(2018) 03 P&H CK 0108

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From Order No. 3309 Of 2011 (O&M)

Reliance General Insurance Company Ltd. — APPELLANT

Vs

Tej Pal Alias Teja Ram And Ors — RESPONDENT

Date of Decision : 09-03-2018

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

Citation : (2018) 03 P&H CK 0108

Hon'ble Judges : Avneesh Jhingan, J

Bench : Single Bench

Advocate : Tajender K. Joshi, Rajiv Sidhu

Final Decision : Disposed off

Judgement

Avneesh Jhingan, J.

1. This appeal arises from the award dated 13.01.2011 passed by the Motor Accident Claims Tribunal, Kurukshetra (for short, `the Tribunal').

2. The appeal involves a question of law :-

Whether the Personal Accident Cover (for short, `PAC') issued on payment of additional premium will cover the owner of the vehicle who is driving

the vehicle or other person also including the borrower of the vehicle?

3. For deciding the aforesaid legal issue involved in the appeal, it would be appropriate to consider the question :-

Whether borrower of a vehicle can claim compensation under Section 163-A of the Motor Vehicles Act, 1988 (for short, `the Act')?

4. Bare facts necessary for adjudication of the appeal are that on 11.03.2009, Naresh Kumar was driving a motor cycle bearing registration No. HR-

41B-0547 (for short, `the vehicle') which was owned by Joginder Singh son of

Sultan Singh. The said vehicle struck against another motor cycle

bearing registration No. HR-01W-9726. As a result of accident, Naresh Kumar received multiple injuries and lost his life. FIR No. 18 dated

11.03.2009 was registered at Police Station Jhansa.

5. Legal heirs of the deceased filed a claim petition under Section 163-A of the Act. In the claim petition, owner of the vehicle was arrayed as

respondent No.1 and respondent No.2 was insurer of the vehicle.

6. The Tribunal held that the claimants are not entitled to any compensation under Section 163-A of the Act, but a sum of ` 1,00,000/- was awarded

for PAC.

7. The Insurance Company has filed this appeal being aggrieved of the impugned award, submitting that borrower of the vehicle was not covered

under PAC.

8. The issue that the borrower of a vehicle will also be covered under the PAC is based on argument arising from decision of the Supreme Court in

Ningamma and another Vs. United India Insurance Co. Ltd., 2009 (13) SCC 710.

9. Supreme Court dealt with the issue :-

â??13. In the light of the aforesaid submissions, the question that falls for our consideration is whether the legal representatives of a person, who was

driving a motor vehicle, after borrowing it from the real owner meets with an accident without involving any other vehicle, would be entitled to

compensation under Section 163-A of MVA or under any other provision(s) of law and also whether the insurer who issued the insurance policy

would be bound to indemnify the deceased or his legal representatives?â??

The issue was decided and it was held as under :-

â??19. We have already extracted Section 163-A of the MVA hereinbefore. A bare perusal of the said provision would make it explicitly clear that

persons like the deceased in the present case would step into the shoes of the owner of the vehicle. In a case wherein the victim died or where he

was permanently disabled due to an accident arising out of the aforesaid motor vehicle in that event the liability to make payment of the compensation

is on the insurance company or the owner, as the case may be as provided under Section 163-A. But if it is proved that the driver is the owner of the

motor vehicle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him. This proposition is

absolutely clear on a reading of Section 163-A of the MVA. Accordingly, the legal representatives of the deceased who have stepped into the shoes

of the owner of the motor vehicle could not have claimed compensation under Section 163-A of the MVA.â??

It would be appropriate at this stage to quote Sections 140 and 163-A of the Act and GR-36.

â??140. Liability to pay compensation in certain cases on the principle of no fault â?" (1) Where death or permanent disablement of any person has

resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicles shall, or, as the case may be, the

owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the

provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifty

thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a

fixed sum of twenty â?" five thousand rupees.

