IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

X-OBJC No.114-CII of 2014 IN/AND
FAO No.4720 of 2005 (O&M)

Date of decision: 22.09.2015

Pepsu Road Transport Corporation, Patiala

….Appellant

Versus

Smt. Umesh and others

….Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Anupam Singla, Advocate
for the appellant.

Mr. Shiv Kumar, Advocate
for the respondents No.1 to 3/cross-objectors.

RITU BAHRI J. (Oral)

This is an appeal filed by Pepsu Road Transport Corporation, Patiala, against the award dated 02.06.2005, passed by Motor Accident Claims Tribunal, Faridabad, vide which the claim petition was accepted and a sum of Rs.11,55,000/- was allowed, on account of death of Ashok Kumar in a motor vehicular accident.

Brief facts of the case are that the injured and two persons who died were coming in an Esteem Car bearing registration No.HR-51-H-6798 from Mata Vaishno Devi Temple

MOHD YAKUB
2015.12.11 15:53
I attest to the accuracy and
authenticity of this document
Chandigarh

via Kharar Banoor Road. The aforesaid car was driven by Ashok Kumar at a very moderate speed, cautiously and observing all the traffic rules and when the Esteem car reached near Basiyankshekhan on Chandigarh Rajpura, a bus bearing registration No.PB-11-P-7408 driven in a rash and negligent manner came from the opposite side and tried to overtake another bus in a reckless manner and at a high speed and in that process, the offending bus was steered towards the car and dashes against it. As a result of which, the said car was got damaged. Yash who was traveling and Ashok Kumar, who was driving the car died at the spot. However, Santosh, Manju, Tansiqua, Sikha and Manisha suffered multiple injuries and they were taken to Government Hospital, Chandigarh. In this regard, a criminal case in respect of accident in question was got registered against Major Singh-driver of the offending bus at Police Station Banoor. Consequently, the claimants-respondents filed a claim petition before the Tribunal.

The finding that the bus was driven in a rash and negligent manner has rightly been recorded by the Tribunal and does not call for interference.

Reference, at this stage, can be made to a 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

MOHD YAKUB
2015.12.11 15:53
I attest to the accuracy and
authenticity of this document
Chandigarh

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 tort feasors as well as the insurer, even though an appeal filed by the insurer is not competent, it may not be dismissed as such. The tort feasor can proceed*

MOHD YAKUB
2015.12.11 15:53
I attest to the accuracy and
authenticity of this document
Chandigarh

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 tort feasors are limited and unless one or more 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*

MOHD YAKUB
2015.12.11 15:53
I attest to the accuracy and
authenticity of this document
Chandigarh

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

MOHD YAKUB
2015.12.11 15:53
I attest to the accuracy and
authenticity of this document
Chandigarh

vitiates the entire proceeding and in such cases it is open to an insurer to apply to the Tribunal for rectification of award."

Keeping in view the above-mentioned judgments, the appeal filed by the appellant i.e. Pepsu Road Transport Corporation, Patiala, is hereby dismissed.

X-OBJC No.114-CII of 2014

Learned counsel for the appellant-Corporation has argued that the cross-objections to the award has been filed by respondents No.1 to 3 on 21.05.2014, after a gap of almost 09 years and they should not be considered for enhancement of compensation.

He has referred to the judgments ***"Ranjeet Singh and another vs Bhagwan Singh and another"*** **2007 ACJ 1629**, "***Oil and Natural Gas Corporation vs Punjsons Private Limited"*** **2008(6) BCR 641**, ***"East India Hotels Limited vs Smt. Mahendra Kumar and another"*** **2008(3) RLW 2345,** to contend that even in the absence of cross-objections, this Court can enhance the compensation.

The compensation has been awarded by the Tribunal by taking the age of deceased as 30 years and his income has been assessed as Rs.9,000/- per month. 1/3rd amount has been deducted in respect of personal expenses and the dependency of the claimants comes to Rs.6000/- per month and the yearly

MOHD YAKUB
2015.12.11 15:53
I attest to the accuracy and
authenticity of this document
Chandigarh

dependency comes to Rs.72,000/-. The multiplier of 16 has been applied. So, the amount of compensation comes to Rs.11,52,000/- (Rs.72000 x 12). Some amount has been spent on transportation of dead body and funeral expenses and therefore, the amount of compensation has been rounded of to Rs.11,55,000/-.

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident.

The amount of compensation has rightly been assessed by the Tribunal. However, while assessing the income of the deceased as per Salary Certificate (Ex.P19), Rs.1,000/- has been deleted which was being paid on account of conveyance allowance. This amount has been wrongly deducted while assessing the monthly income of the deceased. So, keeping in view the judgment of the ***"Vimal Kumar vs Kishore Dan and others"*** **2013 (2) RCR (Civil) 945**, where the allowances with respect to H.R.A. and other allowances have to be impleaded as part of the salary. So, the income of the deceased is taken as Rs.10,000/- per month.

In the peculiar facts and circumstances of the case, to meet the ends of justice, the compensation is hereby reassessed in view of the judgments of ***Asha Verman and others vs. Maharaj Singh and others***, **2015(2) RCR (Civil) 520**, ***Sarla Verma and others vs. Delhi Transport Corporation and another***, **2009 (3) RCR (Civil) Page 77**, ***Rajesh and others vs. Rajbir Singh and***

MOHD YAKUB
2015.12.11 15:53
I attest to the accuracy and
authenticity of this document
Chandigarh

others, **2013 (9) SCC 54** and ***Munna Lal Jain and another vs. Vipin Kumar Sharma and others*, 2015(3) Recent Apex Judgments 459**. Accordingly, the compensation re-assessed as under:-

SR. NO.	HEADS	CALCULATIONS
(i)	Annual Income	Rs.1,20,000/-
(ii)	50% of (i) added for future prospects (age of deceased was 30 years)	(Rs.1,20,000/-) + (Rs.60,000/-) =Rs.1,80,000/-
(iii)	Dependency of the claimant after deducting 1/3rd of (ii) towards personal expenses of the deceased	(Rs.1,80,000/-) - (Rs.60,000/-) =Rs.1,20,000/-
(iv)	Compensation after multiplier of 17 is applied	Rs.1,20,000/- x 17 =Rs.20,40,000/-
(v)	Loss of consortium	Rs.1,00,000/-
(vi)	Loss of estate	Rs.1,00,000/-
(vii)	Loss of love and affection for children (2 minor children)	Rs.2,00,000/- (Rs.1,00,000/- each)
(viii)	Funeral expenses	Rs.25,000/-
(ix)	**TOTAL COMPENSATION AWARDED**	**Rs.24,65,000/-**
(x)	**Enhanced amount of compensation**	**(Rs.24,65,000/-) – (Rs.11,55,000/-) =Rs.13,10,000/-**

The enhanced amount of compensation of **Rs.13,10,000/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of "***Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others",* 2015(1) SCC 539**. Remaining conditions of disbursal of amount shall remain unaltered.

MOHD YAKUB
2015.12.11 15:53
I attest to the accuracy and
authenticity of this document
Chandigarh

Accordingly, the cross-objections are allowed and the award stands modified to the above extent.

(RITU BAHRI)
JUDGE

22.09.2015
yakub

MOHD YAKUB
2015.12.11 15:53
I attest to the accuracy and
authenticity of this document
Chandigarh