Before Rajbir Sehrawat, J.

NATIONAL INSURANCE COMPANY LTD.—*Appellant*

versus

NASIB KAUR AND OTHERS—*Respondents*

FAO No. 2275 of 1998

December 14, 2017

Motor Vehicles Act, 1988—S.147(1)(b)(i) and 149—Insurance company liable to pay compensation in claim arising from death of pillion rider—Pillion rider succumbed to injuries due to rash and negligent driving—Rs.3,69,500 awarded by tribunal to claimants as compensation—Challenged by insurance company by contending that insurance policy does not cover the risk of pillion rider as it is not a third party—Held, terms and conditions of policy have not excluded pillion rider—Policy cannot even exclude the liability except in cases where vehicle was being plied for hire and reward—Appeal dismissed.

Having heard learned counsel for the parties and after appreciating the record with the able assistance of learned counsel for the parties, this Court is of the considered opinion that there is no illegality or perversity in the Award passed by the Tribunal. The argument of learned counsel for the appellant; that the Insurance Company is not liable for the liability arising from the death of pillion rider; is not supported either by the Policy placed on record by the Insurance Company or by the provisions of the statute as interpreted by courts. A bare perusal of the Policy shows that; while describing the limitation as to use of the vehicle in question; only it has been written that the Policy does not cover the use of scooter for hire or reward, for organized racing, peace making, reliability trials and speed testing. Still further under general exceptions mentioned in the Policy, again; only this much has been said that under the Policy; the Company shall not be liable in respect of a death or bodily injury to any person (other than a passenger carried by reason of or in pursuance of contract of employment) being carried in or upon or entering of mounting or alighting from the vehicle in question at the time of occurrence of the event. However, this condition has been made subject to the requirements of the provisions of the Motor Vehicles Act. Hence it is clear that Policy; *per se;* does not exclude the liability of the Company towards pillion rider on the scooter in question; specifically. Hence the

Company can not take shelter under the conditions included in the Policy to avoid the liability towards the death of the pillion rider.

(Para 12)

Further held that, so far as the provisions of the Motor Vehicle Act are concerned, this Court had already held in the judgment passed in *FAO No.4287 of 2005* titled as *Shiv Lochan Singh @ Bhola vs. National Insurance Co. Ltd. and others* that under the provisions of the New Motor Vehicles Act a pillion rider of a scooter is very much included in the definition of *'Third Party'* for the purpose of raising claim under Motor Vehicles Act. It has been held in this case that with the deletion of Proviso (ii) of Section 95(1)(b)(i) of the Old Act, by not carrying forward the same in Section 147(1)(b)(i) of the New Act, the exception created to the compulsory insurance regarding passengers in a private passenger cars and the motor cycles have not been carried forward in the New Act. Hence the passenger travelling in the private passenger car and the pillion rider on the Motor Cycle scooter would be covered in the definition of *third party* for the purpose of claim petition under the New Motor Vehicles Act. To arrive at this conclusion, this Court has relied upon the definitions of the *Passenger Car and the Motor Cycle* on one hand and the definition of *Goods Carriage* on the other hand; and also upon the vast difference between the defences available to the Insurance Company under Section 149 of the Act; in case of liability arising from *Goods Carriage* on one hand and the liability arising from the *Private Passenger Car* and the *Motor Cycle* on the other hand.

(Para 13)

Further held that, after appreciating all the provisions in detail, this Court had come to the conclusion that by virtue of the definition itself, the private passenger car and a motor cycle is entitled to carry the passengers on it. In case of *private passenger car* the only defence available to the Insurance Company under Section 149 is that the passenger should not be carried for hire or reward. If the passengers are travelling as gratuitous passenger in a private passenger car then no defence has been provided to the Insurance Company by Section 149 of the Act. Similarly, in case of pillion rider of a Scooter/Motor Cycle the only defence made available to the Insurance Company is that; if two wheeler is registered as having a side car attached to it, then the two wheeler should not have been driven without the side car being attached to it. Section 149 of the New Act has not provided mere travelling of a pillion rider on a motor cycle as a defence, *per se,* to

avoid the liability by the Insurance Company; arising of the death of such a pillion rider. Needless to say that a pillion rider on a motor cycle is not prohibited under any provision of the Motor Vehicles Act. Hence riding the scooter as a pillion rider is not illegal under any law. Resultantly, the Insurance Company had been held to be liable to make the payment of compensation in a claim arising from a death of a pillion rider as well. All the judgments of Hon'ble Supreme Court were duly considered by this Court in the judgment rendered in above said FAO No. 4287 of 2005. This Court finds that the present case is fully covered by the judgment rendered by this Court in *FAO No.4287 of 2005(supra).* Hence this plea of the Insurance Company is liable to be rejected.

