IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4565 of 2016 (O&M)
Decided on: 30.08.2016

United India Insurance Company Limited

....Appellant

Versus

Saroj and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. D.P. Gupta, Advocate
for the appellant.

REKHA MITTAL, J.

CM No.17058-CII of 2016

Allowed as prayed for.

Documents Annexures A-1 and A-2 are taken on record subject to just exceptions.

Application stands disposed of.

FAO No.4565 of 2016 (O&M)

The present appeal has been directed against the award dated 28.04.2016 passed by the Motor Accident Claims Tribunal, Karnal (in short 'the Tribunal') whereby compensation has been awarded in favour of the claimants in regard to death of Abhimanyu @ Ajay in a motor vehicular accident due to rash and negligent driving of car No.HR-06M-5821 by Hardeep Rana, its driver.

The insurance company (United India Insurance Company Limited) has assailed the award primarily on three counts. The first submission made by counsel is that the learned Tribunal has not adverted to cover-note Ex.R-1 which clearly proves that the alleged offending vehicle was insured w.e.f. 31.12.2012 to 30.12.2013 and as such, there was no insurance of the vehicle on 28.12.2012, the day the vehicle met with an accident resulting in death of Abhimanyu @ Ajay. It is further argued that the learned Tribunal has wrongly placed reliance upon cover-note Ex.R-5 which was brought on record for the first time during cross-examination of Sh. Shekhar Chander, Marketing Manager, United India Insurance Company Limited – RW1. According to counsel, a criminal complaint was made to the police against Carnation Auto India Limited, Karnal with regard to the said company having committed fraud with the insurance company and after due enquiry/investigation, an FIR has been lodged against the said broker/agent. It is submitted that the cover-note Ex.R-5 is also the result of wrongful act/misdeed of the said broker/agent, therefore, findings recorded by the Tribunal holding the insurance company liable to pay compensation by relying upon Ex.R-5 are liable to be set-aside.

Another submission made by counsel is that the learned Tribunal has allowed benefit of future prospects despite the fact that the matter with regard to grant of future prospects is pending consideration before a Larger Bench in view of reference made in ***"National Insurance Company Limited Vs Pushpa and others"*** *vide* ***SLP No.8058/2014***. The claimants have been awarded compensation by adopting a multiplier of 18 on the basis of age of the deceased in place of age of the claimants (parents of the deceased). Counsel has submitted that even the matter with regard to multiplier where the deceased happens to be an unmarried person is pending consideration before a Larger Bench of Hon'ble the Supreme Court.

I have heard counsel for the appellant, perused the paperbook particularly the documents Ex.R-1 and R-5 and a copy of the statement of Sh. Shekhar Chander – RW1 examined by the insurance company.

The learned Tribunal on a detailed consideration of facts elicited during cross-examination of Shekhar Chander – RW1 has recorded its findings and a relevant extract from the observations made by the Tribunal, reads as follows:-

> *"........... In his cross-examination conducted by the learned counsel for respondent No.4, RW1 admitted that cover note Ex.R-5 was issued by their agent/broker namely Carnation Brokers Insurance on behalf of United India Insurance Company Limited and after issuing of Ex.R5 cover note, two copies of cover note called as Insurer copy and office copy was submitted by their broker alongwith proposal form, amount of premium in cash by depositing the same with the bank on 31.12.2012 alongwith Xerox copy of earlier Insurance alongwith one envelope sent by Carnation Auto Private Limited, Karnal to Chandigarh and the copy of the said envelope is Mark-RA. There was written agreement of United India Insurance Company Limited with Carnation Auto Private Limited, Phase No.1, Chandigarh or with Carnation Auto India Limited, Karnal. Self stated that Carnation Auto India Limited, was appointed by R.D.A. to work as Insurance Broker. Their company used to hand over the cover note book to the said concerned broker. He cannot tell on which date the cover note book was handed over to Carnation Auto India Limited as the record of the same is available in their office and he has not brought the same in the Court. Ex.R5 was correctly issued by Carnation Auto India Limited. The broker or agent of the insurance company returns the*

> *cover note after completion of the same to the insurance company...... There is no cutting or overwriting in the cover note Ex.R5 as well as in the writings there in United Insurance Company."*

Keeping in view the facts elicited during cross-examination of Shekhar Chander – RW1, it is difficult to find any fault in the findings of the Tribunal in relying upon Ex.R-5, the cover-note issued by an authorized broker/agent of the United India Insurance Company Limited. There is nothing on record to suggest that in any complaint made by the insurance company to Senior Superintendent of Police, Chandigarh or in the FIR stated to be lodged on the basis of that complaint, there is any reference or grievance expressed against the cover-note Ex.R-5. This apart, counsel has not disputed factual findings that there is no cutting or overwriting in the cover-note Ex.R-5 and two copies of the said document along with other documents were received in the office of the insurance company. In this view of the matter, the appellant cannot derive any advantage to its contentions from cover-note Ex.R-1 relied upon by the insurance company when admittedly Ex.R-1 does not bear any endorsement by the insured.

This brings the Court to challenge against quantum of compensation assessed by the learned Tribunal. The mere fact that a reference with regard to grant of future prospects or multiplier in similar circumstances is pending consideration before a Larger Bench is not sufficient to deny benefit of future prospects or adopting a multiplier of 18 in view of authoritative enunciation of law laid down in ***"Smt. Sarla Verma and others vs. Delhi Transport Corporation and another",*** **2009(3) R.C.R. (Civil) 77.** That being so, award passed by the learned Tribunal extending benefit of future prospects and adopting multiplier of 18 on the basis of age of the deceased cannot be faulted with.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed *in limine*.

(REKHA MITTAL)
JUDGE

30.08.2016
yakub

Whether speaking/reasoned Yes/No

Whether reportable: Yes/No