IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

* * * * *

FAO No. 2089 of 2014 (O&M)
Date of decision : November 04, 2015

* * * * *

Shri Ram General Insurance Company Ltd.

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

Versus

Harvinder Kaur and others

..........Respondents

FAO No. 2086 of 2014 (O&M)
Date of decision : November 04, 2015

* * * * *

Shri Ram General Insurance Company Ltd.

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

Versus

Kanwaljit Singh and others

..........Respondents

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

* * * * *

Present: Mr. Kaavya Jariyal, Advocate for
Mr. T.K Joshi, Advocate for the appellant.
Mr. Sagar Aggarwal, Advocate for the respondents.

* * * * *

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. 7561-CII of 2014

For the reasons mentioned in the application, delay of 34 days in filing the appeal is condoned.

C.M is allowed.

FAO No. 2089 of 2014

By way of this common judgment two appeals filed by the Insurance Company i.e FAO No. 2089 of 2014 titled,` Shri Ram General Insurance Company Ltd. vs. Harvinder Kaur and others' and

FAO No. 2086 of 2014 titled, ` Shri Ram General Insurance Co. Ltd. vs. Kanwaljit Singh and others' shall be decided.

Both the appeals have been filed by the Insurance Company against the award dated 9.12.2013 passed by Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as `the Tribunal') vide which the claim petitions filed by the respondents/claimants were partly allowed.

The brief facts of the case are that on 25.9.2010, Smt. Harvinder Kaur was going from Delhi to Patiala to attend `Akhand Paath Bhog' at her relative's place in Patiala along with her husband Avneet Singh Gogia son Ikjyot, her mother Tajinder Kaur and Smt. Harbhajan Kaur in a car bearing registration no. HR 2Q-9305 which was being driven by Avneet Singh Gogia. When they reached in the area of Village Sambhalkhi near Mirchi hotel at 9.30 p.m, the offending truck bearing registration no. HR-55G-4277 came from the opposite side. It was driven by respondent no.1 in a rash and negligent manner at a very fast speed. Respondent no.1 turned his truck towards the side of car of Avneet Singh Gogia without giving any indicator. After seeing the offending truck, Avneet Singh Gogia took his car on the extreme left side of the road but still the offending truck struck against his car after coming on the wrong side of the road. All the occupants of the car received multiple, serious and grievous injuries. Tajinder Kaur died at the spot. Avneet Singh Gogia succumbed to his injuries at CHC, Shahabad. With regard to the accident, a criminal case bearing FIR No. 352 dated 26.9.2010 was registered under Sections 279, 337, 304-A IPC on the statement of Ikjyot Singh.

Three claim petitions, one by Harvinder Kaur on accunt of injuries received by her in the accident, second petition by the legal representatives of Avneet Singh Gogia who died in the accident and third petition by the legal representatives of Tajinder Kaur who also died in the accident were filed under Sections 166 & 140 of the Motor Vehicles Act, 1988.

The claim petitions were contested by respondent no.1 taking the objections with regard to maintainability and jurisdiction of the claim petition and stated that respondent no.2 was the owner of the truck which was insured with respondent no.3 i.e M/s Shri Ram Gneral Insurance Company Limited. Respondent no.2 did not appear despite publication and he was proceeded ex parte.

Respondent no.3 also contested the claim petition and took the plea that the claimants have come up with the bogus claims in order to extract money from the Insurance Company and in fact no accident in question had taken place.

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

1. *Whether the accident in question resulting into injuries to claimant Harvinder Kaur and deaths of Avneet Singh and Smt. Tajinder Kaur was caused due to rash and negligent driving of Truck No. HR55-G-4277 by its*

driver respondent no.1 as alleged? OPP.

2. *If issue no.1 is proved, to what amount of compensation, the claimants are entitled to and from whom? OPP*
3. *Whether the respondent no.1 was not holding a valid and effective driving license at the time of accident? OPR.*
4. *Whether the claimants have no locus standi and cause of action to file and maintain the present claim petition? OPR.*
5. *Whether the claim petition is not maintainable? OPR.*
6. *Whether the vehicle in question was being driven in contravention of the terms and conditions of the insurance policy and also against the provisions of Motor Vehicle Act? OPR.*
7. *Whether the vehicle in question was being driven in contravention of the terms and conditions of the insurance policy and also against the provisions of Motor Vehicle Act?*
8. *Relief.*

On the basis of the oral as well as the documentary evidence, a finding was returned in favour of the claimants on issue no.1 that the accident took place on 25.9.2010 on account of rash and negligent driving by respondent no.1 while driving truck bearing registration No. HR-55G-4277. The three claim petitions were decided as under:-

(1) MACP No. 0000160 of 2013

The claim petition filed by Harvinder Kaur on account of injuries received by her in the accident was dismissed. She was held not entitled for any compensation as MLR was placed on record but no doctor had been examined to prove the injuries.

