

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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Date of decision: 21.11.2016

1) FAO 1798 of 2012

Reliance General Insurance Company Limited *Appellant*

Versus

Urmila Devi and others *Respondents*

2) FAO 1799 of 2012

Reliance General Insurance Company Limited *Appellant*

Versus

Tileshwari Devi and others *Respondents*

3) FAO 4829 of 2012

Urmila Devi and others *Appellants/claimants*

versus

Samjay and others *Respondents*

4) FAO 4830 of 2012

Smt. Trileshwari Devi and others *Appellants/claimants*

versus

Sanjay and others *Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. T K Joshi, Advocate
for the appellant-Insurance Company

Mr. Namit Sharma, Advocate
for the claimants

Mr. Suneet Singh Deol, Advocate
for the respondent/owner of the offending vehicle

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Rekha Mittal, J.

This order will dispose of aforesaid appeals as these have emerged out of the same award dated 14.12.2011 passed by the Motor Accidents Claims Tribunal, Panipat (in short, 'the Tribunal') and identical questions of law and fact are involved for adjudication. However, for the sake of convenience, facts are taken from FAO No. 1798 of 2012.

Two appeals (FAO Nos. 1798 and 1799 of 2012) have been filed by the Reliance General Insurance Company Limited (hereinafter to be referred as 'the Insurance Company') and other two (FAO Nos. 4829 and 4830 of 2012) have been filed by the claimants seeking enhancement of compensation.

Counsel for the insurance company has assailed the award on the sole ground that in a petition filed under Section 163-A of the Motor Vehicles Act, 1988 (in short, 'the Act'), the Tribunal has allowed deduction to the extent of 1/4th in place of 1/3^d as provided in the structured formula under Second Schedule, appended to Section 163-A of the Act.

Counsel for the claimants, on the contrary, has submitted that the insurance company is not entitled to challenge the award qua quantum of compensation, therefore, plea of the insurance company with regard to deduction cannot be entertained much less accepted. In support of his

contention, he has relied upon judgment of Hon'ble the Supreme Court of India ***National Insurance Company Limited, Chandigarh vs. Nicolletta Rohtagi and others, 2002 (4) RCR (Civil) 464***, wherein the Apex Court has held that the consistent view of this Court had been 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 offending vehicle. Further argued that as the matter with regard to competence of the insurance company to file an appeal qua quantum of compensation is pending consideration before a larger bench in view of reference made in ***United India Insurance Company Limited v. Shilla Datta and others, 2012 (1) RCR (Civil) 582***, the law existing at present is to be applied in the present scenario. For this purpose, he has relied upon judgment of the Apex Court ***Manager, National Insurance Company Limited v. Saju P Paul and another, 2013 (1) RCR (Civil) 869***.

To substantiate plea of the claimants for enhancement of compensation, counsel has submitted that the claimants are entitled to compensation under conventional heads in the light of judgments of Hon'ble the Supreme Court of India ***Rajesh and others vs. Rajbir Singh and others, 2013 (3) RCR (Civil) 170*** and ***Vimal Kanwar and others v. Kishore Dan and others, 2013 (2) RCR (Civil) 945***. In addition, it is argued that this Court in ***Oriental Insurance Company Limited v. Gurdev Singh and others, 2013 (2) RCR (Civil) 611*** has held that decision of Hon'ble the Supreme Court in ***Sarla Verma vs. Delhi Transport Corporation, 2009 (3) R.C.R. (Civil) 77*** and ***Raj Kumar v. Ajay Kumar, 2011 (2) R.C.R. (Civil) 101*** can suitably be applied even in cases falling under Section 163-A of the

Act and the Second Schedule of the Act is not a watertight compartment. Consequently, it would be appropriate to hold that in so far as the limits of conventional heads in the Second Schedule has no co-relation with the benefit granted under Section 163-A i.e. of the need to do away with proving negligence, a deviation may be made in assessing/awarding compensation under the heads medical expenses, funeral expenses, loss of consortium/loss of estate. In this regard Courts can resort to ratio of the decisions of the Hon'ble Supreme Court in *Sarla Verma* (supra) and *Raj Kumar* (supra).

