IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No. 3803 of 2013 (O&M)
Date of decision : August 24, 2015

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ICICI Lombard General Insurance Company limited,
Kaithal through its Legal Manager/Authorized signatory

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

Versus

Jagdish Chander and others

..........Respondents

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Binat Sharma, Advocate for the appellant.

Mr. Namit Sharma, Advocate for respondents no. 1 & 2.

Ms. Suman Devi, Advocate for respondent no.3.

Mr. Ashok Murtheja, DAG, Haryana for respondent no.4.

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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.15469-CII of 2013

For the reasons mentioned in the application, delay in affixing the requisite court fees is hereby condoned.

C.M is allowed.

FAO No. 3803 of 2013

The present appeal has been filed by the ICICI Lombard General Insurance Company Limited challenging the award dated

5.4.2013 passed by the Motor Accident Claims Tribunal, Karnal (hereinafter referred to as `the Tribunal') in M.A.C.T Case No. 17 of 2012, on the ground of calculation of compensation and monthly income of the deceased.

There is no challenge to the finding recorded by the Tribunal that the accident has taken place on account of rash and negligent driving of respondent no.3-Satish Kumar. The Supreme Court of India in the case of ***National Insurance Co. Ltd., Chandigarh vs. Nicolletta Rohtagi and others, 2002 (4) RCR (Civil) 464*** has 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 view of the judgment in ***National Insurance Co. Ltd., Chandigarh vs. Nicolletta Rohtagi and others, 2002 (4) RCR (Civil) 464***, present appeal is dismissed.

August 24, 2015 **(RITU BAHRI)**
ritu **JUDGE**