IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

F.A.O No. 8127 of 2015
Date of decision:- 05.12.2015

United India Insurance Co. Ltd. ...Appellant

Versus

Raswinder Singh and others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Ms. Sonal Dutta, Advocate and
Mr. Vikas Mohan Gupta, Advocate
for the appellant

RITU BAHRI J.

This appeal is by the insurance company disputing the liability foisted upon it by the Motor Accident Claims Tribunal, Patiala (for brevity, the tribunal'), vide its award/order dated 01.09.2015 whereby the appellant-Company (for short 'the appellant') was held liable to make the compensation to the tune of Rs.15,40,501/-.

Facts not in dispute

On 02.07.2014, Amandeep Singh and Pritpal Singh were going from village Cheema to Sunam on their respective motorcycles. Amandeep Singh was driving his motorcycle bearing No. PC-13-Z-7683 ahead of Pritpal Singh and was hit by car bearing registration No. PB-12-H-0024 coming from the side of Cheema in a rash and negligent manner. Due to which, the motorcycle of the deceased struck into the kicker tree and fell into ditches of side of road and received grievous injury on head. F.I.R dated 02.07.2014 with regard to the alleged accident was registered at P.S. Cheema.

The learned Tribunal after going through the entire evidence held that the accident had occurred due to rash and negligent driving of the driver of the offending vehicle and gave the compensation to the claimants of the deceased as mentioned below:-

Sr. No.	***Heads***	***Calculations***
(i)	Salary	Rs.6000/- per month
(ii)	50% of (i) above to be added as future prospects= Age of the deceased=18 years	Rs.6000+Rs.3000=Rs.9,000/-
(iii)	1/3rd of (ii) deducted as personal expenses of the deceased=	Rs.9000-Rs.3000=Rs 6000/- per month
(iv)	Compensation after multiplier of 18 is applied	Rs.6000 X 12 X 18= Rs.12,96,000/-
(v)	Loss of love and affection to parents	Rs.25,000/-
(vi)	Funeral charges	Rs.25,000/-
(vii)	Medical treatment	Rs.1,94,501/-
(ix)	Total Compensation awarded	Rs.15,40,501/-

Learned counsel for the appellant has argued that the learned tribunal has erred in law in deducting the amount of 1/3rd of income of deceased towards his personal and living expenses. As per the judgment of ***Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) Page 77',*** the deduction should be half towards personal and living expenses, as the deceased was bachelor.

This argument of learned counsel for the appellant is liable to be rejected on the ground that even if we assume that the learned Tribunal has erred in law in deducting 1/3rd towards personal and living expenses of the deceased but the learned Tribunal has granted Rs.25,000/- towards love and affection to parents but this Court usually gives Rs.50,000/- to each parents in case of a death of a bachelor. So if we calculate the compensation by deducting 50% towards personal and living expenses, the amount comes to Rs.12,16,501/- and if the claimants will come for enhancement, this Court will usually give Rs.12,91,501/-.

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 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.

In view of the above mentioned judgments, the appeal is dismissed being devoid of any merit.

05.12.2015 (***RITU BAHRI***)

G Arora ***JUDGE***