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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 30.08.2017

1. **FAO-5212-2004**

M/s United India Insurance Company Ltd.
... Appellant(s)

Versus

Harpal Kaur and others
... Respondent(s)

2. **FAO-5157-2004**

Harpal Kaur and others
... Appellant(s)

Versus

Manmohan Singh and another
... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.K. Bashamboo, Advocate
for the appellant in FAO-5212-2004 and
for respondent No.2 in FAO-5157-2004.

Mr. Jaideep Verma, Advocate
for respondent Nos.1 to 4 in FAO-5212-2004 and
for the appellants in FAO-5157-2004.

Mr. Himanshu Chhabra, Advocate
for respondent No.5 in CWP-5212-2004 and
for respondent No.1 in CWP-5157-2004.

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AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two appeals bearing ***FAO No.5212 of 2004*** titled as ***"M/s United India Insurance Company Ltd. V/s Harpal Kaur and others"*** preferred by the Insurance Company against the findings, fastening the liability upon it, owing to the death of Jawant Singh-owner of DCM Toyota No.PB-12-2007 and ***FAO No.5157 of 2004*** titled as ***"Harpal Kaur and others V/s Manmohan Singh and another"***, filed by the LRs of Jaswant Singh for enhancement of the compensation.

Mr. R.K. Bashamboo, learned counsel appearing on behalf of the United India Insurance Company Ltd., submits that the manner and mode in which the facts disclosed in the claim petition filed under Section 163-A of the Motor Vehicles Act, was that, Manmohan Singh was none-else, but son of Jaswant Singh and also driver of the Tempo. After reaching the destination (Delhi), in the process of parking of the Tempo, Jaswant Singh, who was standing behind the Tempo, was crushed in between the Tempo and wall brick. The insurance policy (Ex.R-2) brought on record shows that the vehicle owned and insured by Jaswant Singh. The owner in view of the settled law cannot be a third party and therefore, the petition was not maintainable. In this regard, a specific issue No.5 regarding *locus standi* was framed, but the Tribunal has given the findings against the Insurance Company, on the basis of 'no evidence'. The insurance policy itself proves the ownership of the vehicle and therefore, there was no occasion for the Tribunal not to address such issue.

On the contrary, Mr. Jaideep Verma, learned counsel appearing on behalf of the LRs of Jaswant Singh, submits that the compensation of ₹ 3,12,000/- awarded by the Tribunal is too less. The deceased was 45 years of age. Instead of multiplier 13 as has been taken by the Tribunal, multiplier 14 should have been applicable. The income of ₹ 3,000/- of the deceased assessed by the Tribunal is on lesser side being a transporter, thus, the amount of compensation is liable to be enhanced.

While rebutting the arguments of Mr. Bashamboo, on the premise of *locus standi,* he submits that the Insurance Company failed to prove on record any piece of evidence in support of the grounds taken in the memorandum of appeal, thus, urges this Court for dismissal of the appeal of the Insurance Company.

I have heard the learned counsel for the parties and appraised the paper book.

Admittedly the vehicle, aforementioned, was owned and insured by the deceased-Jaswant Singh son of Deva Singh. The question raised is whether the owner in an act policy can be third party or not. The Hon'ble Supreme Court had an occasion to ponder upon such question and it has been held that the owner cannot be third party. A reference is made to the judgments rendered in ***"Dhanraj V/s New India Assurance Company Ltd. and another" 2004 (8) SCC 553*** and ***"New India Assurance Company Ltd V/s Sadanand Mukhi & Ors", 2009 (1) RCR (Civil) 817.***

Mr. Verma, has not been able to rebut the aforementioned *ratio decidendi* by citing any other law, contrary to what has been held in judgment cited supra. The findings arrived at by the Tribunal on issue No.5, in my view, are erroneous and perverse and do not subscribe to the view with the law and specific objection taken in the written statement. The Insurance Company should not be non-suited in the manner and mode, as indicated above. Had Jaswant Singh been the third party, the petition could have been filed under Section 166 of the Motor Vehicles Act, but the facts, noticed above, reveal otherwise.

For the foregoing reasons, the finding of the Tribunal viz-a-viz issue No.5, by allowing the appeal of the Insurance Company, is modified to the extent that the Insurance Company is absolved from the liability and in other words, is discharged from indemnification.

As regards the enhancement of compensation, there is no question of enhancement as the claim petition was filed by LRs of deceased Jaswant Singh, who was the owner, therefore, they cannot seek the enhancement of compensation.

This Court while issuing notice of motion had ordered the disbursement of compensation deposited by the Insurance Company to the claimants against the security, which reads thus:-

> *"Notice of motion for 16.5.2005.*
> *Meanwhile, compensation to the respondents in pursuance of award of the Tribunal shall be disbursed only on their furnishing adequate security to the satisfaction of the Tribunal."*

In case the compensation against the security has already been disbursed to the claimants, the Insurance Company shall be entitled to seek refund of the money through execution by encashment of the security or revocation thereof or otherwise, in accordance with law.

Resultantly, the appeal bearing ***FAO No.5212 of 2004*** is allowed and appeal bearing ***FAO No.5157 of 2004*** is dismissed.

(AMIT RAWAL)
JUDGE

30.08.2017
Yogesh Sharma

Whether speaking/reasoned	**Yes/ No**	✓ Yes
Whether Reportable	**Yes/ No**	✓ No