(II)MACP No.0000156 of 2013

On account of death of Avneet Singh Gogia, claimants who were the widow, two daughters and minor son of Avneet Singh Gogia, filed claim petition under Sections 166 & 140 of the Motor Vehicles Act, 1988, which was accepted by the Tribunal and a sum of Rs. 1,15,99,000/- was awarded as compensation on account of death of Avneet Singh Gogia. The monthly income of the deceased was assessed at Rs. 1,20,000/- as per his salary certificate Ex. P-1. Hence annual salary of the deceased came to Rs.14,40,000/-. After deducting the income tax of Rs.2,41,000/-, the annual salary of deceased amounted to Rs.11,99,000/-. As the deceased was 52 years old, 15% addition in income was given towards future prospects and hence the salary per annum came to Rs.13,78,850/-. After deducting 1/4th towards the personal expenses of the deceased, the dependency of the claimants came to Rs.10,34,138/- which was rounded of to Rs.10,34,000/-. Multiplier of 11 is applied. The compensation came to Rs. 1,13,74,000/-. A sum of Rs.1,00,000 was awarded on account of loss of consortium to widow, Rs.1,00,000/- was awarded towards love and affection to children (Claimants no. 2 to 4) and an amount of Rs.25,000 was awarded for funeral expenses of the deceased. Hence the claimants were found entitled to total compensation of **Rs.1,15,99,000/-** by the Tribunal.

III) MACP No. 0000157 of 2013

This claim petition was filed by the legal heirs of Tajinder Kaur on account of her death in the vehicular accident. There was no evidence to establish that Smt. Tajinder Kaur was working. Therefore, her notional income was taken as that of a home maker. Since the claimants specifically urged the income to be Rs.5000/-, it was considered appropriate and just to take her income as Rs.5000/- per month as home maker. The annual income came to Rs.60,000 (5000x12). After deducting 50% towards the personal expenses of the deceased the income came to be Rs.30,000/-. The age of the deceased was 60 years. After applying the multiplier of 9, the compensation came to Rs.2,70,000/-. An amount of Rs.1,00,000 was awarded for loss of love and affection for the claimants and an amount of Rs.25,000/- was awarded for funeral expenses of the deceased. The total compensation came to **Rs.3,95,000**/-.

Issue no.3 was decided against respondent no.3 i.e Insurance company as contrary to the contention of respondent no.3 that respondent no.1 was not holding a valid and effective driving license, respondent no.1 placed on record driving license Ex, R-1 which shows that the same was issued in the year 2010 in the name of Ramesh son of Rattan Singh resident of VPO Baini Chaderpal, District Rohtak by the District Transport Officer, Nagaland authorizing him to drive M/C, LMV, HGV, HTV only. The said driving licence was valid up to 14.7.2013. The accident took place on 25.9.2010 i.e covering the date of accident.

The Insurance Company has come up in appeal against the award primarily on the quantum of compensation. The appeals filed by the Insurance company are liable to be dismissed in view of the judgment of Supreme Court in the case of ***National Insurance Co. Ltd., Chandigarh vs. Nicolletta Rohtagi and others, 2002 (4) RCR (Civil) 464*** , wherein it has been held that the insurer has no right to file an appeal to challenge the quantum of compensation or finding of the Tribunal as regards the negligence or contributory negligence of the offending vehicle. In this case Hon'ble the Supreme Court made reference to the earlier decisions in various judgments in paragraphs 19, 20 and 21, which are reproduced 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 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 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.*

In the facts and circumstances of the present case, Issues no. 1 & 3 have been rightly decided in favour of the claimants and against the Insurance Company. Moreover, in view of the judgment in ***National Insurance Co. Ltd., Chandigarh vs. Nicolletta Rohtagi and others, 2002 (4) RCR (Civil) 464***, appeals are hereby dismissed.

November 04, 2015 **(RITU BAHRI)**
ritu **JUDGE**