**IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**

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**FAO No. 7135 of 2011 (O&M)**
Date of decision : October 09, 2015

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ICICI Lombard General Insurance Company Limited

............Appellant

Versus

Bimla Devi and others

...........Respondents

* * * * *

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**

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Present: Mr. Mrigank Sharma, Advocate for the appellant.
Ms. Manjari Joshi, Advocate for
Mr. Rajiv Joshi, Advocate for respondents no. 1 & 2.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

**RITU BAHRI, J**

**C.M No. 30038-CII of 2011**

For the reasons mentioned in the application, delay of 320 days in filing the appeal is hereby condoned.

C.M is allowed.

**FAO No. 7135 of 2011**

The ICICI Lombard General Insurance Company (GIC) Limited-appellant has come up in this appeal against the order dated 25.10.2010 passed by the Motor Accidents Claims Tribunal, Jalandhar, whereby a compensation of Rs. 4,53,600/- has been awarded to the claimants on account of death of their son, Paplu in a motor vehicle accident and respondents were jointly and severally held liable for payment of amount of compensation.

Brief facts of the case are that on 28.3.2009, Paplu and Harbhajan Singh were coming from their house on their scooter No.

PB-08-AW-8064. Harbhajan Singh was driving the scooter and Paplu was sitting on the pillion seat. When they crossed green lights of Chogitti Chowk, a motor Vehicle make 'Swaraj Mazda' bearing registration No. HP-07-4108 came at a very high speed being driven by respondent no.1 in a rash and negligent manner. He crossed red lights and struck the same against the scooter of Harbhajan Singh and Paplu. Paplu received multiple injuries. Harbhajan Singh also received injuries. Paplu was brought to Satyam Hospital from where he was shifted to Vishal Hospital, Jalandhar. Ultimately Paplu died because of the injuries suffered by him. In this regard, FIR No. 75 (Ex. P-17) dated 30.3.2009 under Sections 279, 337, 338, 427/304-A IPC was also registered against respondent no.1.

On account of death of Paplu, claimants filed claim petition under Section 166 of the Motor Vehicles Act, 1988 bearing MACT Case No. 9 of 2009. On notice respondents no. 1 and 3 filed their separate written statements denying all the averments made in the claim petition.

From the pleadings of the parties, following issues were framed by the Tribunal:-

1. *Whether Paplu was killed due to rash and negligent driving of Swaraj Mazda No. HP-07-4108 by the respondent no. 1? OP Claimants.*
2. *Whether the claimants ae entitled for compensation if so of what amount from*

*which of the respodnent and manner of recovery? OP Claimant.*

3. *Whether the respondent no.1 was not holding legal and valid driving license at the time of accident and respodnent no.2 has violated the terms of the policy? OP respondent no.3.*

PW-2 Mehtab Singh an eye witness of the accident deposed as per the facts mentioned in the FIR Ex. P-17 which was registered by the police on his statement. Copy of post mortem report of Paplu Ex. P-16 was also proved on record according to which, Paplu died on receiving injuries in a road side accident. No evidence came from the opposite side to rebut the statement of PW-2 Mehtab Singh and Issue no.1 was decided in favour of the claimants by holding that Paplu was killed due to rash and negligent driving of Swaraj Mazda No. HP -07-4108 by respondent no.1.

While assessing the compensation, the total income of the deceased at the time of his death was assessed to be Rs. 36,000/- per annum. 1/3rd deduction was made towards his personal expenses. Thus, total dependency of the claimants upon the deceased was assessed at Rs.24,000/- per annum. Multiplier of 16 was applied. In this way, compensation came to Rs.3,84,000/-. To this amount, the total amount spent by claimant no.2 for the treatment of Paplu and to purchase medicines vide bills/receipts Ex.

P1 to Ex. P15 i.e Rs.59,600/- was added and thus the total compensation to be awarded to the claimants came to Rs.4,43,600/-. Claimant no.2 was also held entitled to a compensation of Rs.10,000/- on account of funeral expenses.

Aggrieved with the impugned award, the Insurance Company has preferred the present appeal.

