IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. F.A.O No. 5664 of 2013 (O&M)

Oriental Insurance Co. Ltd. ...Appellants

Versus

Divya Gera and others ...Respondents

2. F.A.O No. 6240 of 2013 (O&M)

Divya Gera ...Appellant

Versus

Brahm Prakash and others ...Respondents

Date of decision:- 15.12.2015

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Ashwani Talwar, Advocate
for the appellant in FAO No. 5664 of 2013 &
for respondent No. 4 & 5 in FAO No. 6240 of 2013

Mr. Ashwani Arora, Advocate
for the appellant in FAO No. 6240 of 2013 &
for respondent No. 1 in FAO No. 5664 of 2013.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest? Yes

RITU BAHRI J. (Oral)

1. Two appeals, as noticed above, are being disposed of by this common judgment, having arisen out of the impugned Award dated 07.08.2013 passed by the learned Motor Accident Claims Tribunal, Chandigarh (herein after to be referred as 'the Tribunal').

Facts not in dispute

2. On 13.04.2011, respondent No. 1-Divya Gera was going

from Panchkula to her office in Infosys at I.T. Park, Chandigarh, riding pillion on motorcycle No. CH-01-AE-1704, which was being driven by respondent No. 4 Tarun Yadav and when they reached near DT Mall, IT Park, Chandigarh then one car bearing No. HR-03-K-6502 came in a rash and negligent manner and hit the motorcycle driven by Tarun Yadav and he and Divya Gera fell on the road along with motorcycle. Divya Gera suffered serious injuries and was taken to General Hospital, Sector 6, Panchkula from where she was referred to Fortis Hospital, Mohali. The car was driven by Braham Prashad and F.I.R No. 106 dated 16.04.2011 u/s 279/337 IPC was registered in this regard.

COMPENSATION ASSESSED BY THE MACT

Sr. No.	***Heads***	***Calculations***
(i)	Salary	Rs.27366X12=Rs.3,28,392/- per annum
(ii)	Future Prospect 50%	Rs.492588/-
(iii)	Actual Income mins tax in 2011	Rs.30136/- (Income Tax) Rs.462452/-
(iv)	Loss of future earning capacity 10% of income	Rs.46,245/-
(v)	Multiplier of 18	Rs.46245X18
(vi)	Loss of future earning	Rs.8,32,413/-
(vii)	Medical treatment	Rs.1,14,523/-
(viii)	Transportation Charges	Rs.4000/-
(ix)	Special Diet	Rs.8,000/-
(x)	Pain and Suffering	Rs.25,000/-
(xi)	Loss of amenities of life and loss of marriage prospects	Rs.50,000/-
	Total compensation	Rs.10,33,936/-

3. Feeling dissatisfied with the impugned award, the claimant as well as Insurance Company have preferred their separate appeal.

Arguments Advanced

4. The learned counsel for the claimant-appellant contends that the compensation awarded by the learned Tribunal is on the lower side and deserves to the enhanced, as the appellant Divya Gera was 25 years old and was software engineer, working with Infosys and is earning Rs4 lacs per annum. The appellant has suffered 25% permanent disability but the learned Tribunal assessed the future loss of income by taking the disability to 10%.

5. Reference has been made to a judgment of Delhi High Court in a case of ***Sunil Kumar vs. Inder Singh and others, 2013 ACJ 294*** wherein the injured was 29 years old and was earning Rs.2500/- per month and suffered 100 per cent disability for reproduction due to bilateral loss of testes resulting in loss of marital life and mental anguish which would affect functional ability. The High Court modified the award of the Tribunal and enhanced the compensation from Rs.1,47,000/- to Rs.8,27,766/-.

7. Further reference has been made to a judgment of Delhi High Court in a case of ***Syed Sadiq etc vs. Divisional Manager, United India Ins. Co., 2014 ACJ (SC) 627***

6. On the other hand, learned counsel for Insurance

Company, has awarded the compensation on the higher side by taking the income and thereafter added 50% towards future prospect and applied the multiplier of 18 after taking loss @ 10%. Further, no vehicle no and name of driver has been mentioned in the F.I.R and thus the factum of accident has not been proved.

7. To give force to its contention, reference has been made to a judgment of Hon'ble the Supreme Court of India in a case of ***Oriental Insurance Co. Ltd vs Meenal Variyal and others, 2007(2) RCR (Civil) 698***

8. Heard learned counsel for the parties.

9. As far as the appeal preferred by the insurance company is concerned, it is liable to be dismissed. Firstly, the Insurance Company cannot challenge the award on the question of quantum, in view of the below mentioned judgments

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.*
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> *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.

10. Further the argument of learned counsel for the Insurance Company that the factum of accident is not proved is also liable to be rejected as the claimant herself appeared into witness box as P.W.1 and stated that she met with an accident with the car of Brahm Prakash. She was a pillion rider. Further Investigating Officer SI Rajinder Prasad made it clear that during the course of investigation, registration number of offending vehicle was disclosed to him by Tarun Yadav and Ms. Richa. Further as per Ex P13 discharge summary, the claimant has suffered numerous injuries in the road side accident. Thus, the accident has been duly proved by the claimant.

9. As far, preferred by the claimant for enhancement of the amount of compensation, is concerned, it is liable to be modified only to the extent that the disability of the claimant has to be taken at 25% while assessing the future loss of income, as P.W.5 Dr. D.K. Pathak in his statement clearly stated the the claimant has suffered 25% permanent disability in relation to whole body and due to this disability, she will have problem of neck pain and early cervical spondylysis and she has to take special care of her neck and neck movement in future and to do spine exercise routinely. It would effect the working capacity of a person doing work on computer. There are

further chances of early de-generation of cervical spine because of these injuries.

Re-assessed compensation

Sr. No.	***Heads***	***Calculations***
(i)	Salary	Rs.27366X12=Rs.3,28,392/- per annum
(ii)	Future Prospect 50%	Rs.492588/-
(iii)	Actual Income mins tax in 2011	Rs.30136/- (Income Tax) Rs.462452/-
(iv)	Loss of future earning capacity 25% of income	Rs.1,15,613/-
(v)	Multiplier of 18	Rs.1,15,613X18
(vi)	**Loss of future earning**	**Rs.20,81,034/-**
(vii)	Medical treatment	Rs.1,14,523/-
(viii)	Transportation Charges	Rs.4000/-
(ix)	Special Diet	Rs.8,000/-
(x)	Pain and Suffering	Rs.25,000/-
(xi)	Loss of amenities of life and loss of marriage prospects	Rs.50,000/-
	Total compensation	Rs.22,82,557/-
	Enhanced compensation	Rs.22,82,557-10,33,936=Rs.12,48,621/-

10. Resultantly, the appeal i.e FAO No. 5664 of 2013 filed by the Insurance Company is dismissed and the appeal i.e FAO No. 6240 of 2013 filed by the claimant-appellant is allowed to the above extent. The enhanced amount of compensation of Rs.12,48,621/- (in FAO No. 6240 of 2013) shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in a case of ***Kumari Kiran***

through her father Harinarayan vs. Sajjan Singh and others, 2015 (1) SCC 539. Remaining conditions of disbursal of amount shall remain unaltered.

December 15, 2015 (***RITU BAHRI***)
G Arora ***JUDGE***