



FAO-2541-2006 (O&M)

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**FAO-2541-2006 (O&M)
Date of Decision: 30.01.2025**

Vivek Goel

.....Appellant

Vs.

Manoj Kumar Goel and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Ankit Saini, Advocate, for
Mr. Ram Kumar Saini, Advocate,
for the appellant.

Mr. Pardeep Goyal, Advocate,
for respondent No.2-Insurance Company.

SUDEEPTI SHARMA J.

1. The present appeal has been preferred by the appellant for setting aside the award dated 02.01.2006 passed in the claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Yamuna Nagar (for short, 'the Tribunal'), whereby, claim petition filed by the appellant for grant of compensation on account of death of his father-Manoj Kumar Goel, was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 07.09.1998 at about 08:30 P.M., Manoj Kumar Goel (since deceased) was going to his village Mustfabad from Yamuna Nagar on his scooter bearing registration No.HR-02-8205. When Manoj Kumar Goel (since deceased) reached near village Kail situated on Jagadhri-Ambala road, suddenly, two dogs came in front of



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his scooter and struck against his scooter and due to this impact, he as well as his scooter fell down on the road. As a result thereof, Manoj Kumer Goel (since deceased) sustained multiple injuries and died on the spot.

3. Upon notice of the claim petition, respondent No.2-Insurance Company appeared and filed its reply denying the factum of accident/compensation.

5. From the pleadings of the parties, the learned Tribunal framed the following issues:-

“i) Whether Manoj Kumar died by use of scooter No.HR-02-8205 being driven by him, if so to what effect?

OPP

ii) Whether the petition is not maintainable under Section 163-A on account of income? OPR

iii) Whether the petition is not maintainable on account of the fact that the insured was the deceased himself? OPR.

iv) Relief.”

6. After taking into consideration the pleadings and the evidence on record, the learned Tribunal has dismissed the claim petition. Hence, the present appeal.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES

7. Learned counsel for the appellant contends that the claim petition was dismissed by the learned Tribunal only on the ground that the owner himself was driving the scooter bearing registration No.HR-02-8205 and as per insurance policy (Ex.R-2) of the scooter, the insurance was comprehensive.



8. *Per contra*, learned counsel for respondent No.2-Insurance Company, however, vehemently argues on the lines of the award dated 02.01.2006 and submits that the award has rightly been dismissed by the learned Tribunal. Therefore, he prays for dismissal of the present appeal.

9. I have heard learned counsel for the parties and perused the whole record of this case.

10. The relevant portion of the award reads as under:-

“ISSUE NO-2:

Admittedly, the vehicle was owned by the deceased and the insurance was in his name. As per insurance policy Ex-R2, the insurance was comprehensive. The counsel for the petitioner submits that in view of Section 147(1)(b) of the Motor Vehicles Act, the insurance Company is liable to indemnity any person. He, thus, argued that the claimant being a minor son the deceased-owner, as entitled to claim compensation from the insurance company. On the other hand, the counsel for the insurance company has referred to Regional Manager Vs. Smt. Bimlesh 2003(1) P.L.R. 783 and Monowara Bibi Vs. New India Assurance Co. Ltd. 2005 ACJ 1348. In those cases, there was third party insurance and it was held that owner was not a third party and, as such, was not entitled to compensation. The argument of the counsel for the petitioner that it being comprehensive policy, the petition is maintainable, stands repelled, when the counsel for the insurance company has relied upon Dhanraj Vs. New India Assurance Co. Ltd. 2005(1) Apex Court Judgements 116 (S.C). In this authority, the Hon’ble Supreme Court has held that even if there is comprehensive insurance policy, the owner of the vehicle can only claim compensation provided a personal accident insurance has been taken out. In the insurance policy produced



by the insurance company, it is nowhere mention that a personal accident insurance has also been taken out by the owner. Thus, in view of this authoritative law laid down by the Supreme Court, the petition by the son against his deceased father, who was owner and insured, as well as against the insurance company is not maintainable. The issue, as such, is decided in favour of the insurance company.”

11. A perusal of the award reveals that there is no dispute regarding the fact that the deceased, who was also the owner of the vehicle, was driving at the time of the accident, which resulted into his demise. The examination of the insurance policy indicates that, though, it is a comprehensive policy, the deceased had not availed of any personal accident cover.

12. The issue of whether the insurance company is liable to compensate the legal heirs of the deceased owner-driver, who had taken out a comprehensive policy but had not opted for a personal accident cover, is no longer *res integra*. The Hon’ble Supreme Court in **“Dhanraj v. New India Assurance Com. Ltd. and another” 2004(8) SCC 553** has conclusively settled this question. The relevant extract from the judgment is as follows:-

“7. We have seen the Policy. It is a comprehensive policy. The question that arises is whether a comprehensive Policy would cover the risk of injury to the owner of the vehicle also. Section 147 of the of the Motor Vehicles Act, 1988 reads as follows :-

“147. Requirements of policies and limits of liability. -

(1) In order to comply with the requirements of this Chapter, a policy of Insurance must be a policy which –



*(a) is issued by a person who is an authorised insurer; or
(b) insures the person or classes of persons specified in the policy to the extent-specified on sub-section (2)-(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised 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 a public place;*

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required –

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of or bodily injury to, any such employee –

(a) engaged in driving the vehicle, or

(b) if it is a public vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation. - For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that



the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in subsection (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely :-

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand :

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.”

Thus, 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. Section 147 does not require an Insurance Company to assume risk for death or bodily injury to the owner of the vehicle.

8. In the case of **Oriental Insurance Co. Ltd. V. Sunita Rathi and others, 1998(1) RCR (Civil) 429 (SC) : 1998 ACJ 121** it has been held that the liability of an Insurance Company is only for the purpose of indemnifying the insured against liabilities incurred towards third person or in respect of damages to property. Thus, where the insured i.e. an owner of



the vehicle has no liability to a third party the Insurance Company has no liability also.

9. *In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs. 4,989/- paid under the heading “Own damage” is for covering liability towards personal injury. Under the heading “Own damage”, the words “premium on vehicle and non-electrical accessories” appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal insurance has been taken out. In this case, there is no such insurance.”*

13. Furthermore, this Court has previously adjudicated upon an identical issue in **FAO-788-2007** titled as **“Jaswinder Kaur and others Vs. Sukhwinder Singh and another”** decided on 08.11.2024, wherein it was held that in the absence of a specific personal accident cover for the owner-driver, the insurance company is not liable to indemnify the legal representatives of the deceased. The relevant extract of the same is reproduced herein-under:-

“7. In view of the above, this Court is of the considered view that the appeal is liable to be dismissed as the owner of the vehicle never paid the premium for personal accident cover and therefore, he would not be covered under the comprehensive policy as per the terms and conditions of the insurance policy. Since, he was the owner and not a third party and the fact that it was a comprehensive policy covering the third party, therefore, he was not liable for payment of the compensation.”



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14. In light of the settled legal position, as enunciated in the aforementioned precedents, the present appeal is devoid of merit and is accordingly dismissed.

15. Appellant-Insurance Company is hereby directed to disburse the current scheduled fees to Mr. Pardeep Goyal, Advocate, within a period of 20 days from the date of receipt of the copy of this judgment.

16. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

30.01.2025

Virrendra

Whether speaking/non-speaking : Yes

Whether reportable : Yes/No