IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. F.A.O No. 1718 of 1998

Shri Laxmi Sagar Jain ...Appellant

Versus

Rajasthan State Road
Transport Corpn, Hanumangarh & anr. ...Respondents

2. F.A.O No. 20 of 1999

Rajasthan State Road
Transport Corpn, Hanumangarh ...Appellant

Versus

Jai Narain Singh and anr. ...Respondents

3. FAO No. 21 of 1999

Rajasthan State Road
Transport Corpn, Hanumangarh ...Appellants

Versus

Shri Laxmi Sagar Jain & anr. ...Respondents

Date of decision:- 28.10.2015

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. S.K. Jain, Advocate
for the appellants in FAO No. 1718 of 1998
and for respondent No. 1 in FAO No. 21 of 1999.

Mr. Anil Kumar Gahlawat, Advocate
for the appellants in FAO No. 20 and 21 of 1999
and for respondent No. 1 in FAO No. 1718 of 1998

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

<u>RITU BAHRI J.</u>

1. Three appeals, as noticed above, are being disposed of by

this common judgment, having arisen out of the impugned Award dated 01.04.1998 passed by the learned Motor Accident Claims Tribunal, Hisar.

2. The facts which are not in dispute are that on 21.07.1996, Jai Narain along with Laxmi Sagar Jain and two others were going in a Maruti Car bearing registration No. HR-20-B-6856, which was being driven by Jai Narain and owned by Laxmi Sagar Jain and when they reached ahead Ratangarh, a bus bearing registration No. RJ-31P-0159 came from the opposite side in a rash and negligent manner and struck against the above mentioned car and as a result of which, Jai Narain and Laxmi Sagar Jain received multiple injuries.

3. The learned Tribunal awarded the compensation to the injured-Laxmi Sagar Jain as mentioned below:-

Sr. No.	***Head***	***Compensation Amount***
1	Medication, Special Diet, Attendant & Transportation Charges	Rs.65,000/-
2	Permanent Disability	Rs.1,00,000/-
3	Pain and Suffering and loss of amenities of life	Rs.1,50,000/-
4	Loss to Income	Rs.1,00,000/-
	Total Compensation	Rs.4,15,000/-

4. At the very outset, the two appeals i.e FAO No. 20 and 21 of 1999 filed by the appellants-R.S.R.T.C are liable to be dismissed in view of the judgment of Hon'ble the Supreme Court in a case of ***National Insurance Co. Ltd vs. Nicolletta Rohtagi and others 2002***

(4) RCR (Civil) 464 wherein Hon'ble the Supreme Court had discussed in detail the provisions of Section 149 of the Motor Vehicles Act and has held that the Insurer is entitled to file an appeal only on the issues and grounds prescribed under Section 149(2) or on satisfaction of the conditions prescribed specified in Section 170 not to challenge only quantum of compensation. Hon'ble the Supreme Court in para Nos. 19, 20, 21, 22 & 31 observed as under:-

> *"19. In **Shankarayya and Anr. v. United India Insurance Co. Ltd. and Anr. [1998] 3 SCC 140**, it was held that an insurance company when impleaded as a party by the Court can be permitted to contest the proceedings on merits only if the conditions precedent mentioned in Section 170 are found to be satisfied and for that purpose the insurance company has to obtain an order in writing from the Tribunal and which should be a reasoned order by the Tribunal. Unless this procedure is followed, the insurance company cannot have a wider defence on merits than what is available to it by way of statutory defences. In absence of the existence of the conditions precedent mentioned in Section 170, the insurance company was not entitled to file an appeal on merits questioning the quantum of compensation.*

*20. In **Narender Kumar and Anr. v. Yarenissa and Ors. [1998] 9 SCC 202**, question arose whether there can be a joint appeal by an insurer and owner of the offending vehicle. It was held that even in the case of a joint appeal by the insurer and the owner of an offending vehicle, if an award has been made against the tortfeasors as well as the insurer, even though an appeal filed by the insurer is not competent, it may not be dismissed as such. The tortfeasor can proceed with the appeal after the cause title is suitably amended by deleting the name of the insurer. In the said case, it also held thus:*

> *"The ground on which the insurer can defend the action commenced against the tortfeasors are limited and unless one or mare of those grounds is/are available, the Insurance Company is not and cannot be treated as a party to the proceedings. That is the reason why the courts have consistently taken the view that the Insurance Company has no right to prefer an appeal under Section 110-D of the Act unless it has been impleaded and allowed to defend on one or more of the grounds set out in sub-section (2) of Section 96 or in the situation*

envisaged by sub-section 2(A) of Section 110-C of the Act."

