IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No. 675 of 2013 (O&M)
Date of decision : 22-09-2015

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Future Generali India Insurance Co. Ltd. through its
Divisional Manager, Rohtak

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

Versus

Manjeet Devi and others

...........Respondents

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Vishal Aggarwal, Advocate for the appellant.

Mr. N.C Kinra, Advocate for respondents no. 5 and 6.

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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?*

<u>RITU BAHRI, J</u>

The appellant-Future Generali India Co. Limited has come up against the award of the Tribunal dated 8.1.2013 whereby a total compensation of Rs.3,02,000/- has been awarded to the claimants on account of death of Santosh in a motor vehicle accident.

Brief facts of the case are that on 22.5.2012, Santosh since deceased was coming from Quilla Road, Rohtak after purchasing some articles and when she reached near Book stall of Hukan Chand at about 6:00 p.m, a three wheeler bearing registration no. HR-46-C-6711 driven by respondent no.1 rashly and negligently came from Gohana Stand, Rohtak and struck his three wheeler into the deceased. Due to that Santosh came in between three wheeler and a pole standing on the road and due to that her chest and lower right side portion of body got crushed badly. She was taken to PGIMS, Rohtak, where she was declared dead. The accident was caused due to rash and negligent driving of respondent no.1. The above said accident was witnessed by Rajbir who got registered the FIR against the respondent no.1.

Respondents no. 1 to 3 contested the petition by filing separate written statements. From the pleadings of the parties, following issues were framed:-

i) Whether the accident in question occurred due to rash and negligent driving of vehicle i.e three wheeler no. HR-46-C-6711 causing the death of Santosh? OPP

ii) If issue no.1 is proved whether petitioners are entitled for the compensation, if so to what amount and from whom? OPP.

iii) Whether respondent no.1/driver of offending vehicle was not holding a valid and effective driving licence at the time of alleged accident and insured has violated the terms and conditions of the insurance policy? OPR3.

The trial Court has returned a finding on issue no.1 in favour of the claimants and held that the accident in question took place due to rash and negligent driving of three wheeler bearing registration no. HR-46-C-6711 by respondent no.1. The eye witness of the accident appeared as PW-2 Rajbir, who is also the complainant in the FIR Ex. P-2. The FIR Ex.P-2 mentions the name of respondent no.1 as also the number of offending vehicle driven by him. PW-2 has corroborated the version of FIR. The finding on issue no.1 does not require any interference.

The deceased Santosh was a housewife and her income at the time of her death has been taken to Rs.3000/- per month as per the ratio laid down by Hon'ble the Supreme Court of India in ***Lata Wadhwa and others vs. State of Bihar and others AIR 2001 SC 3218***. The annual income of the deceased was thus calculated to be Rs.3000x12= Rs.36,000/- per annum. The deceased having four dependents as a result of which 1/4th of her annual earning was deducted towards her personal living expenses. Thus the amount came to (Rs.36000-Rs.9000) Rs.27,000/-. To this amount multiplier of 11 was applied and the amount came to Rs.2,97,000. An amount of Rs.5000/- was also awarded for the expenses of last rites. Thus, a total compensation of Rs. 3,02,000/- was awarded by the Tribunal to the claimants.

Counsel for the appellant has argued that the driver of the offending vehicle was not holding a valid licence and he was authorized to drive the light motor vehicle (non-transport). But at the time of the accident he was driving a goods vehicle. Therefore, he had violated the terms and conditions of the policy.

Hon'ble the Supreme Court recently in the case of ***S. Iyyapan vs. M/s United India Insurance Company Ltd. and another, 2013 (3) RCR (Civil) 654*** examined the case of the driver who was having a driving licence to drive a light vehicle but at the time of accident, he was driving a commercial vehicle in violation of insurance policy and caused death of a person. It was held that the Insurance company cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but was driving commercial vehicle. In the event of violation of any condition of the insurance policy, the insurance Company could proceed against the insured for recovery of the amount. In paragraphs 17 & 18 of the judgment, it was observed as under:

> *17. The heading "Insurance of Motor Vehicles against Third Party Risks" given in Chapter XI of the Motor Vehicles Act, 1988 (Chapter VIII of 1939 Act) itself shows the intention of the legislature to make third party insurance compulsory and to ensure that the victims of accident arising out of use of motor vehicles would be able to get compensation for the death or injuries suffered. The provision has been inserted in order to protect the persons travelling in vehicles or using the road from the risk attendant upon the user of the motor vehicles on the road. To overcome this ugly situation, the legislature has*

made it obligatory that no motor vehicle shall be used unless a third party insurance is in force.

18. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely, (i) the vehicle was not driven by a named person, (ii) it was being driven by a person who was not having a duly granted licence, and (iii) person driving the vehicle was disqualified to hold and obtain a driving licence. Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to

> *proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.*

Hon'ble the Supreme Court has referred to the 3-Judge Constitution Bench judgment in the case of ***National Insurance Co. Ltd. vs. Swaran Singh and others 2004(2) RCR (Civil) 114*** and the judgments in the cases of ***National Insurance Co. Ltd. vs. Kusum Rai and others, 2006(2) RCR (Civil) 313*** and ***Oriental Insurance Co. Ltd. vs. Nanjappan, 2004 (13) SCC 224,*** wherein a consistent view has been followed that even if a driver is not having a licence which authorized him to drive a vehicle and if the insurance policy covers a third party risk, the insurance company is liable to pay the compensation and in case of violation of any provision of the insurance policy get the recoveries from the insured.

In view of all that has been discussed above, there is no infirmity or illegality in the judgment passed by the Tribunal and same does not require interference of this Court. Hence the appeal is hereby dismissed.

September 22, 2015 **(RITU BAHRI)**
ritu **JUDGE**