(Para 14)

Further held that, so far as the reliance of the learned counsel for the appellant upon the judgment of the Hon'ble Supreme Court in case of Oriental Insurance Co.(supra) is concerned, a perusal of the said judgment shows that it referred to specific terms and conditions of the Insurance Policy and held that since the contract of Insurance did not cover the owner of the vehicle and the pillion rider, therefore, in view of the terms of the contract of the Insurance, the Insurance Company would not be liable to make any payment of compensation on account of death of a pillion rider. So far as, otherwise, the pillion rider on a scooter being within the definition of '*third party'* is concerned, admittedly, the effect of not carrying forward the Proviso (ii) of Section 95(1)(b)(i) of the Old Act in the Section 147(1)(b)(i) of the New Act, the difference of definition of *Goods Carriage* on one hand and the definition of *Motor Cycle* on the other hand and further the difference between the defences available in case of *Goods Carriage* on' one hand and the *Motor Cycle* on the other hand, as prescribed under the Motor Vehicles Act; have not been specifically brought to the notice of Hon'ble Supreme Court in the above said case. The said difference has been duly noticed, discussed and considered by this Court in extensive details in the above said judgment rendered in *FAO No. 4287 of 2005*. Read in this situation the terms and conditions of the Policy can restrict the use of the vehicle only qua using the same for hire or reward. In the present case it is not even the case of the Insurance Company that the scooter in question was being used for any hire or reward. Hence the judgment relied upon by the counsel is of no help. When the terms and conditions of the Policy itself have not excluded the pillion rider and the policy can not even exclude the liability except in cases where the vehicle was being plied for hire and reward; then the Insurance

Company can not avoid the liability except where it has succeeded in showing that vehicle in question was being plied for hire and reward at the relevant time.

(Para 15)

Neeraj Khanna, Advocate
for the *appellant.*

Diwan S.Adlakha, Advocate
for respondent No. 6.

RAJBIR SEHRAWAT, J.(Oral)

Civil Misc. No. 25191-CII of 2017

Allowed as prayed for.

FAO No. 2275 of 1998

(1) This is an appeal filed by the Insurance Company challenging the award passed by the Motor Accidents Claim Tribunal, Ambala.

(2) The brief facts of this case are that on 07.08.1996, Mehar Singh was coming from village Laln to his village Kurli on a scooter bearing Registration No. PB-39-6024. He was a pillion rider thereon which was being driven by respondent No.1(in the claim petition) in a rash and negligent manner. At about 1:30 pm when they reached near Gas Factory within the area of village Dehar on Ambala Chandigarh road, the scooter went out of the control of respondent No. 1 due to his rash and reckless driving and so it slipped. Both, the driver and the said Mehar Singh, the pillion rider, suffered injuries. Mehar Singh was taken to Civil Hospital, Ambala City where he succumbed to the injuries. On account of death of Mehar Singh, the claim petition was filed by widow, minor sons and daughters of Mehar Singh. It was claimed in the claim petition that the deceased Mehar Singh was 42 years of age and was a Cobbler having a monthly income of Rs. 3500/- from his shoe making occupation. It was further claimed that there was a history of longevity of life in the family. The claimants have been left totally helpless. There is no source of income and the claimants were completely dependent upon the income of the deceased. Hence, claim of Rs. 10 lakhs was made.

(3) On receiving the notice, the respondent No. 1, the driver of the scooter, admitted the accident but pleaded that there was a pit on the road. The deceased tried to jump from the scooter and he sustained

injuries. He disputed that there was any rash or negligent driving by him. The other averments of the claim petition were also denied. Respondent No.2, the owner of the scooter also followed the line of defence taken by respondent No. 1. Additionally, it was pleaded that the deceased was more than 42 years of age. It was further claimed that the scooter in question was duly insured with respondent No.3.

(4) Respondent No. 3, Insurance Company however, set up a contrary defence. The pleadings of the claim petition were denied by the Insurance Company. It was further pleaded that the deceased being a pillion rider was neither covered under the Policy nor the Insurance Company was liable to pay any compensation. Still further it was pleaded that respondent No. 1, the driver of the scooter was not having a valid driving license on the date of accident.

(5) Parties led their respective evidences.