*21. In **Chinnama George and Ors. v. N.K. Raju and Anr., [2000] 4 SCC 130**, it was held that if none of the conditions as contained in sub-section (2) of Section 149 exists for the insurer to avoid the liability, the insurer is legally bound to satisfy the award and the insurer cannot be a person aggrieved by the award. In such a case, the insurer will be barred from filing an appeal against the award of the Tribunal. It was also held that the insurer cannot maintain a joint appeal along with the owner or driver if defence of any ground under Section 149(2) is not available to it.*

*22. In **Rita Devi (Smt) and Ors. v. New India Assurance Co. Ltd and Anr. [2000] 5 SCC 113**, it was held that the insurer having not obtained permission under Section 170 of 1988 Act, is not entitled to prefer any appeal to the High Court against the award given by the Tribunal on merits.*

31. We have already held that unless the conditions precedent specified in Section 170 of 1988 Act is satisfied, an insurance company has no right of appeal to challenge *the award on merits. However, in a situation where there is a collusion between the claimants and the insured or the insured does not contest the claim and, further, the tribunal does not implead the insurance company to contest the claim in such cases it is open to an insurer to seek permission of the tribunal to contest the claim on the ground available to the insured or to a person against whom a claim has been made. If permission is granted and the insurer is allowed to contest the claim on merits in that case it is open to the insurer to file an appeal against an award on merits, if aggrieved. In any case where an application for permission is erroneously rejected the insurer can challenge only that part of the order while filing appeal on grounds specified in sub-sections (2) of Section 149 of 1988 Act. But such application for permission has to be bona fide and filed at the stage when the insured is required to lead his evidence. So far as obtaining compensation by fraud by the claimant is concerned, it is no longer res integra that fraud vitiates the entire proceeding and in such cases it is open to an insurer to apply to the Tribunal for rectification of award."*

This view of Hon'ble the Supreme Court has been followed right from the year 1998.

5. This view has been followed in a case of ***Punam Devi and another vs. Divisional Manager, New India Assurance Co. Ltd, 2004(2) RCR (Civil) 236*** wherein it was held that the Insurance Company cannot challenge quantum of compensation. The only ground open to insurer is contained in Section 149(2) of the Motor Vehicles Act.

6. The learned counsel for the claimant-appellant in FAO No. 1718 of 1998 contends that the compensation awarded by the learned Tribunal is on the lower side and deserves to the enhanced, as the Tribunal had only awarded Rs.4,15,000/- towards compensation. The disability is to the extent of 70%, as per disability certificate, which has been proved by Dr. J.S. Bhatia. The disability was on account of dislocation of survical six vertebrae over survical 7 vertebrae with weakness of all four limbs.

7. I have heard learned counsel for the parties and perused the record.

8. The compensation awarded by the Tribunal does not require any interference. The only point for consideration before this Court that whether the Tribunal was right in assessing the loss of income of the appellant at Rs.1,00,000/-.

9. Reference at this stage can be made to the income tax

return of the appellant for the financial year 1995-96 of the appellant-Laxmi Sagar Jain which was to the tune of Rs.1,85,000/-. He was an Advocate by profession and due to the accident, his practice has been lowered down as he has to engaged another counsel to look after his briefs. So, his monthly can be taken at Rs.15,500/- per month and multiplier of 8 can be applied, as he was approximately 50 years of age.

RE-ASSESSED COMPENSATION

10. The compensation is re-assessed as under:-

Sr. No.	***Head***	***Calculations***
1	Salary	15500X12=Rs.1,86,000/-
2	Multiplier of 8 Age (50 years)	186000X8=Rs.14,88,000/-
3	Total compensation	Rs.14,88,000/-
4	Enhanced Compensation	1488000-100000=Rs.13,88,000/-

11. With the aforesaid modification in the impugned award, the appeal preferred by the claimant-appellant (FAO No. 1718 of 1998) is allowed and appellant is entitled to Rs.13,88,000/- (14,88,000-1,00,000) and the appeals preferred by the Transport Companies (FAO No. 20 and 21 of 1999) stands dismissed, being devoid of merit. Remaining conditions of disbursal of amount shall remain unaltered.

October 28, 2015 (***RITU BAHRI***)
G Arora ***JUDGE***