987.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1633 of 2010 (O&M)
Date of decision: 19.02.2016

United India Insurance Company Limited ... Appellant

versus

Sarbjit Kaur and others .... Respondents

II. <u>FAO No.6264 of 2010</u> (O&M)

Sarabjit Kaur and another ... Appellants

versus

Kulbir Singh and another .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Vikas Mohan Gupta, Advocate,
for the appellant in FAO No.1633 of 2010 and
for respondent No.2 in FAO No.6264 of 2010.

Mr. Manpreet Singh Longia, Advocate,
for the appellants in FAO No.6264 of 2010 and
for respondents 1 and 2 in FAO No.1633 of 2010.

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1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

<u>K.Kannan, J.</u> *(Oral)*

1. Both the appeals are connected and they are disposed of by a common order. The appeal in FAO No.1633 of 2010 is by the insurer denying liability and the appeal in FAO No.6264 of 2010 is

at the instance of the claimants seeking for enhancement of compensation.

2. The deceased was aged 50 years. The accident was said to have taken place at the time when he was driving his motorcycle when yet another motorcycle driven by the insured dashed against him that resulted in grievous injuries. He was admitted to the hospital but died two weeks later on 23.10.2008. A DDR had entered on the following day on 24.10.2008 at the instance of his son that merely recorded the fact of the deceased having been involved in a motor accident and that he had died. After an investigation, a FIR was lodged as late as on 13.08.2009. At the trial, a person by name Dilbagh Singh (PW3) gave evidence to the effect that he saw the accident and that he reported about the accident on the same day at the residence of the deceased. However, the widow gave a conflicting version that Dilbagh Singh informed them about 4/5 months later and that was when the identity of the offending vehicle was known. The driver of the vehicle did not examine himself.

3. The Investigator of the Insurance Company had been examined as RW1 and he gave a report that admitted the involvement of the insured's vehicle. It was brought out in the report that the owner and the driver of the insured's vehicle had actually admitted to the involvement of his vehicle in the accident,

but he declined to give any statement in that regard. The report concluded that the accident took place involving the motorcycle and that there was a valid policy of insurance.

4. If there was an investigation undertaken by the insurer as it ought to be at all times the case, the Insurance Company must have escalated its own good effort by offering a reasonable settlement. Unfortunately, the insurer did not feel compelled to take a reasonable defence but took up a false plea of non-involvement of the vehicle and attempted to pick holes on the alleged version of eyewitness and the widow of the deceased. This has been a recurrent theme that the Insurance Company sees itself only as an adversary to challenge every claim and makes no responsible defences. At least after the award was passed, the Insurance Company must have been graceful to satisfy the claim but instead it has challenged the award on the same ground of non-involvement. I deprecate the conduct of the insurer and dismiss the appeal as frivolous. I take the report of the Investigator itself as good enough, for, it could be nobody's case that the Investigator was acting against the insurer for any oblique purpose. All this is not to state that the Investigator's report must at all times be accepted and the Tribunal could simply rely on an Investigator's report. There is always a court's duty to examine the evidence which is brought before it, if there is an inconsistent version about the Investigator's report and

the claimants' version, I find if the claimants' version is supported by the Investigator, it will be futile to engage in a full-fledged trial and allow the insurer to contradict its own report by letting evidence and cross-examine to claimants' witnesses. I have no doubt in my mind that the police investigation had correctly led to lodging of FIR against the insured and the award making the insurer liable was justified.

5. As regards the quantum, there was evidence that the deceased was maintaining about 35 to 40 cows and he was supplying milk to MCC, Morinda, Milk Plant, Mohali under the name and style Rangi Dairy Farm. His wife deposed that the husband was earning ₹2,60,173/-. There was also evidence that he used to prepared cattle feed for sale and was earning about ₹1,44,000/- per annum. The claimant placed on record a Dairy Entrepreneurship Training Certificate issued to the deceased and the payment slip of the milk sold to Verka during the financial year 2007-08. Taking up the claim by the claimants that the deceased used to earn about ₹32,000/- per month, the court reasoned that he was not an income tax assessee and, therefore, his own income must have been less than the taxable limit and assessed the income at ₹15,000/- and reckoned the amount in excess as the expenses for running the farm. I find no error in the approach adopted by the Tribunal and also make no modification with reference to income

assessed. I will make a deduction of 1/3rd and take the contribution as ₹1,20,000/- and apply a multiplier of 13 instead of 11 as adopted by the Tribunal. The loss of dependence will be ₹15,60,000/-. I will add additional amount of ₹1 lakh to the wife and ₹50,000/- for loss of guidance in loss of love and affection to the son. He remained admitted in the hospital and no medical expenses were shown to have been incurred but I am prepared to assume that it would have been not less than ₹15,000/- and I will also provide for transportation expenses of ₹5,000/- and funeral expenses of ₹25,000/-. The aggregate amount shall be ₹17,55,000/-. The additional amount over what has been awarded already by the Tribunal attract interest at 9% per annum from the date of petition till date of payment and the amount will be distributed between the widow and major son equally. The liability shall be on the Insurance Company. The appeal by the Insurance Company in FAO No.1633 of 2010 is dismissed and the appeal in FAO No.6264 of 2010 by the claimants for enhancement of compensation is allowed. The Insurance Company shall be made liable to pay ₹25,000/- costs to the respondents in both the appeals.

(K.KANNAN)
JUDGE

19.02.2016
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