

(2018) 07 P&H CK 0306

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 776 Of 2018 (O&M)

Oriental Insurance Company Limited, Chandigarh

APPELLANT

Vs

Paramjit Kaur And Others

RESPONDENT

Date of Decision : 03-07-2018

Acts Referred:

Citation : (2018) 07 P&H CK 0306

Hon'ble Judges : Harinder Singh Sidhu, J

Bench : Single Bench

Advocate : R.K. Bashamboo, Ashwani Arora

Final Decision : Dismissed

Judgement

Harinder Singh Sidhu, J

CM-2354-CII-2018

For the reasons stated in the application, delay of 22 days in filing the appeal is condoned.

Miscellaneous application stands disposed of.

Main Case

The insurance company has filed the present appeal against the award dated 8.9.2017 of the Motor Accidents Claims Tribunal, Chandigarh (for short

'the Tribunal') whereby the claim petition filed by the claimant-respondent No.1 has been allowed.

The claimant is the mother of the deceased-Harpreet Singh. The case set up in the claim petition was that on 4.4.2017 at about 11.45 AM Harpreet

Singh was a pillion rider of motorcycle bearing registration No. PB-65-AJ-4829 which was being driven by Virender Singh-respondent No. 2. They

were going from Jhanjeri to Mohali. The motorcycle was being driven in a rash and negligent manner in the middle of the road. Kulwant Singh was following them on a separate motorcycle. When the motorcycle reached in the area of village Sawarha, a car came from the opposite direction, struck against the motorcycle and sped away. Its registration number could not be noted. Due to the impact of the accident, the deceased fell down on the road and received injuries. He was taken to hospital in Sohana where he died on 5.4.2017 due to the injuries sustained in the accident. A criminal case was registered against the driver of the unknown car on the statement of Virender Singh, driver of the motorcycle. The claim petition was filed alleging that the accident had taken place due to rash and negligent driving of motorcycle bearing registration No. PB-65-AJ-4829.

Respondent No.2 and 3 (the driver and owner respectively) of motorcycle did not appear to contest the claim petition and were proceeded against ex-parte. During the pendency of the claim petition Respondent No.2 died in a separate accident on 21.7.2017.

The case of the appellant-insurer of the motorcycle was that the accident had been caused due to the rash and negligent driving of driver of unknown car. The driver of the motorcycle was not at fault. It was he who had lodged the FIR against the driver of the unknown car.

On the basis of the evidence on record, learned Tribunal concluded that the accident had occurred due to rash and negligent driving of the motorcycle by respondent No.2, the driver of the motorcycle. The Tribunal relied on the statement of RW-1 SI Bhupinder Singh. RW-1 had affirmed that the FIR had been registered on the statement of the driver of the motorcycle against an unknown car and its driver and that no challan was presented in this case and it was filed as untraced. However he placed on record site plan Ex.P10, which revealed that the accident had taken place in the middle of the road. PW2- Kulwant Singh, who was just behind the motorcycle when the accident took place had also deposed that the accident had occurred due to rash and negligent driving of the driver of motorcycle. As the insurance policy Annexure R-5 was a package policy which covered the risk of pillion rider, it was held that the insurance company was liable.

Though the case of the claimant was that her son Harpreet Singh was working as a Helper in Godrej Factory at Mohali and getting salary of

Rs.12,000/-per month but as no documentary proof had been placed on record regarding his income, his income was assessed as per minimum wages

at Rs.7,000/- per month. 50% was deducted towards personal living expenses of the deceased. 30% increase was granted on account of future

prospects. Multiplier of 18 was applied on the age of the deceased who was about 17 years. The loss of dependency was assessed at Rs.9,82,800/-.

Besides Rs.25,000/- on account of funeral expenses were awarded. A total compensation of Rs.10,07,800/- was awarded.

Assailing the award, learned counsel for the insurance company has raised the following contentions:

(i) The negligence of the driver of the motorcycle was not proved hence the insurance company could not be held to be liable.

(ii) The deceased was aged about 17 years. There was no proof that he was even working hence, only notional income had to be taken and income

ought not to have been assessed as per the minimum wages.

(iii) The multiplier should have been as per the age of the claimant-mother.

There is no merit in any of the submissions of learned counsel for the insurance company.