It has been argued that the Tribunal has not even allowed compensation qua loss of estate as per the Second Schedule.

Counsel for the owner/insured of the offending vehicle has challenged the findings of the Tribunal that the deceased were gratuitous passengers and the insurance company is entitled to recover the amount of compensation from the insured after discharging liability qua the claimants. It is argued that as the goods (marbles) loaded in the vehicle in question belonged to Charbhujia Marble House, Panipat and the deceased happen to be representatives of the aforesaid Marble House, the insurance company can neither escape its liability to pay compensation nor assert recovery right the against the insured.

Counsel for the insurance company, while refuting contentions of counsel for respondent No. 6, has submitted that the owner/insured has not preferred any appeal against the award passed by the learned Tribunal. Respondent No. 6 did not examine a witness of Charbhujia Marble House, Panipat to prove that the deceased were the representatives of owner of the

goods, carried in the vehicle.

I have heard counsel for the parties, perused the paper book and the records.

The first question that arises for consideration is '*whether the insurance company is competent to maintain an appeal to challenge the quantum of compensation on any count whatsoever?*'

No doubt, the Apex Court in *Nicolleta Rohtagi's* case (supra) had held that the insurer has no right to file an appeal to challenge the quantum of compensation. Later, this question came up for consideration before the Apex Court in *Shila Datta's* case (supra). Hon'ble the Supreme Court in para 2 of the judgment has referred to two questions that arose for consideration in view of reference made by a Two Judge Bench on 03.12.2007. In para 3, there is reference to five points which were urged by the insurance company that the insurance companies are not barred from questioning quantum of compensation either before the Motor Accidents Claims Tribunal or in the appeals arising from the awards of the Tribunal. Point No. (i) pertains to cases where the claimants impleaded the insurer as a respondent in the claim application and is answered in para 11, reads thus:-

11. Therefore, where the insurer is a party-respondent, either on account of being impleaded as a party by the tribunal under section 170 or being impleaded as a party-respondent by the claimants in the claim petition voluntarily, it will be entitled to contest the matter by raising all grounds, without being restricted to the grounds available

under section 149(2) of the Act. The claim petition is maintainable against the owner and driver without impleading the insurer as a party. When a statutory notice is issued under section 149(2) by the tribunal, it is clear that such notice is issued not to implead the insurer as a party-respondent but merely to put it on notice that a claim has been made in regard to a policy issued by it and that it will have to bear the liability as and when an award is made in regard to such claim. Therefore, it cannot, as of right, require that it should be impleaded as a party-respondent. But it can however be made a party-respondent either by the claimants voluntarily in the claim petition or by the direction of the Tribunal under section 170 of the Act. Whatever be the reason or ground for the insurer being impleaded as a party, once it is a party-respondent, it can raise all contentions that are available to resist the claim.

Point No. (ii): *Maintainability of a joint appeal by the owner of the vehicle (insured) and insurer* was also answered by the Bench though the same is not relevant in the present context. However, Points No. (iii) to (v) were referred for decision by a Larger Bench. In view of answer to point No. (i), reproduced hereinbefore, I find it difficult to accept contention of the claimants that the insurance company is not entitled to question quantum of compensation even in cases where the insurance company has been impleaded as a party by the claimants. In this view of the matter, the claimants cannot derive any advantage to their contention from the

judgment in *Nicolleta Rohtagi's* case (supra).

Indisputably, the petitions for compensation were filed by invoking Section 163-A of the Act. In a claim filed under Section 163-A of the Act, the Tribunal is obligated to follow the structured formula laid down in the Second Schedule appended to Section 163-A of the Act. The Second Schedule has a note beneath the table describing multiplier and compensation in case of death and the same reads as follows:-

“The amount of compensation so arrived at in the case of fatal accident claims shall be reduced by 1/3rd in consideration of the expenses which the victim would have incurred towards himself had he been alive.”