(6) After hearing the parties and appreciating the evidence, the Tribunal held respondent No. 1 to be negligent in driving the scooter. While considering the question of amount of compensation, the Tribunal held that since no definite income of the deceased has been proved by leading positive evidence, therefore, some guess work has to be applied by the Tribunal. The Tribunal has held that the deceased was supporting a family of 5 members apart from himself. Therefore, he must be earning atleast Rs. 3,000/- per month. Hence, the income of the deceased was assessed to be Rs. 3,000/- per month. An amount of 1/3rd from the same was deducted by the Tribunal on account of personal expenses of the deceased. Resultantly, the income of the deceased was taken to be Rs. 2,000/- per month. Accordingly, the annual loss of dependency to the claimants was assessed by the Tribunal to be Rs.24,000/-. Keeping in view the age of the deceased, the Multiplier of 15 was applied. Hence a total of Rs. 3,60,000/-was awarded to the claimants on account of loss of dependency. Beside this, the claimants were entitled to Rs. 5,000/- towards loss of consortium and another sum of Rs. 2,000/- was awarded on account of Funeral Expenses. Beside this Rs. 2500/- was awarded on account of loss of estate as well. Hence a total of Rs. 3,69,500/- was awarded by the Tribunal to the claimants as compensation.

(7) However, while dealing with the liability to pay the compensation, the Tribunal held that the claimants have duly proved the particulars of the Insurance Policy of the scooter in question. Therefore, the scooter was held to be insured with the respondent-

insurance company. Regarding second contention of the Insurance Company that the Policy does not cover the risk of pillion rider, the Tribunal held that the contention of the Insurance Company was not worth acceptance. It was held by the Tribunal that the Insurance Company could not substantiate that it was not having any liability to compensate for the loss on account of death of a pillion rider. It was further claimed that there is no evidence that the deceased was being carried on the scooter as pillion rider for hire or reward. Still further it was held by the Tribunal that although the cover note of the Policy has been proved on record, yet the Insurance Company has not produced any material or evidence to show that its liability is limited and it does not extend to the pillion rider on the said scooter. Still further relying upon the judgment of the Hon'ble Supreme Court rendered in the case of ***National Insurance Co. Ltd*** versus ***Jugal Kishore and others***[1]the Tribunal held that the Insurance Company should not rely on the abstract doctrines while discharging the burden of proof and it is the duty of the Insurance Company to produce the copy of the Insurance Policy to avoid any liability in accordance with the terms and conditions of the Policy. However, no such terms and conditions have been proved by the Insurance Company which entitles it to avoid the liability. Resultantly, the Insurance Company was held to be liable to make the payment of the amount of the compensation.

(8) Aggrieved against the award passed by the Tribunal, the Insurance Company has filed the present appeal.

(9) While arguing the case, learned counsel for the Insurance Company has submitted that he restricts his arguments only to one point, i.e., that the deceased was a pillion rider and that the Insurance Company is not liable to pay the compensation since the pillion rider is not a third party and the Policy in the present case was only an '*Act Policy*'. Hence no liability could be fastened upon the Insurance Company. To support his argument, learned counsel has relied upon the judgment of the Hon'ble Supreme Court rendered in titled as ***Oriental Insurance Co. Ltd.*** versus ***Sudhakaran K.V. and others***[2]

(10) On the other hand, learned counsel for the respondent submitted that there was no condition in the Policy to exclude the pillion rider from the liability of the Insurance Company. Still further it is submitted by learned counsel that there is no absolute proposition of

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[1] 1998 ACJ 270 (SC)

[2] 2008 ACJ 2045

law that a pillion rider, in any case; would not be covered under the Insurance Policy, even if the same is described as the '*Act Policy'* by the Insurance Company.

(11) During the pendency of the present appeal, the Insurance Company has placed on record the copy of the Insurance Policy of the Scooter in question as Annexure A-1 with the CM No. 25191-CII of 2017.

(12) Having heard learned counsel for the parties and after appreciating the record with the able assistance of learned counsel for the parties, this Court is of the considered opinion that there is no illegality or perversity in the Award passed by the Tribunal. The argument of learned counsel for the appellant; that the Insurance Company is not liable for the liability arising from the death of pillion rider; is not supported either by the Policy placed on record by the Insurance Company or by the provisions of the statute as interpreted by courts. A bare perusal of the Policy shows that; while describing the limitation as to use of the vehicle in question; only it has been written that the Policy does not cover the use of scooter for hire or reward, for organized racing, peace making, reliability trials and speed testing. Still further under general exceptions mentioned in the Policy, again; only this much has been said that under the Policy; the Company shall not be liable in respect of a death or bodily injury to any person (other than a passenger carried by reason of or in pursuance of contract of employment) being carried in or upon or entering of mounting or alighting from the vehicle in question at the time of occurrence of the event. However, this condition has been made subject to the requirements of the provisions of the Motor Vehicles Act. Hence it is clear that Policy; *per se;* does not exclude the liability of the Company towards pillion rider on the scooter in question; specifically. Hence the Company can not take shelter under the conditions included in the Policy to avoid the liability towards the death of the pillion rider.