(i) No doubt, the FIR had been registered on the statement of respondent No.2, the driver of the motorcycle against the driver of unknown car which

had hit against the motorcycle and the case was also filed as untraced. However, as rightly noted by the Tribunal, the site plan Ex.P10, which had

been placed on record by RW-1 SI Bhupinder Singh revealed that the accident had taken place in the middle of the road. The very fact that the

motorcycle had not kept to its side but was on the middle of the road indicates some contributory negligence on the part of the driver of the

motorcycle. It has come in the cross-examination of RW1 that the site plan had been prepared at the instance of Virender Singh. PW2-Kulwant Singh

who was just behind the motorcycle at the time of the accident had stated that the motorcycle was being driven in a rash and negligent manner in the

middle of the road. All these facts indicate that the driver of the motorcycle also contributed to the accident in some measure by not keeping to its side

and driving it in a rash and negligent manner in the middle of the road. No doubt, respondent No.2 had also died in a separate accident on 21.7.2017

and hence could not appear before the Tribunal to state his version, but in the

light of the aforesaid evidence, the findings of Tribunal on the issue of negligence cannot be faulted.

Even without such a finding of negligence on the part of the driver of the motorcycle, the insurer could not avoid liability considering that the motorcycle was admittedly involved in the accident, it being thus a case of composite negligence. The policy being a package policy would cover the pillion rider.

This question has been considered in various decisions and the insurance company has been held to be liable.

In 'The Oriental Insurance Company Limited vs. Smt. Indro @ Indro Devi and ors.' (FAO-1831-2014), decided on 8.1.2016 the issue was considered in detail. The relevant observations are as under:

â??4 â?" In any accident involving two vehicles, as far as a person who was passenger or a pillion rider, the accident must always be understood as

resulting from composite negligence of two vehicles. An accident simply does not happen with zero negligence on one side. It is the lack of attention

for a split second that must be understood as the cause for many a debacle on roads. A careful motorcyclist going on the left side getting hit from

behind, it tactful could still steer to a place of safety, though such skill might be extraordinarily rare. It is not as if the deceased died out of any injury

by a direct impact of an unknown vehicle on any vital part of the body and the motorcyclist himself could take no part of the blame. It was, on the

other hand, that the motorcyclist was fortunate to fall on the mud portion of the road and it was fall on the concrete surface that caused the death of

the deceased pillion rider. In such a situation, I will take surety that there was a modicum of negligence on the part of the insured motorcyclist. It will

be wholly wrong to make an inference that the motorcyclist was careful in causing death of the pillion rider. Such an expression would be an

oxymoron. Accident and alertness and antithetical. The existence of one rules out the other. A careful motorcyclist may never have involved even a

pillion rider in the misfortune of a fatal injury. I will, therefore, decline the argument that the statement of the motorcyclist before the police attributing

negligence only to the unknown driver must be taken at his value and no part of negligence could be attributed to the motorcyclist to make possible a

claim under Section 166.

5. Even without reference to evidence of guilt on the part of the motorcycle, a package policy that covers the risk to a pillion rider is a hybrid policy of motor insurance with life insurance. It requires proof of the fact of the use of a motor vehicle and a claim before the MACT as requiring negligence to be established under Section 166. The Motor Vehicles Act itself has gone through a sea-change and the policies have also undergone changes to accommodate claims in situations where no negligence at all need to be proved. While section 140 rules out a requirement of any negligence, Section 163-A allows for a structured formula to be applied to a limited class of persons without having to prove the negligence of yet another person that had caused the accident. A strict liability under Section 163-A is a further extension of an accommodation under the Motor Vehicles Act a new concept of making the insurer liable even without proof of negligence. A policy such as, a personal accident cover provides for liability for death or injury to a person that is akin to life insurance or accident insurance without any need to prove negligence. A package policy covering the risk to passenger or pillion rider is an innovation propelled by judicial interventions. In the strictness of application in the manner conceived under the Act, Insurance Company Act and the Motor Vehicles Act, a comprehensive policy so called did no more than enlarging the liability to not merely to third parties but allowed for claims for own damage to the vehicle. It was the judgment in Pushpabai Purshottam Udesb and others Versus Ranjit Ginning & Pressing Company (P) Limited and another AIR 1977 SC 1735 that impelled the Insurance regulatory Authority to issue circulars to comprehensively cover even persons who were not third parties. This extension of liability cannot actually be seen under the bare provisions of the terms of the policy themselves, but they have come through later instructions.(see particularly, IRDA/CIR/FFU/073/11/2009, dated 16.11.2009). the way the law of insurance has been understood, a package policy that covers the risk of a pillion rider in a motorcycle accident will be triggered for its applicability in every situation that the incident of death or injury takes place. No further proof is necessary for making a claim for the representatives of the deceased in such a situation. I will indeed hold to the next extreme situation of there being no requirement for proof of any negligence whatever when a claim is made by a representative of a person, who was killed by the use of a motor vehicle. The two factors that are required to be established are:

