IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2335 of 2010 (O&M)
Date of Decision:05.10.2015

Oriental Insurance Company Ltd.

….Appellant

Versus

Om Parkash and others

….Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. Rohit Goswami, Advocate for
Mr. Vinod Chaudhari, Advocate for the appellant.
Mr. Parveen Kumar, Advocate for respondents No.1 to 4.

NAVITA SINGH, J.

1. The Insurance Company came up in appeal against the award dated 20.1.2010 whereby compensation was granted by Motor Accidents Claims Tribunal, Hoshiarpur (Tribunal for short) in a petition filed under Section 163-A of the Motor Vehicles Act (Act for short) restricting the income of the deceased to Rs.30,000/- per annum. Liability was also disputed.

2. Counsel for the appellant argued that the deceased was a pillion rider on scooter No.PB-07-N-2028, which was owned by respondent No.5 and, therefore, he was not covered under the policy which was only an act policy. It was then contended that the income of the deceased had been pleaded by the claimants to be Rs.4000/- per month and, therefore, no claim under Section 163-A of the Act could be entertained. It was submitted that an application was filed for amendment with permission to convert the petition to one under Section 166 of the Act but the same was dismissed. This would mean that the claimants insisted that the income of the deceased was more than Rs.40,000/- per annum.

3. Counsel for the respondent, however, submitted that no such application was filed and whether or not such any order was passed, the Tribunal was within its right to bring down the income of the deceased within the permissible limit and pass an award accordingly. Counsel for the appellant does

not have copy of the order passed on any application for amendment. The record in the case is burnt and, therefore, nothing can be verified. The award makes no such mention.

4. Counsel for the respondent relied on Oriental Insurance Company Ltd. Vs. Smt. Saroj and others 2007 (1) RCR (Civil) 152 where Division Bench of this Court came to the conclusion that merely because claim was set up on the basis of income which was higher than the permissible limit, the claim would not be barred.

5. So far as the finding of the Tribunal by awarding compensation on the basis of restricted income is concerned, the same need not be interfered with. The Tribunal assessed the income at a much lower rate than the upper limit. It is, therefore, felt that at this stage no change is required to be made.

6. Regarding the nature of the insurance policy and the deceased being a pillion rider, right of the claimants is not affected as the Insurance Company could get recovery rights from the insured. At this stage counsel for the appellant submits that recovery rights may be granted. For the purpose of granting right of recovery, the insured was required to be heard but the driver and owner were proceeded against ex parte, which would not mean that they are not interested in contesting the appeal. Since there was violation of the terms of the insurance policy, the appellant should have a right to recover the amount from the insured.

7. The appeal against respondents No.1 to 4 is, therefore, dismissed and recovery rights from the insured and driver are granted to the Insurance Company.

(NAVITA SINGH)
JUDGE

05.10.2015
Ishwar

Whether to be referred to reporter: Yes