IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3453 of 2015 (O&M)
Date of decision: 05.10.2015

The Oriental Insurance Company Limited

….Appellant

Versus

Kamlesh and others

….Respondents

2) FAO No.3457 of 2015 (O&M)

The Oriental Insurance Company Limited

….Appellant

Versus

Ranjit Kaur and others

….Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Deepak Chaudhary, Advocate
for Mr. Ram Avtar, Advocate
for the appellant (in both the appeals).

Mr. Ashwani Arora, Advocate
for respondents No.1 and 2 (in both the appeals).

<u>RITU BAHRI J. (Oral)</u>

By this single judgment I intend to dispose of two appeals i.e. **FAO No.3453 of 2015** titled as ***"The Oriental Insurance Company Limited vs Kamlesh and others"*** and **FAO**

No.3457 of 2015 titled as ***"The Oriental Insurance Company Limited vs Ranjit Kaur and others"*** as both these appeals have arisen out of the same award dated 19.03.2015.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 20.05.2014 at about 01:00 p.m., Sandeep Singh @ Sandeep Kumar was going from village Gobindgarh, P.S. Sohana to village Dearhi while driving a motorcycle at slow speed and on the left side of the road. Sukhwinder Singh was sitting on the pillion seat of his motorcycle. They were being followed by Gurmail Singh who was on a separate motorcycle. When they reached near village Bathlana bus stop at that time, a truck bearing registration No.PB-65-D-8451 came at fast speed from their behind and after overtaking the motorcycle of Gurmail Singh, it struck against the motorcycle of Sandeep Singh @ Sandeep Kumar from behind. The said truck was being driven at fast speed and in a rash and negligent manner by Balwinder Singh-respondent No.1. As a result of this accident, they both fell on the road along with their motorcycle and Sandeep Singh @ Sandeep Kumar was ran over by the wheels of the truck. They both were taken to Civil Hospital, Kharar in an ambulance, where doctors on duty declared Sandeep Singh @ Sandeep Kumar as dead, whereas Sukhwinder Singh was referred to GMCH, Sector 32, Chandigarh, where he died on the same day due to the injuries sustained in the accident.

In this regard, FIR (Ex.P-5), in respect of the accident in question was got registered by Gurmail Singh/eye-witness.

Consequently, the claimants-respondents filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY MACT

Sandeep Singh @ Sandeep Kumar 's case

On the basis of evidence led by the parties, the Tribunal has returned the finding on Issue No.1 in favour of the claimants-appellants. The claim petition was accepted by the Tribunal and a sum of Rs.10,97,000/- was awarded as compensation on account of death of Sandeep Singh @ Sandeep Kumar along with future interest at the rate of 6% per annum from the date of filing of the petition till its realization. The compensation assessed by the Tribunal is reproduced as below :-

Sr. No.	Heads	Calculations
1.	Assessed monthly income	Rs.6,000/- per month
2.	50% addition towards future prospects	Rs.6,000+Rs.3,000 =Rs.9,000/-
3.	50% of (2) above deducted as personal expenses of deceased	Rs.9,000 – Rs.4,500 =Rs.4,500/-
4.	Compensation after multiplier of 18 is applied	Rs.4,500 x 12 x 18 =Rs.9,72,000/-
5.	Loss of love and affection to claimants No.1 and 2.	Rs.1,00,000/- (Rs.50,000/- each
6.	Funeral expenses	Rs.25,000/-
7.	**Total compensation awarded**	**Rs.10,97,000/-**

Sukhwinder Singh's case

On the basis of evidence led by the parties, the

Tribunal has returned the finding on Issue No.1 in favour of the claimants-appellants. The claim petition was accepted by the Tribunal and a sum of Rs.10,97,000/- was awarded as compensation on account of death of Sukhwinder Singh along with future interest at the rate of 6% per annum from the date of filing of the petition till its realization. The compensation assessed by the Tribunal is reproduced as below :-

Sr. No.	**Heads**	**Calculations**
1.	Assessed monthly income	Rs.6,000/- per month
2.	50% addition towards future prospects	Rs.6,000+Rs.3,000 =Rs.9,000/-
3.	50% of (2) above deducted as personal expenses of deceased	Rs.9,000 – Rs.4,500 =Rs.4,500/-
4.	Compensation after multiplier of 18 is applied	Rs.4,500 x 12 x 18 =Rs.9,72,000/-
5.	Loss of love and affection to claimants No.1 and 2.	Rs.1,00,000/- (Rs.50,000/- each
6.	Funeral expenses	Rs.25,000/-
7.	**Total compensation awarded**	**Rs.10,97,000/-**

Feeling dissatisfied with the impugned award, the appellant-Insurance Company has preferred the present appeals i.e. **FAO No.3453 of 2015** titled as ***"The Oriental Insurance Company Limited vs Kamlesh and others"*** and **FAO No.3457 of 2015** titled as ***"The Oriental Insurance Company Limited vs Ranjit Kaur and others".***

I have heard learned counsel for the parties and perused the case file.

The fact of accident is admitted and proved. It stands established that the deceased-Sandeep Singh @ Sandeep Kumar and Sukhwinder Singh died, as a result of the accident.

The finding that the truck was driven in a rash and negligent manner has rightly been recorded by the Tribunal and does not call for interference.

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 tort feasors as well as the insurer, even though an appeal filed by the insurer is not competent, it may not be dismissed as such. The tort feasor 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 tort feasors 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.*

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."*

Keeping in view the above-mentioned judgments, the appeal filed by the appellant i.e. The Oriental Insurance Company Limited, is hereby dismissed.

(RITU BAHRI)
JUDGE

05.10.2015
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