(i) that the death was on account of use of a motor vehicle and (ii) the vehicle in which he was travelling was insured under a package policy. The

liability shall be attracted immediately in the claim before a Tribunal.â??

In Mamta and others versus Ranjit Singh and others (FAO-5893- 2015) decided on 7.12.2017 it was observed as under:

â??7- It could not be disputed on facts that the offending motorcycle was covered by a package policy and as such the insurance company is liable to

indemnify the insured for the death arising out of the accident to a pillion rider. For these reasons, the judgment cited by the insurance company was

distinguished on facts. The Tribunal applied the doctrine of last opportunity indicating that every person who had last opportunity to avoid accident by

exercise of proper care, will also be held responsible for the accident, in an accident involving two or more vehicles, where a third party (other than

drivers and/or owners of the vehicles involved) claims damages.

8. It was also the contention of the insurance company that the second vehicle remained unknown and untraced and at the most, the company could

be saddled with 50% of the liability assessed as compensation. This contention was not accepted by the Tribunal holding that the case is of composite

negligence, each wrong-doer being jointly and severally liable to the claimants for payment of entire compensation and they can proceed against them

or both of them. Meaning thereby, even if the other vehicle involved in the accident is unknown, the claimant is entitled to get compensation from the

insurer of the offending motor-cycle. The Tribunal reasoned that in case of composite negligence, amount of compensation cannot be apportioned

because the claimants cannot be compelled to proceed to recover the apportioned amount from each vehicle owner/insurer involved in the accident.

On this reasoning, the Tribunal thought it reasonable to hold the driver of the motorcycle negligent to the extent of 50% and unknown truck driver to

the other half. However, in a case of composite negligence each wrong-doer is jointly and severally liable for payment of entire compensation with

right to recover against the other wrong-doer because the tortfeasor who makes the payment will be free to recover/realise the amount paid from

other tortfeasors. There is no provision in the law to make both the vehicles as partly. The insurer has to satisfy the claim and it is for it to take

independent action for recovery of the sum against the owner. The Tribunal

reached conclusion that the insurer was liable to indemnify insured under insurance cover of the motorcycle. I have no reason to disagree with the finding of the Tribunal or to interfere with the credibility of the eye witness

giving sufficient allowance to the claimants for the inability of the insurer to summon the driver Ranjit Singh and put him to cross-examination.....â??

(ii) The claimant was stated to be about 17 years of age and working as a Helper in Godrej Factory at Mohali and getting salary of Rs.12,000/- per

month. But as no documentary proof had been placed on record regarding his income, his income was rightly assessed as per minimum wages at

Rs.7,000/- per month. No fault can be found with this finding as well.

(iii) In support of his contention that the multiplier ought to have been applied as per the age of the claimant learned counsel referred to an order of the

Hon'ble Supreme Court dated 22.11.2017 passed in SLP(Civil NO.34237/2017 which was ordered to be tagged with SLP(Civil).....2017 (CC No.7577

of 2017) by noting that the issue whether the age of the deceased or the age of the legal heirs is to be taken into account for arriving the proper

multiplier is pending consideration before a larger Bench in that case. However, mere pendency of an issue before a larger bench is no ground to

ignore the settled law in Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another 2009(3) RCR (Civil) 77 and Reshma Kumari Vs.

Madan Mohan (2013) 9 SCC 65 as per which multiplier is to be as per the age of the deceased.

Thus, there is no merit in the appeal and the same is dismissed.