IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No. 8102 of 2015 (O&M)
Date of decision : December 4, 2015

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Reliance General Insurance Company Ltd.
............Appellant

Versus

Sahbo and others
...........Respondents

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Paras Money Goyal, Advocate for the appellant.

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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>

Insurance Company has filed this appeal against the award dated 13.10.2015 passed by the Additional District Judge, Motor Accident Claims Tribunal, Sonepat (hereinafter referred to as `the Tribunal') in claim petition bearing `MACT Case No. 42 of 2015' filed under Section 166 of the Motor Vehicles Act, whereby a total compensation to the tune of Rs.8,31,000/- has been awarded to the claimant on account of the death of her son Naresh in a motor vehicular accident on 28.6.2014

The brief facts of the case are that on 28.6.2014, Naresh was sleeping in the street on a cot in front of their house. His younger brother Surender was sleeping on the teraace of their house. Surender heard the noise of striking the vehicle. Surender saw from the terrace that two boys of their village namely Ashish son of Jaipal and Rakesh son of Mahabir were driving one Scorpiro vehicle of white colour in a rash and negligent manner and foot of deceased Naresh was entangled underneath the said vehicle. Naresh was dragged by the said vehicle. Surender rushed down and chased the offending vehicle. After some distance, Ashish fled away from the spot with his vehicle by running over Naresh. Surender noted the number of the offending vehicle which was HR-11E-7797. The accident was also witnessed by Balwan who was also sleeping in the street. Naresh was taken to medical College Khanpur Kalan. After giving first aid, he was referred to PGIMS, Rohtak on the same day. During treatment in the PGIMS, Rohtak, Naresh died due to the injuries sustained in the accident. With regard to the accident, a criminal case bearing FIR No. 143 dated 28.6.2014 was registered under Sections 279, 304-A IPC.

On account of the death of Naresh, his mother Sahbo wife of Rameshwar filed claim petition under Section 166 of the Motor Vehicles Act, 1988.

The claimant placed on record the copy of report under Section 173 Cr.P.C Ex.P-1 to show that after investigation police filed challan against the driver of the offending vehicle for the offences punishable under Sections 279, 304-A IPC on the allegation that he caused the accident in question by driving the offending vehicle in a rash and negligent manner. As per postmortem report Ex. P-6 it was proved that Naresh died due to the injuries sustained in the accident. On the basis of the oral as well as the documentary evidence, a finding was returned in favour of the claimant that the accident in question in which Naresh died was caused by the driver of the offending vehicle while driving the same in a rash and negligent manner. Hence, the claim petition was partly allowed and the claimant was found entitled to a total compensation of **Rs.8,31,000/-**.

The compensation was assessed by the Tribunal by taking the monthly income of the deceased as Rs.5600/-. 50% of income was added towards future prospects. Therefore, income of the deceased came to Rs.8400/- per month. As the deceased was unmarried 50% deduction was made towards his personal expenses. Hence annual dependency of the claimant was arrived at (Rs.4200x12)=Rs.50,400/-. The age of the deceased at the time of accident was taken to be between 35 to 40 years and hence a multiplier of 15 was applied. Hence the annual loss of dependency came to Rs.7,56,000/-. Besides this amount, an amount of Rs.50,000/- on account of loss of love and affection and Rs.25,000/- on account of funeral expenses was awarded. Thus the claimant was found entitled to a total compensation of **Rs.8,31,000**/-

The Insurance Company has come up in appeal against the award primarily on the quantum of compensation. Counsel for the appellant is seeking modification of the award on the ground that

50% addition in the per month income of the deceased on account of future prospects has been wrongly granted. Moreover the multiplier of 15 has also been wrongly applied.

A perusal of the order of the Tribunal shows that as per the judgment of Hon'ble the Supreme Court in the case of ***Rajesh vs. Rajbir 2013 ACJ 1403***, 50% amount towards future prospects has been rightly awarded and moreover keeping in view the age of the deceased the multiplier of 15 has been rightly applied.

Hence, there is no illegality or infirmity in the judgment passed by the Tribunal. Moreover, the appeal filed by the Insurance company is liable to be dismissed in view of the judgment of Supreme Court in the case of ***National Insurance Co. Ltd., Chandigarh vs. Nicolletta Rohtagi and others, 2002 (4) RCR (Civil) 464*** , wherein it has been held that the insurer has no right to file an appeal to challenge the quantum of compensation or finding of the Tribunal as regards the negligence or contributory negligence of the offending vehicle. In this case Hon'ble the Supreme Court made reference to the earlier decisions in various judgments in paragraphs 19, 20 and 21, which are reproduced 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.*
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> 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.*

In the facts and circumstances of the present case, and in view of the judgment in ***National Insurance Co. Ltd., Chandigarh vs. Nicolletta Rohtagi and others, 2002 (4) RCR (Civil) 464***, present appeal is hereby dismissed.

November 04, 2015 **(RITU BAHRI)**
ritu **JUDGE**