(13) So far as the provisions of the Motor Vehicle Act are concerned, this Court had already held in the judgment passed in titled as ***Shiv Lochan Singh @ Bhola*** versus ***National Insurance Co. Ltd. and others*** FAO No 4287 of 2005 that under the provisions of the New Motor Vehicles Act a pillion rider of a scooter is very much included in the definition of '*Third Party'* for the purpose of raising claim under Motor Vehicles Act. It has been held in this case that with the deletion of **Proviso** (ii) of Section 95(1)(b)(i) of the Old Act, by not carrying forward the same in Section 147(1)(b)(i) of the New Act, the exception

created to the compulsory insurance regarding passengers in a private passenger cars and the motor cycles have not been carried forward in the New Act. Hence the passenger travelling in the private passenger car and the pillion rider on the Motor Cycle scooter would be covered in the definition of *third party* for the purpose of claim petition under the New Motor Vehicles Act. To arrive at this conclusion, this Court has relied upon the definitions of the ***Passenger Car and the Motor Cycle*** on one hand and the definition of ***Goods Carriage*** on the other hand; and also upon the vast difference between the defences available to the Insurance Company under Section 149 of the Act; in case of liability arising from ***Goods Carriage*** on one hand and the liability arising from the ***Private Passenger Car*** and the ***Motor Cycle*** on the other hand.

(14) After appreciating all the provisions in detail, this Court had come to the conclusion that by virtue of the definition itself, the private passenger car and a motor cycle is entitled to carry the passengers on it. In case of *private passenger car* the only defence available to the Insurance Company under Section 149 is that the passenger should not be carried for hire or reward. If the passengers are travelling as gratuitous passenger in a private passenger car then no defence has been provided to the Insurance Company by Section 149 of the Act. Similarly, in case of pillion rider of a Scooter/Motor Cycle the only defence made available to the Insurance Company is that; if two wheeler is registered as having a side car attached to it, then the two wheeler should not have been driven without the side car being attached to it. Section 149 of the New Act has not provided mere travelling of a pillion rider on a motor cycle as a defence, *per se,* to avoid the liability by the Insurance Company; arising of the death of such a pillion rider. Needless to say that a pillion rider on a motor cycle is not prohibited under any provision of the Motor Vehicles Act. Hence riding the scooter as a pillion rider is not illegal under any law. Resultantly, the Insurance Company had been held to be liable to make the payment of compensation in a claim arising from a death of a pillion rider as well. All the judgments of Hon'ble Supreme Court were duly considered by this Court in the judgment rendered in above said FAO No. 4287 of 2005. This Court finds that the present case is fully covered by the judgment rendered by this Court in ***FAO No.4287 of 2005*** (supra). Hence this plea of the Insurance Company is liable to be rejected.

(15) So far as the reliance of the learned counsel for the appellant upon the judgment of the Hon'ble Supreme Court in case of Oriental Insruance Co.(supra) is concerned, a perusal of the said judgment shows that it referred to specific terms and conditions of the Insurance Policy and held that since the contract of Insurance did not cover the owner of the vehicle and the pillion rider, therefore, in view of the terms of the contract of the Insurance, the Insurance Company would not be liable to make any payment of compensation on account of death of a pillion rider. So far as, otherwise, the pillion rider on a scooter being within the definition of '*third party'* is concerned, admittedly, the effect of not carrying forward the Proviso (ii) of Section 95(1)(b)(i) of the Old Act in the Section 147(1)(b)(i)_of the New Act, the difference of definition of *Goods Carriage* on one hand and the definition of *Motor Cycle* on the other hand and further the difference between the defences available in case of *Goods Carriage* on' one hand and the *Motor Cycle* on the other hand, as prescribed under the Motor Vehicles Act; have not been specifically brought to the notice of Hon'ble Supreme Court in the above said case. The said difference has been duly noticed, discussed and considered by this Court in extensive details in the above said judgment rendered in ***FAO No. 4287 of 2005***. Read in this situation the terms and conditions of the Policy can restrict the use of the vehicle only qua using the same for hire or reward. In the present case it is not even the case of the Insurance Company that the scooter in question was being used for any hire or reward. Hence the judgment relied upon by the counsel is of no help. When the terms and conditions of the Policy itself have not excluded the pillion rider and the policy can not even exclude the liability except in cases where the vehicle was being plied for hire and reward; then the Insurance Company can not avoid the liability except where it has succeeded in showing that vehicle in question was being plied for hire and reward at the relevant time.

(16) In the present case, no evidence has been led by the Insurance Company to show that the deceased was being carried as a pillion rider for hire or reward or that there was any other violation of any other provision of the Act. Hence the Insurance Company can not avoid the liability to make the payment of the amount awarded by the Tribunal.

(17) No other argument was raised by learned counsel for the parties.

(18) In view of the above, finding no illegality or perversity with the Award passed by the Tribunal and the same is upheld. The appeal filed by the Insurance Company is dismissed.

Dr. Sumati Jund