(2014) 05 P&H CK 0118

In the Punjab And Haryana At Chandigarh

Case No : F.A.O. No. 5339 of 2010 (O&M)

New India Assurance Co. Ltd. — APPELLANT

Vs

Pataso — RESPONDENT

Date of Decision : 15-05-2014

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

Citation : (2014) 3 RCR(Civil) 1012

Hon'ble Judges : Jitendra Chauhan, J

Bench : Single Bench

Advocate : Neeraj Khanna, Advocate for the Appellant; K.K. Garg and Prithi Singh, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

Jitendra Chauhan, J.—This appeal has been filed by the Appellant-Insurance Company against the Award dated 24.5.2010, passed by the Motor Accident Claims Tribunal, FTC, Sonipat (for short the Tribunal) for the grant of compensation to the claimants. Learned counsel for the appellant contended that the deceased borrowed the motor cycle from the owner, thus he steps into the shoes of the owner. His Legal heirs are not entitled to maintain application for compensation u/s 163-A of the Motor Vehicles Act. He submits that as per the terms and conditions of the insurance policy, the driver is not covered under the insurance cover. The motor cycle was borrowed by deceased from his brother, real owner. Therefore, the Insurance Company is not liable to indemnify the Award. In support of his contentions, he relied upon Ningamma and Anr. v. United India Insurance Company Ltd. 2009 (3) RCR (Civil) 435.

2. On the other hand, learned counsel for respondents No. 1 & 2 submits that the Ld. Tribunal rightly granted compensation to the claimants.

3. I have heard the learned counsel for the parties and perused the case file carefully.

4. A perusal of the Award shows that the Ld. Tribunal has observed that the accident in question had taken place out of the use of the motor cycle, which by virtue of the statement of PW 1 Dilbagh Singh, coupled with the FIR Ex./P1 stands proved. It was concluded that the accident had taken place out of use of motor cycle No. HR-10G-6503. This evidence of the PW 1 goes unrebutted, as it was alleged by respondent No. 1 that he and his family members shocked to know that the motor cycle was totally damaged and Manoj Kumar had died. It was also the stand of respondent No. 1 that offending vehicle does not belong to respondent No. 1. These were the contradictory stands taken in the written statement by respondent No. 1. Thus, it seems that the Ld. Tribunal has not taken into consideration the submission of the respondent No. 2 (Insurance Company) and came to the conclusion that claimants are entitled for the compensation u/s 163-A of the Motor Vehicles Act. Taking the income of the deceased at Rs. 3300/- per month and applying the multiplier of 18, as per Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, the Ld. Tribunal awarded total compensation of Rs. 4,90,000/- to the claimants, against which the Insurance company filed the present appeal.

5. From the facts on record, it is proved that the deceased borrowed the motor cycle from his brother, the owner. The said vehicle was insured with the Insurance Company. No additional premium was paid for any kind of additional risk. The accident took place when the deceased was driving motor cycle borrowed by him from the owner, his brother. Therefore, he stepped into the shoes of the real owner. The Insurance Company is not liable to indemnify the award to the claimants. Therefore, the contentions of the learned counsel for the appellants deserve to be accepted. The present appeal is partly allowed. The claimants are entitled to Rs. 50,000/- as compensation, under the principle of No Fault Liability. The claimants are old aged parents of the deceased. However, no recovery of the amount already paid, shall be effected from the claimants, if the amount is already paid.

