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

**F.A.O No. 167 of 2014 (O&M)
Date of decision:- 15.12.2015**

Shri Ram General Insurance Co. Ltd. ...Appellant

Versus

Premjit Kaur and others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Ms. Kaavya Jariyal, Advocate for
Mr. T.K. Joshi, Advocate
for the appellant

None for respondents.

RITU BAHRI J.

C.M. No. 290-CII of 2014

For the reasons mentioned in the application, delay of 227 days in filing of the present appeal is condoned.

The application stands disposed of accordingly.

F.A.O No. 167 of 2014

This appeal is by the insurance company disputing the liability foisted upon it by the Motor Accident Claims Tribunal, Hoshiarpur (for brevity, the tribunal'), vide its award/order dated 30.01.2013 whereby the appellant-Company (for short 'the appellant') was held liable to make the compensation to the tune of Rs.8,48,500/-.

Facts not in dispute

On 07.10.2010, Sardara Singh along with Satpal Saini was going on Bolero vehicle from Dasuya to Tanda on G.T. Raod and when they reached in the area of village Khunkhun Kalan, the offending truck/tanker bearing No. PB29E-9527 was going ahead of Bolero vehicle. The driver of the truck overtake the bolero vehicle and from the opposite side, one hero honda motorcycle bearing No PB21C3260 was coming and the driver of the offending truck hit his vehicle against the motorcycle of Paramjit Singh and Paramjit Singh came under the truck and died at the spot.

The learned Tribunal after going through the entire evidence held that the accident had occurred due to rash and negligent driving of the driver of the truck and awarded the compensation of Rs.8,48,500/-.

Learned counsel for the appellant has argued that since the driver of the offending was not holding a valid and effective driving licence, the Insurance Company be given recovery rights.

This argument of learned counsel is liable to be rejected as held by the Tribunal in para No. 16 of its award wherein Tribunal relied upon a judgment of Hon'ble the Supreme Court in a case of ***National Insurance Company Ltd. v. Swaran Singh and others***

2004 ACC 1 (SC) wherein it has been held that the breach of policy condition e.g. Disqualification of driver or invalid driving licence of the driver, as contained in sub section 2(a)(ii) of Section 149 have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time are not in themselves defences available to the insurer against either the insured or the third parties.

Learned counsel for the appellant has further contended that the compensation awarded by the learned Tribunal is on the higher side.

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 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.

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.

In view of the above mentioned judgments, the appeal is dismissed being devoid of any merit.

15.12.2015 (***RITU BAHRI***)
G Arora ***JUDGE***