Counsel for the claimants has failed to cite any precedent that permits deviation from structured formula for assessment of compensation in a death case where the claim has been filed under Section 163-A of the Act. In this view of the matter, I find merit in contention of the insurance company that the Tribunal has wrongly allowed deduction to the extent of 1/4th in place of 1/3rd for personal and living expenses of the deceased. By allowing deduction to the extent of 1/3rd, loss of dependency comes to Rs.2000x12x14=**Rs.3,36,000.00.**

Counsel for the claimants has pressed for enhancement of compensation under conventional heads by relying upon judgment of a coordinate bench (FAO No. 884 of 2014, decided on 17.11.2015) wherein the Court dealt with an appeal filed by the insurance company against the award under Section 163-A of the Act in a injury case.

Hon'ble the Apex Court in *Puttamma and others v K L Narayana Reddy in 2014(1) RCR (civil) 443* has expressed its serious

concern that the Second Schedule has now become redundant, irrational and unworkable, due to changed scenario including the present cost of living and current rate of inflation and increased life expectancy. Direction was issued to the Central Government to amend the Second Schedule of the Act, keeping in view the present cost of living. Till date, the legislature has not brought any amendment in the Second Schedule. The very fact that the Apex Court which has wider jurisdiction did not think it proper to tinker with the Second schedule rather thought it fit to issue direction to the Central Government to make proper amendments, it is difficult to accept that this Court can add something to the Second Schedule or uphold plea of the claimants that they are entitled to compensation under conventional heads at par with or on the analogy followed in petitions filed under Section 166 of the Act. In this view of the matter, plea of the claimants to allow compensation under conventional heads by taking into consideration judgments of *Rajesh's* case and *Vimal Kanwar's* case (supra) is untenable. However, the learned Tribunal has not allowed any compensation qua loss of estate. The claimants shall be entitled to an amount of Rs.2500.00 in each case for loss of estate.

This brings the Court to the plea of the owner/insured of the offending vehicle with regard to recovery rights to the insurer. The Tribunal in para 27 of the award has dealt with this aspect of the matter. Counsel for respondent No. 6 has not disputed correctness of factual findings recorded by the Tribunal that the deceased were casual labourers employed for unloading goods of Charbhuja Marble House, Panipat. Neither they were owners of the goods nor they can be considered to be authorized agents of

owner of the goods. They were sitting in the rear portion of the Canter where the goods were loaded. Therefore, their position is that of gratuitous passengers and as such, they were not covered under the terms and conditions of the insurance policy and the provision of Section 147 of the Act does not attract.

Counsel for the insured has not denied that no evidence was adduced by the insured in order to establish that the deceased were the authorized agents of Charbhujia Marble House, Panipat to whom the goods loaded in the Canter belonged to. In this view of the matter, no fault much less illegality can be noticed in the findings of the Tribunal that the deceased were the gratuitous passengers, therefore, the insurance company though has no liability in law but shall be entitled to recover the amount of compensation after discharging liability qua the claimants.

As an upshot of the aforesaid discussion, compensation payable in each case is tabulated here-in-below:-

Sr. No.	Particulars	Amount
1.	Loss of dependency after allowing deduction to the extent of 1/3 rd 2000x12x14=3,36,000.00	3,36,000.00
2.	Loss of consortium, allowed by tribunal	5,000.00
3.	Transportation, allowed by tribunal	2,000.00
4.	Loss of estate, allowed by this Court	2,500.00
	Total	3,45,500.00

As such, compensation with regard to death of Chand Kishore alias Chander Kishore alias Palat Ram and Rameshwar Mukhiya is reduced to the extent of Rs.39,500.00/- in each case.

For the foregoing discussion, the appeals filed by the insurance

company are partly allowed in the aforesaid terms. However, the appeals filed by the claimants are dismissed except allowing a limited benefit qua loss of estate.

No order as to costs.

Xerox copy of this order be placed on the file of connected cases.

(Rekha Mittal)
Judge

21.11.2016
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No