

In the High Court of Punjab and Haryana at Chandigarh

Cross Objection No.46-CII of 2015 in/and
FAO No.618 of 1997 (O&M)

Date of decision: February 19, 2016

National Insurance Company

..... Appellant

Versus

Shanti Devi and others

..... Respondent

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. R.M. Suri, Advocate for the appellant.

Mr. Surinder Gandhi, Advocate for the Cross-objectors-
respondents No.1,2 and 4 to 6.

Mr. D.R. Bansal, Advocate for respondent No.10.

Mr. Surender Pal, Advocate for respondent No.11.

Mr. Raja Sharma, Advocate for Mr. Kamal Sharma, Advocate
for respondent No.12.

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?*

AJAY TEWARI, J. (Oral)

This appeal has been filed by the claimants for the enhancement of compensation and to modify the award dated 12.11.1996 passed by the Motor Accident Claims Tribunal, Hisar awarding compensation of ₹2,30,400/- along with interest @ 12% p.a. on

account of death of Zile Singh (aged 38 years) in motor vehicle accident.

X-objection has also been filed by respondents No.1 and 2 and 4 to 6.

Brief facts are that on 29.08.1990 Zile Singh as driver of a truck bearing registration No.HYT/8977 belonging to one Raghbir Chand was driving the said truck from Hissar to Panipat while loaded with mustard cakes. One Balwan Singh Conductor and Naresh Kumar nephew of the truck owner Raghbir Chand were also travelling in the said truck. When the said truck reached near the bus stand of village Gadhi on the G.T. Road, the truck was halted by its driver Zile Singh for checking water and tyre pressure at which juncture a four-wheeler bearing registration No.HYS/8893 driven by respondent No.1 Jagpal in a rash and negligent manner came from behind and struck against the front bumper of the truck and injured Zile Singh, who succumbed to his injuries at the spot.

Learned counsel for the appellant has argued that the vehicle was transferred prior to the date of accident and after the transfer, transferee renewed the insurance but in the name of the registered owner. His argument is that the insurance of the vehicle in the name of a registered owner by subsequent transferee amounts to fraud.

In my opinion, this would not be so. It is obviously a case where the insurance had lapsed before the vehicle could be transferred in the name of the new owner and that is why the transferee got it renewed. I put it to learned counsel for the appellant whether the transferee could have applied for a refund of the premium on the

ground that the insurance had been done in the name of the registered owner. Learned counsel has fairly stated that this would be no ground for refunding the premium. In the circumstances, the argument that the renewal of the insurance by the transferee in the name of the original owner should be termed as fraud in the facts and circumstances of the case cannot be accepted.

The second argument is that in any case the transferee having not notified the insurance company the appellant is entitled to recover the same. Reliance is placed upon **Rikhi Ram and another Vs. Smt. Sukhrania and others** passed in Appeal (Civil) No.1578 of 1994, decided on 05.02.2003. Their Lordships hold as follows:

“A perusal of Sections 94 and 95 would further show that the said provisions do not make compulsory insurance to the vehicle or to the owners. Thus, it is manifest that compulsory insurance is for the benefit of third parties. The scheme of the Act shows that an insurance policy can cover three kinds of risk, i.e. owner of the vehicle; property (vehicle) and third party. The liability of the owner to have compulsory insurance is only in regard to the third party and not to the property. Section 95(5) of the Act runs as follows:

"Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify the person or classes of person specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of person.' The aforesaid provision shows that it was intended to cover two legal objectives. Firstly, that no one who was not a party to a contract would bring an action on a contract;

and secondly, that a person who has no interest in the subject matter of an insurance can claim the benefit of an insurance. Thus, once the vehicle is insured, the owner as well as any other person can use the vehicle with the consent of the owner. Section 94 does not provide that any person who will use the vehicle shall insure the vehicle in respect of his separate use.

On an analysis of Section 94 and 95, we further find that there are two third parties when a vehicle is transferred by the owner to a purchaser. The purchaser is one of the third parties to the contract and other third party is for whose benefit the vehicle was insured. So far, the transferee who is the third party in the contract, cannot get any personal benefit under the policy unless there is a compliance of the provisions of the Act. However, so far as third party injured or victim is concerned, he can enforce liability undertaken by the insurer.

For the aforesaid reasons, we hold that whenever a vehicle which is covered by the insurance policy is transferred to a transferee, the liability of insurer does not ceases so far as the third party/victim is concerned, even if the owner or purchaser does not give any intimation as required under the provisions of the Act. “

In view of this decision, it is held that it is open to the appellant to recover the amount from the insured.

By way of cross-objections, the claimants have prayed for enhancement.

Learned counsel for the claimants-X-objectors has argued that the income of ₹1800/-per month for a truck driver is too low because as per the claimants cross-objectors, he was earning ₹4,000/-

per month. In this connection, it may be noticed that in the year 1990, the taxable limit was ₹18,000/-. Therefore, there is no scope for enhancement of income in the lack of evidence.

The counsel has further argued that there were seven dependants excluding the father and therefore deduction could not have been more than 1/5th. I find this to be correct. Consequently, deduction is taken as 1/5th.

Learned counsel has further argued that nothing has been paid on account of funeral expenses, consortium and love and affection. I find this to be correct also.

Consequently, keeping in view the date of the accident, I award a sum of ₹50,000/- to appellant No.1 on account of loss of consortium and an amount of ₹50,000 on account of loss of love and affection. I further award an amount of ₹25,000/- to appellants No.2,4,5 and 8 on account of love and affection. An amount of ₹50,000/- to appellants No.3 and 6 each on account of loss of love and affection. I further award an amount of ₹10,000/- for funeral expenses. The enhanced amount would carry interest @ 8% per annum from the date of filing of the writ petition till the date of payment. Apart from the individual enhancements, the entire amount shall be handed over to appellant No.1 and since the children must have attained the age of majority by now and the amount falling to their shares be disbursed to them.

The appeal and the X-objection are disposed of in the above

Since the main case has been decided, the pending Civil
Misc. Application, if any, also stands disposed of. No costs.

(AJAY TEWARI)
JUDGE

February 19, 2016
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