

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO No.3601 of 2015 (O&M)
Date of decision: 14.12.2015**

IFFCO Tokio General Insurance Company Limited

....Appellant

Versus

Suman Rani and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Rajesh Bansal, Advocate
for the appellant.

Mr. Ashwani Arora, Advocate
for respondents No.1 to 4.

RITU BAHRI J. (Oral)

This is an appeal filed by IFFCO Tokio General Insurance Company Limited, against the award dated 02.12.2014, passed by Motor Accident Claims Tribunal, SAS Nagar, Mohali, vide which the claim petition was accepted and a sum of Rs.27,19,600/- was allowed, on account of death of Virinder Singh @ Varinder Singh, in a motor vehicular accident, which took place on 14.08.2013.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 14.08.2013, at about 06:30 a.m. Virinder Singh @ Varinder Singh was going from

village Dyalpura to Zirakpur for distribution of milk by driving his motorcycle bearing No.PB-70-B-0637, at a slow speed and on left side of the road. He was being followed by Sandeep Singh and Gurdeep Singh on a separate motorcycle. When he reached near Gurudwara Nabha Sahib, he stopped his motorcycle on katcha portion on extreme left side of the road and gave milk to Sewadar of Gurudwara Sahib. When he was just to move his motorcycle towards Zirakpur, an offending eicher vehicle bearing No.PB-03-T-0982, came at a fast speed from behind and struck against his motorcycle. The offending eicher vehicle was being driven in a rash and negligent manner and at a fast speed by respondent No.1-Swaran Singh. Due to this accident, he fell on the road and suffered serious injuries. He was shifted to Government Medical College and Hospital, Sector-32, Chandigarh and there he died during the treatment on 21.08.2013.

In this regard, FIR No.337 dated 21.08.2013, under Sections 279, 304-A and 427 IPC, in respect of the accident in question was got registered at Police Station Zirakpur.

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

COMPENSATION ASSESSED BY MACT

Before the Tribunal, Sandeep Singh (eye-witness) appeared as PW-2 and tendered his affidavit Ex.PW-2/A to prove the accident in question. Suman Rani also appeared as PW-1 and

tendered her affidavit Ex.PW-1/A to corroborate the testimony of PW-2.

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.27,19,600/- was awarded as compensation on account of death of Virinder Singh @ Varinder 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.	Annual income	Rs.1,20,000/-
2.	50% addition towards future prospects	Rs.1,20,000+Rs.60,000/- =Rs.1,80,000/-
3.	1/4th deducted as personal expenses of deceased	Rs. 1,80,000 – Rs.45,000/- =Rs.1,35,000/-
4.	Compensation after multiplier of 18 is applied	Rs. 1,35,000 x 18 =Rs.24,30,000/-
5.	Loss of consortium	Rs.1,00,000/-
6.	Loss of care and guidance to minor child	Rs.1,00,000/-
7.	Medical expenses	Rs.19,526/-
8.	Pain and suffering	Rs.20,000/-
9.	Loss to estate	Rs.25,000/-
10.	Funeral expenses	Rs.25,000/-
11.	Total compensation awarded	Rs.27,19,526/- (rounded off to Rs.27,19,600)

Feeling dissatisfied with the impugned award, the appellant-Insurance Company has preferred the present appeal i.e.

FAO No.3601 of 2015 titled as “IFFCO Tokio General

Insurance Company Limited vs Suman Rani 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-Virinder Singh @ Varinder Singh died, as a result of the accident.

The finding that the offending vehicle 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. Nicolletha 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 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.
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. IFFCO Tokio General Insurance Company Limited, is hereby dismissed.

(RITU BAHRI)
JUDGE

14.12.2015
yakub