(2010) 09 P&H CK 0440

In the Punjab And Haryana At Chandigarh

Case No : F.A.O. No. 20 of 2010

United India Insurance Co. Ltd. — APPELLANT

Vs

Ramrati and Others — RESPONDENT

Date of Decision : 29-09-2010

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

Citation : (2011) 161 PLR 555 : (2011) 2 TAC 629

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Judgement

K. Kannan, J.—The Insurance Company is in appeal challenging the liability on the ground that the person who met with an accident by hitting against a tree was a borrower of a vehicle and he cannot maintain an action for compensation against the insurer. It refers to the terms of the policy that shows that there is a cover for personal accident for the owner cum driver and the policy details do not reveal any cover to any driver of the vehicle. The issue relating to liability of an insurer has been dealt with by the Hon''ble Supreme Court in Ningamma and Anr. v. United India Insurance Company Ltd (2009) 156 PLR 796 (SC) . While referring to the liability of an insurer under an Act Policy the Hon''ble Supreme Court has again reaffirmed the principle in New India Assurance Company Ltd. Vs. Sadanand Mukhi and Others, that an insurer shall not be liable. It shall not be understood .that in all cases where an accident results by one''s own driving, a claim u/s 163A of the Motor Vehicles Act (hereinafter referred to as the ''Act'') will not be possible. It shall be the duty of the Court to examine whether there are any clauses in Insurance that make the insurer liable, as cautioned by the Hon''ble Supreme Court in Bimlesh and Others Vs. New India Assurance Co. Ltd., .

2. Learned Counsel for the Respondents also contends that Ningamma''s and Sadanand Mukhi''s case (supra) will apply only to situations where the policy is an Act Policy and it will not apply in other types of insurance. Such a wide

proposition cannot be still made and the enforcement of a claim against an insurance by a person who himself was driving the vehicle will be tested on the policy terms. Learned Counsel refers to

a judgment of Kamataka High Court and several decisions of various courts to say that the third party could be any person that travels in a vehicle. The decisions are cited as under.

3. In General Travels, Bangalore and Others Vs. Chandrakala Shetty and Others, a Division Bench of the Madras High Court held that persons entrusted with the vehicle by the owners are not owners of the vehicle. Normally ''ownership'' consists of a bundle of rights, one of which is custody or possession of the vehicle. The Bench held in that case that Tribunal will have no power to award compensation to the legal representatives of the deceased, against the partners of the firm though such representatives may be entitled to damages against the firm. The Insurer of he car was found liable for compensation to the extent only of the amount insured. I do not see the relevance of this judgment in any manner. The Full Bench of the Kerala High Court at Ernakulam held in National Insurance Co. Ltd. Vs. Malathi C. Salian, that a claim u/s 163A, can be defeated by Insurance company on the ground that death or permanent disablement has occurred due to wrongful act, neglect or default on the part of the deceased or the disabled person. Full Bench held that the insurance company is statutorily obliged to discharge the liability under the structured formula. This decision came about even before the decision in Ningamma ''s case (supra). Therefore, this decision cannot be said laid down the correct law in the light of the decision of the Hon''ble Supreme Court. In National Insurance Co. Ltd. v. Swaran Singh (2004)136 PLR 510 (SC) the Hon''ble Supreme Court has dealt with liability of an insurer for persons who were insurer where driver did not have a valid driving licence. The issue of liability of the insurer for a claim by the third party was answered positively by reference to its earlier decision in New India Assurance Co., Shimla v. Kamla (2001)121 PLR 830 (SC) . We are not addressing a situation of liability for insurer for the wrong committed by the driver when the claim was at the instance of the third party. We are however, testing the case in the context of applicability of Section 163A of the Act when the deceased was himself responsible for the accident. In United India Assurance Company Limited Vs. M.N. Ravikumar and Others, the division bench of the Kamataka High Court at Bangalore held that third party could be person who is not a party to the contract, but as a beneficiary of a contract, he has a right to enforce its terms against the insurer and insured. If this judgment were to be understood as that the driver of a vehicle who meets with an accident to be a third party then its a clear misunderstanding of the proposition which is brought about to the said judgment. The judgment is simply, no answer at all to the situation presented in this case. In National Insurance Co. Ltd. v. Jugal Kishore and Ors. (1988)94 PLR 128 (SC), the Hon''ble Supreme Court has examined the issue of liability of Insurance Company from the point of view of the extent of liability. In that case the defence of the liability was under the terms of policy of Insurance. That in

case the insurance company wishes to take a defence in a claim petition that is liability is not in excess of the statutory liability it should file a copy of the insurance policy along with its defence. The insurance policy filed in Court shows that there was a personal accident cover for the owner cum driver. A personal cover is not transferable in the sense that a borrower who may step into the shoes of the owner can not still obtain a right of owner for his claim to enforce a personal accident cover, unless it is shown that a personal accident cover could be transferred to any person named in the policy. Learned Counsel also refers to a decision of this Court in ICICI Lombard General Insurance Company Limited v. Guddi Devi and Ors. FAO No. 1754 of 2009 decided on 22.04.2009 that a claim at the instance of representation of a person who drives a motor cycle and meets with by a death will be entitled to make a claim in an accident u/s 163A of the Act. This judgment is no longer good law in view of the decision of the Hon''ble Supreme Court in Ningamma''s case (supra).

4. The only benefit that the claimant would still obtain would be a claim at the instance of the legal representative under no fault liability secured through Section 140 of the Act. This point has been dealt with by the judgment of the Hon''ble Supreme Court in Eshwarappa @ Maheshwarappa and Anr. v. C.S.Gurushanthappa and Anr. (2010)160 PLR 399 (SC) entitled the claimants would be only to secure Rs. 50,000/-against the insurance company. The award of the Tribunal making insurer liable for a claim is set aside. The liability of the insurer however, shall stand restricted to Rs. 50,000/- on the basis of no fault u/s 140 of the Act. The appeal filed by the Insurance Company is allowed but subject to liability as aforesaid.

