of accident. However, perusal of the Ex.R5 reveals that the policy was comprehensive, which covered own damage as well as for liability basic premium. No added premium was paid to cover the personal accident benefit. In the given circumstances, when the car was driven by permissive user and the owner had sustained injuries, while being occupant of the car in question, therefore, the personal accident cover was not existing qua Shela Pandit, at the relevant time. Precisely, on this account, claimant Shela Pandit is not entitled to any compensation.

Consequently, the finding qua entitlement of Shela Pandit to the compensation, as held by learned Tribunal is also hereby reversed and as such, **FAO-3268-2002** stands allowed and claim petition is dismissed.

September 25, 2024 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**