

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

FAO No. 4395 of 2016 (O&M)

Date of Decision: 14.09.2016

New India Assurance Company Limited

.....Appellant

Vs.

Ruby and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Vinod Gupta, Advocate,
for the appellant.

Mr. Munish Gupta, Advocate,
for the caveator.

AMOL RATTAN SINGH, J. (ORAL)

CM No. 15201-CII-2016

For the reasons mentioned in the application, the delay of 12 days in filing the appeal, is condoned.

The application stands disposed of, accordingly.

FAO No. 4395-2016

In this appeal, the appellant-insurance company has challenged the impugned Award of the learned Tribunal on two grounds only, as submitted by learned counsel for the appellant.

First, that the income assessed, of the respondent-claimant, @ Rs. 13,000/- per month, is excessive as she was only a student undergoing a course of nursing from a hospital and college of nursing in Delhi.

Secondly, it is submitted that though the learned Tribunal has attributed negligence to the extent of 50% each on respondents No. 2 and 5 herein, i.e. Bakshish Singh and Hira singh, who were driving the two vehicles in question, eventually the respondents before the Tribunal having been held jointly and severally liable to pay the compensation, the respondent-claimant has filed an execution application only against the present appellant, which had insured the bus driven by respondent No. 5 herein.

As regards the question of assessment of the income of the respondent-claimant, it is seen that though she had claimed that her income was Rs. 18,000/- per month approximately, once she had completed her nursing course, the Tribunal had only assessed Rs. 13,000/-.

I see no ground to interfere with that finding, in view of the fact that it is common knowledge that a qualified nurse would be actually earning far more than the said amount upon completing her/her course of nursing.

The respondent-claimant is found to have been disabled to the extent of 100%, thereby rendering her unfit for any job. Had she completed her nursing course, she would be earning at least Rs. 13,000/- per month, if not more.

Hence, that contention of learned counsel for the appellant is rejected, without prejudice to the rights of the respondent-claimant for any enhancement that she may or may not seek, in any appeal.

Coming to the issue of the liability to pay the compensation, it is settled law that the claimant is entitled to seek compensation from any of the tort-feasors and in this case, if the respondent-claimant has chosen to

implead only the appellant-insurance company in execution proceedings, I see no ground to interfere with that finding. However, since all the respondents before the Tribunal, i.e. the present appellant as also respondents No. 2 to 6 herein (there being no respondent No. 4), have been held jointly and severally liable to pay the compensation, the appellant would be at liberty to seek recovery of the proportionate amount of compensation, from its co-respondents before the Tribunal.

Reference in this regard may be had to the judgment of the Supreme Court in **Khenyei Vs. New India Assurance Co. Ltd.**, (2015) 9 SCC 273.

The appeal is accordingly disposed of with the aforesaid observation.

The statutory amount deposited by the appellant be forwarded to the Motor Accidents Claims Tribunal, seized of the execution proceeding.

(AMOL RATTAN SINGH)
JUDGE

September 14, 2016
nitin/vcgarg

Whether speaking/reasoned	Yes
Whether Reportable	No.