IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

FAO No.4994 of 2014 (O&M)
Date of decision: 16.07.2015

New India Assurance Company Limited

….. Appellant

versus

Manjit Kaur and others

……Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Ashwani Tarlwar and Mr.J.S.Chatrath, Advocates for the appellant
Mr.Ashit Malik, Advocate for respondent Nos.1 to 4

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?

Kuldip Singh, J. (Oral)

The insurance company has filed this appeal against the award dated 2.4.2014 passed by the Motor Accident Claims Tribunal, Kurukshetra (for short, 'the Tribunal).

Short facts which are required to be noticed for the purpose of disposal of the appeal are that on 16.1.2013 Jaswinder Singh (since deceased) borrowed Tata Indigo Car bearing registration No.HR-01AA-2878 from his father Naib Singh and was driving the same. At around 4.00 PM, the car met with accident. It struck against the railing of GT road and turned turtle. Jaswinder Singh suffered fatal injuries and later on succumbed to the injuries. His widow, minor children and mother filed claim petition under Section 163-A of the Motor Vehicle Act, 1988. The Tribunal passed the award for a sum of Rs.7,29,900/. The respondents were held jointly and severally liable to pay the amount of compensation, holding that the vehicle was insured with the appellant insurance company.

I have heard learned counsel for the parties and have also carefully gone through the file.

Learned counsel for the appellant has argued that in this case, it is held that the deceased was the borrower of the car. Therefore, as per authority of the Hon'ble Supreme Court in the case of *Ningamma and another v. United India Insurance Co. Ltd., 2009(3) RCR (Civil) 435,* the insurance company is not liable to compensate the insured. The perusal of the authority shows that in the said case, it was third party policy and it was held that since owner was not entitled to compensation, therefore, borrower from the owner is also not entitled for compensation. However, the Policy (Ex.R1), shows that it was comprehensive policy and additional payment was made for the driver. Under the policy, the personal accident of the owner was covered. It would follow that the borrower from the owner is also covered. The extent of liability was not mentioned in the policy. Therefore, the liability of insurance company cannot be limited to certain amount. Therefore, finding of the Tribunal in this regard are affirmed.

Learned counsel for the appellant has further argued that in this case, the Tribunal assessed the income of the deceased as Rs.3300/- per month. 1/4th was deducted as personal expenses,whereas as per schedule it should be 1/3rd. Further it has been argued that Rs.one lac for loss of consortium and Rs.one lac for loss of care and guardian of minors and Rs.25,000/- for funeral expenses were allowed by the Tribunal, which is contrary to the second schedule of the Motor Vehicle Act, 1988. I find force in the same. As per schedule, only 1/3rd deduction is required to be made. Therefore, the dependency of the claimant would come to Rs.2200/- per month and amount of compensation will come to Rs.4,48,300/- by applying multiplier of 17. As per schedule 2 of the said Act, Rs.2000/- for funeral expenses, Rs.5000/- for loss of consortium and Rs.2500/- for loss of estate are to be allowed. Total amount of compensation comes to Rs.4,58,300/-. The same will be payable along with interest @ 7.5% per annum from the date of filing of claim petition till realization. Out of the amount of compensation a fixed Rs.25,000/- shall go to Mohinder Kaur mother of the deceased and out of the remaining amount, ½ shall go to the widow of the deceased who is to run day to day affairs of the family and remaining ½ shall be equally shared by the minor children of the deceased. The share of the minor children shall be invested in long term FDR in the name of the minors in the bank of the choice of their mother and guardian and shall be paid to them on becoming major. In the FDRs, date of birth of the minors shall also be recorded and no further order for release of the amount will be required. However, mother of the minors shall be entitled to utilize the interest on the FDRs for the upbringing of the minors.

Appeal is accordingly allowed.

Rs.25000/- already deposited in this Court be remitted to the Tribunal for disbursement.

16.07.2015 **(Kuldip Singh)**
gk **Judge**