(2014) 05 P&H CK 0098

In the Punjab And Haryana At Chandigarh

Case No : FAO No. 2194 of 2012

IFFCO Tokio General Insurance Co. Ltd. — APPELLANT

Vs

Karnailo Devi and Others — RESPONDENT

Date of Decision : 19-05-2014

Acts Referred:
Motor Vehicles Act, 1988 — Section 140, 147, 163-A

Citation : (2015) 2 ACC 858 : (2014) 176 PLR 398

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : R.S. Madan, Advocates for the Appellant; Vivek Goyal, Advocates for the Respondent

Judgement

K. Kannan, J.—The point involved in this case is the issue of liability of insurer for the claim by a person who comes by death or injury by his own driving. This was a case where the deceased was driving a motor cycle and a tyre got deflated, he dashed against a tree and suffered injuries that proved fatal. The policy of insurance was a Package Policy and this was stated to afford a ground for the representatives of the deceased to make a claim. The Motor Vehicles Act provides for an enforcement of liability in typical tortious situations where a person that owed a duty Of care breached his duty and made himself liable by the negligence act that contributed to the death or injury to another person. If a person by his own driving comes by death or injury then the right of enforcement of claim shall become possible only if the death results by the use of motor vehicle in course and out of employment in his capacity as a workman, for Section 147 of the Motor Vehicles Act makes compulsory insurance for covering the risk to certain classes of persons who would be provided full coverage for liability under the Workmen''s Compensation Act. If, on the other hand, the person comes by injury or death is himself the owner of the vehicle or a person who has borrowed the vehicle and comes by death or injury, then the enforcement of claim against the insurer shall become possible only under two circumstances. One, if the person who is injured or dead had taken a personal accident cover which will provide a right of action against the insured to the extent to which the liability is covered. Another instance could be under no fault liability which the law provides under Section 140 and which is recognized in the judgment of the Supreme Court in Eshwarappa @ Maheshwarappa and Another Vs. C.S. Gurushanthappa and Another, . In no other situation can a liability arise for an insurer to satisfy the claim for person who comes by his own fault or by supervening event that makes death or injury inevitable.

2. Learned counsel appearing on behalf of the respondent refers to me the judgment of this Court in-New India Assurance Co. Ltd. v. Umesh Kumari and others 2011(2) ACJ 890 where the son of the owner of the offending vehicle, who had stepped into shoes of the owner by borrowing the vehicle with permission of the owner, this Court held that this cannot be said to be a third party. With respect the reasoning is erroneous. The decision of the Supreme Court in Ningamma and Another Vs. United India Insurance Co. Ltd., that likens the situation of a person who borrows the vehicle to step into the shoes of the owner is to examine whether an owner who comes by injury or death will have a right to claim against himself and the insurer. The answer obviously ought to be in the negative and even the Court said that it is not possible to accommodate such a claim. The principle has been,-with respect, wrongly understood to mean if the deceased was owner of the vehicle, he cannot be treated as third party. The issue is not whether a person is third party or not. The issue is whether the insurance company would be made liable for a claim arising out of his own action. I have already examined this situation when the law permits for such an exercise. In yet another judgment of this Court in Munshi Ram v. United India Insurance Company Limited (2012-1)165 PLR 189, it has been held that where a motor vehicle insured on the date of the accident and the policy taken for the motor cycle had been Package Policy under which the pillion rider was also to be covered, the legal heir of person who was driving the vehicle after borrowing has come by injury or death would have a right of enforcement under Section 163-A of the Motor Vehicles Act. With respect, I do not think this principle to law is correctly applied in the said judgment. The liability cast on the insurer was clearly wrong and when there is direct law on the subject by the decision of the Supreme Court in Ningamma''s case (supra), there could be no deviation from such principle pointed out in the two judgments of this Court.

3. In this case there is a personal accident cover to the person in whose name policy was taken but the benefit cannot, apply to any other person. Learned counsel appearing on behalf of the respondent points out that in the grounds of appeal filed by the insurer, they have admitted the liability to the tune of Rs. 1 lac covered through personal accident cover. There could be no estoppel against law and consistent with my finding that personal accident could be extended and availed only to a person in whose name policy was taken and cannot be extended to any other person, I take it to be an admission which could be withdrawn as the counsel for the insurer choose to do before me at the time of argument. Under the circumstances, the award passed on the insurance company is set

aside except to the extent of Rs. 50,000/- to which the insurance company would still be liable in the light of decision of the Supreme Court in Eshwarappa @ Maheshwarappa and Another Vs. C.S. Gurushanthappa and Another, . The award stands-modified and the appeal is allowed to the above extent.