Counsel for the appellant argued that the compensation should have been awarded keeping in view the age of the parents of the deceased. He referred to a judgment of Hon'ble the Supreme Court of India in the case of ***New India Assurance Company Ltd. vs. Smt. Shanti Pathak and others 2007(3) RCR (Civil) 593*** wherein the age of deceased was 25 years. Claimants (father and mother) aged 65 years. For grant of award, Multiplier of 5 was applied according to age of claimants.

I have heard the contention made by the counsel for the appellant but do not find any force in that contention as this Court is following the judgment of Hon'ble the Supreme Court in the case of ***Amrit Bhanu Shali & others vs. National Insurance Co. Ltd & others 2012(4) RCR (Civil) 343***. In this case deceased was bachelor aged 26 years. Family of deceased consisted only two members (father and mother). It was held that selection of multiplier is based on the age of deceased and not on the basis of the age of the dependant. There may be a number of dependents of the deceased whose age may be different and therefore the age of dependents has no nexus with the computation of compensation. Therefore, the tribunal rightly assessed the compensation on account of death of Paplu in a motor vehicular accident.

Moreover, as per the judgment in the case of ***National Insurance Co. Ltd., Chandigarh vs. Nicolletta Rohtagi and others, 2002 (4) RCR (Civil) 464***, it was held by Hon'ble the Supreme Court of India that an insurer cannot avoid its liability on any other grounds except those mentioned in Sub-Section (2) of Section 149 of 1988 Act. Any other breach of conditions by the insurer which does not find place in Sub Section (2) will not provide any defence to the insurer except with the specific permission or direction of the Court for the reasons to be recorded on the grounds of collusion or fraud in terms of Section 170 of the Act. Judgment in ***United India Insurance Co. Ltd. V. Bhushan Sachdev 2002 (2) RCR (Civil) 66*** does not lay down correct law in holding that insurer has a right to take all defences available to insured and failure of insured to appeal amount to failure to contest giving rise to right to defence of insurer. In paragraphs 25 and 26, the Supreme Court has observed as under:

> 25.*We have earlier noticed that motor vehicle accident claim is a tortious claim directed against tortfeasors who are the insured and the driver of the vehicle and the insurer comes to the scene as a result of statutory liability created under the Motor Vehicles*

*Act. The legislature has ensured by enacting Section 149 of the Act that the victims of motor vehicle are fully compensated and protected. It is for that reason the insurer cannot escape from its liability to pay compensation on any exclusionary clause in the insurance policy except those specified in Section 149(2) of the Act or where the condition precedent specified in Section 170 is satisfied.*

26.*For the aforesaid reasons, an insurer if aggrieved against an award, may file an appeal only on those grounds and no other. However, by virtue of Section 170 of the 1988 Act, where in course of an enquiry the Claims Tribunal is satisfied that (a ) there is a collusion between the person making a claim and the person against whom the claim has been made or (b) the person against whom the claim has been made has failed to contest the claim, the tribunal may, for reasons to be recorded in writing, implead the insurer and in that case it is permissible for the insurer to contest the claim also on the grounds which are* *available to the insured or to the person against whom the claim has been made. Thus, unless an order is passed by the tribunal permitting the insurer to avail the grounds available to an insured or any other person against whom a claim has been made on being satisfied of the two conditions specified in Section 170 of the Act, it is not permissible to the insurer to contest the claim on the grounds which are available to the insured or to a person against whom a claim has been made. Thus where conditions precedent embodied in Section 170 is satisfied and award is adverse to the interest of the insurer, the insurer has a right to file an appeal challenging the quantum of compensation or negligence or contributory negligence of the offending vehicle even if the insured has not filed any appeal against the quantum of compensation. Sections 149, 170 and 173 are part of one Scheme and if we give any different interpretation to Section 173 of the 1988 Act, the same would go contrary to the scheme and object* *of the Act.*

In the given set of facts and circumstances of the case, there is no ground to challenge the award of the Tribunal. Present appeal is liable to be dismissed both on the grounds of calculation of compensation and maintainability.

Dismissed.

October 09, 2015 **( RITU BAHRI )**
***ritu*** **JUDGE**