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent

disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or

vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of

whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or

permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to

give compensation for relief, he is also liable to pay compensation under any other law for the time being in force :

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this

section or under section 163 â?" A. 163 â?" A. Special provisions as to payment of compensation on structured formuala basis â?" (1)

Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the

motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of

motor vehicle compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation. â?" For the purposes of this sub-section, â??permanent disabilityâ? shall have the same meaning and extent as in the Workmenâ??s

Compensation Act, 1923.

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent

disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles

concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second

Schedule.

GR 36. Personal Accident (PA) Cover under Motor Policy (not applicable to vehicles covered under Section E, F and G of Tariff for Commercial

Vehicles) A. Compulsory Personal Accident Cover for Owner-Driver Compulsory Personal Accident Cover shall be applicable under both Liability

Only and Package policies. The owner of insured vehicle holding an 'effective' driving license is termed as Owner-Driver for the purposes of this

section.

Cover is provided to the Owner-Driver whilst driving the vehicle including mounting into/ dismounting from or traveling in the insured vehicle as a

coâ?"driver.

NB. This provision deals with Personal Accident cover and only the registered owner in person is entitled to the compulsory cover where he/she holds

an effective driving license. Hence compulsory PA cover cannot be granted where a vehicle is owned by a company, a partnership firm or a similar body corporate or where the owner-driver does not hold an effective driving license. In all such cases, where compulsory PA cover cannot be

granted, the additional premium for the compulsory P.A. cover for the owner - driver should not be charged and the compulsory P. A. cover provision

in the policy should also be deleted. Where the owner-driver owns more than one vehicle, compulsory PA cover can be granted for only one vehicle

as opted by him/her.

10. In Ningamma's case (supra), it was held that the representatives of the deceased step into the shoes of the owner of the motor vehicle, hence

could not claim compensation under Section 163-A of the Act.

11. Learned counsel for the appellants contended that the Tribunal erred in relying upon PAC for awarding a sum of ` 1,00,000/- to the borrower of

the vehicle. His contention is that the PAC is only with regard to the owner of the insured vehicle who would be entitled to this amount in case of a

fatal accident.

12. Learned counsel for respondents No.1 to 3 â?" claimants argued that once it has been held by Supreme Court that the borrower of the vehicle

stepped into the shoes of the owner, the insurance company cannot be permitted to take a contradictory stand, to say that borrower of vehicle is not

covered under PAC.

13. The contention raised by learned counsel for respondents No.1 to 3 has a fallacy. It is not disputed that in the present case, ` 50/- extra premium

was paid for PAC for owner-driver. The term 'owner-driver' has been defined under GR-36. It states â??Compulsory Personal Accident Cover shall

be applicable under both Liability Only and Package policies. The owner of insured vehicle holding an 'effective' driving license is termed as Owner-

Driver for the purposes of this section. The definition clearly restricts the meaning of `owner-driver'. It only includes owner of the insured vehicle.

There is a further rider that for claiming compensation for PAC owner should be holding an `effective' driving licnese.

14. Note in GR-36 states that only the registered owner in person is entitled for Personal Accident Cover if he holds an effective driving license. The

said Cover is not to be granted where the vehicle is owned by a company, a partnership firm or a similar body corporate. This further clarifies that

representative of the owner will not fall within the ambit of PAC.

15. The term 'owner-driver' has been defined, hence, no word can be added or deleted from the definition to extend the benefit to claimant so that the

term 'owner-driver' can be stretched to mean owner or driver.

16. The award passed by the Tribunal is being set aside, whereby the claimants were found entitled to compensation of ` 1,00,000/-. It would be

appropriate to invoke Section 140 of the Act. Under the said provision, the claimants would be entitled to ` 50,000/- for `no fault liability' as provided.

17. The award dated 13.01.2011 is modified to the extent that the claimants would be entitled to ` 50,000/- instead of ` 1,00,000/- as awarded by the

Tribunal. It is, however, clarified that the interest, as awarded by Tribunal, due, if any, because of delay in making payment of ` 50,000/-, the claimants

would be entitled to the same.

18. The appeal is disposed of in the aforesaid terms.