IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

F.A.O No. 8633 of 2015 (O&M)
Date of decision:- 22.12.2015

New India Assurance Co. Ltd. ...Appellant

Versus

Labh Singh and others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Vinod Chaudhari, Advocate
for the appellant

RITU BAHRI J.

C.M. No. 27233-CII of 2015

For the reasons mentioned in the application, delay of 10 days in filing of the present appeal is condoned.

The applications stand disposed of accordingly.

F.A.O No. 8633 of 2015

This appeal is by the insurance company disputing the liability foisted upon it by the Motor Accident Claims Tribunal, Karnal (for brevity, the tribunal'), vide its award/order dated 14.08.2015 whereby the appellant-Company (for short 'the appellant') was held liable to make the compensation to the tune of Rs.24,86,400/-.

Facts not in dispute

On 14.02.2013, Manjeet Singh along with his wife Raj Kaur, Lakhmir Singh s/o Hakam Singh and Ajay son of Ram Kishan were gong from village Bapa to Karnal to meet their relative in their honda city car bearing registration No HR-02S-7923 and when they reached near Govt Uchana Farm-Karnal, then a truck bearing temporary No. JH-05-A-729/K/13 being driven by respondent No. 1 came in a rash and negligent manner from Karnal side and struck against the car of the claimants, as a result of which the car turned and crushed by the offending vehicle, due to which Manjeet Singh and Lakhmir Singh died at the spot, whereas Ajay and Raj Kaur had received multiple, grievous and serious injuries. They were taken to Govt Hospital, Karnal and in the hospital, Raj Kaur also succumbed to her injuries. F.I.R No. 122 dated 14.02.2013 has been registered in this regard under Sections 279/304-A IPC against respondent No. 1 with police station Sadar-Karnal. The offending chasis is being owned by respondent No. 2-tata Motor-Jamshedpur and insured with respondent No. 3

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:-

Manjeet Singh

Sr. No.	***Heads***	***Calculations***
(i)	Salary	Rs.10793/- per month
(ii)	30% of (i) above to be added as future prospects= Age of the deceased=50 years	Rs.10793+Rs.3600=Rs.14400/-
(iii)	1/4th of (ii) deducted as personal expenses of the deceased=	Rs.14400-Rs.3600=Rs10800/- per month
(iv)	Compensation after multiplier of 13 is applied	Rs.10800 X 12 X 13= Rs.16,84,800/-
(v)	Loss of estate	Rs.10,000/-
(vi)	Funeral charges	Rs.10,000/-
(vii)	Loss of love and affection	Rs.1,00,000/-
(ix)	Total Compensation awarded	Rs.18,04,800/-

Raj Kaur

Sr. No.	***Heads***	***Calculations***
(i)	Salary	Rs.14400/- per month
(ii)	1/3rd of salary	Rs.4800/- per month
(iii)	1/4th deduction towards personal expenses	4800-1200=Rs.3600/-
(iv)	Multiplier of 13	3600X12X13=Rs.5,61,600
(v)	Loss of Estate	Rs.10,000/-
(vi)	Funeral expenses	Rs.10,000/-
(vii)	Loss of love and affection	Rs.1,00,000/-
(ix)	Total Compensation awarded	Rs.6,81,600/-

Learned counsel for the appellant has argued that even though the chasis was owned by Tata Motors and was insured with the Insurance Company, the contract of taking the chasis was not with Tata Motors. So, the Insurance Company is not liable to pay the compensation.

Heard learned counsel for the appellant

Reference at this stage can be made to a written statement filed by the Appellant-Insurance Company wherein it has been admitted that the chasis in question was insured vide cover note No. 1371150157 for a period from 07.02.2013 to four days in the name of TATA Motors Pvt. Ltd for journey from Jamshedpur to Jammu. Reference can further be made to Mark C-1 i.e the certificate issued by Branch Manager of the appellant-Insurance Company which reveals that the offending vehicle was insured vide policy No.12140231120200002008 and declared under Motor4 Trade Road Transit Risk Liability Policy and the coverage is valid from the date of its dispatch (07.02.2013) till reaching of the vehicle at its destination point. Further as per Mark C i.e the certificate issued by TATA Motors certifying that the offending vehicle was being transported by B.M. Transport for destination to RSO-Jammu. Further as per Mark A, the driving licence of Sanjay Kumar was valid upto 10.06.2015 and was being authorized to drive the vehicle, involved in the accident.

Thus, once the Manager of the Appellant-Insurance Company had issued certificate Mark C-1 that the offending vehicle was insured vide policy No.12140231120200002008 and declared under Motor Trade Road Transit Risk Liability Policy and the coverage is valid from the date of its dispatch (07.02.2013) till reaching of the vehicle at its destination point, thereafter, the appellant-Insurance Company cannot wriggle out from the liability foisted upon them.

Learned counsel for the appellant is further challenging the award on the ground that the learned Tribunal has erred in law while giving the compensation to the claimants and it is on the higher side.

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.

22.12.2015 (***RITU BAHRI***)

G Arora ***JUDGE***