IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.357

FAO No.816 of 2006
Date of decision : 01.12.2017

Rozi and others ..... Appellants

VERSUS

Subhash Chand and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mr. M.S. Kathuria, Advocate, for the appellants.

Mr. H.R. Nahoria, Advocate, for respondent No.1.

Mr. Paul S. Saini, Advocate, for respondent No.2.

Mr. Vikas Sharma, Advocate, for respondent No.4.

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SUDHIR MITTAL, J.

This appeal has been filed by the claimants, who are the widow, minor children and parents of the deceased-Parmod Kumar. They had filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') for claiming compensation on account of death of Parmod Kumar in an accident, which took place on 12.02.2004. The Motor Accidents Claims Tribunal, Jhajjar (hereinafter referred to as 'the Tribunal') granted ₹50,000/- as compensation under Section 140 of the Act, under no fault liability alongwith interest @ 9% per annum from the date of filing of claim petition till realization. The owner and the insurer of the offending vehicle were held liable to pay the compensation jointly and severally. As mentioned earlier, the accident took place on 12.02.2004. Deceased-Parmod Kumar was driving a car bearing registration No.HR-31B-2555 and was returning from Delhi. At about 7.00 p.m., a car bearing registration No.HR-25F-2260 came from the opposite side and was being driven rashly and negligently. It hit the car being driven by Parmod Kumar which fell into the ditches. As a result of the accident, Parmod Kumar received multiple injuries and died on the way to hospital. Later on, it transpired that the offending vehicle bore registration No.DL-6CH-6527 and was a stolen vehicle. An FIR was registered at Police Station Sadar, Rohtak, under Sections 279, 337 and 304-A IPC. Regarding deceased-Parmod Kumar, it was stated in the claim petition that he was twenty five years of age and was earning ₹5,000/- per month as a driver. Thus, claim of ₹15,00,000/- as compensation was made.

2. Subhash Chand, S/o Sh. Gopal Chand (owner of the offending vehicle) inter alia, pleaded that his car had been snatched at gun-point by some un-known persons and that he had got an FIR registered at Police Station Kanjhawala, New Delhi, under Section 392 read with Section 34 IPC. Respondent No.2-New India Assurance Company Limited (insurer of the offending vehicle) pleaded no liability on the ground that the car was being driven by an unauthorized person resulting in violation of the terms of the certificate of insurance.

3. On examination of the evidence on record, the Tribunal returned a finding of fact that the accident took place due to rash and negligent driving of the driver of the offending vehicle. The income of the deceased-Parmod Kumar was assessed as ₹2100/- per month being minimum wages for an un-skilled labourer because no evidence was produced on the record regarding his income. The widow of Parmod Kumar appeared as PW-1 and stated that he was earning ₹8,000/- to ₹10,000/- per

month, whereas in the claim petition his monthly income was stated to be ₹5,000/-. Thus, the Tribunal was justified in assessing the monthly income of the deceased in accordance with minimum wages being drawn by an un-skilled labourer. Further, the Tribunal deducted 1/3rd on account of personal expenses and applied a multiplier of 16 by holding the age of the deceased to be less than twenty five years based on Ex.P-3, his matriculation certificate, which recorded the date of birth as 12.12.1981. The finding that the deceased-Parmod Kumar was less than twenty five years of age on the date of the accident cannot be faulted. However, the deduction of 1/3rd for personal expenses is excessive. Admittedly, the deceased is survived by his widow, two minor children and aged parents. Thus, there are five dependents of the deceased and therefore, a deduction of 1/4th only was permissible as laid down by the larger Bench of Hon'ble Supreme Court of India in **National Insurance Company Limited Vs. Pranay Sethi and Others, Special Leave Petition (Civil) No.25590 of 2014, decided on 31.10.2017.** Following the dictum of the said judgment, multiplier of 16 applied by the Tribunal is also incorrect; it should have been 18 in view of the fact that the deceased was less than twenty five years of age. The Tribunal has also erred in not granting increase on account of future prospects, which should have been 40%, in view of his age.

4. Thus, the claimants-appellants are entitled to compensation as follows:

1.	Annual Income (1575x12)	₹18,900/-
2.	Increase of 40% in income on account of future prospects (18,900+7,560)	₹26,460/-

3.	Deduction of $1/4^{th}$ on account of personal expenses (26,460-6,615)	₹19,845/-
4.	Annual dependency applying multiplier of 18 as the deceased was twenty five years of age (19,845x18)	₹3,57,210/-
5.	Funeral expenses	₹15,000/-
6.	Loss of consortium	₹40,000/-
7.	Loss of estate	₹15,000/-
	Total Compensation	**₹4,27,210/-**

5. The learned Tribunal has held that the claimants are entitled to compensation of ₹50,000/- only, under no fault liability of the ground that the vehicle was stolen when the accident took place and the owner was not having domain over the offending vehicle at the time of the accident. The vehicle had been stolen eleven days before the accident and the theft had been reported to the police. Under the circumstances, in the opinion of the learned Tribunal, the owner was not liable to compensate any third-party and therefore, his insurer viz., respondent No.2-New India Assurance Company Limited, would also not be bound to make any payment, as there was no question of indemnification, if the owner was not liable to pay. In my opinion, this finding of the learned Tribunal is unsustainable in law. It is now settled beyond shadow of doubt that the insurer can only escape liability in the event of willful breach of the conditions of the insurance by the insured. Where, a vehicle has been stolen, there is no question of any breach leave alone willful breach of a condition of the terms of the Insurance. Therefore, respondent No.2 cannot escape liability on the said ground and the insurance company being in the business of insurance is

bound to indemnify a third-party, who has died or suffered injuries on account of the accident. Section 149(1) of the Act imposes a statutory duty upon an insurer to satisfy the judgments and awards against the insured person in respect of third-party risks. The insurer can only escape liability, if there has been a willful breach of the conditions of the policy and I have already held that there can be no question of breach of terms of a policy, where a vehicle has been stolen. My view is supported by a judgment of Hon'ble Supreme Court of India in **United India Insurance Company Limited Vs. Lehru and Others, 2003(3) SCC 338,** wherein after examining the issue of liability of an insurance company in a case relating to fake driving licence. It has been held as follows:-

> "18. Now let us consider Section 149(2). Reliance has been placed on Section 149(2)(a)(ii). As seen in order to avoid liability under this provision it must be shown that there is a "breach". As held in Skandia's and Sohan Lal Passi's cases (supra) the breach must be on part of the insured. We are in full agreement with that. To hold otherwise would lead to absurd results. Just to take an example, suppose a vehicle is stolen. Whilst it is being driven by the thief there is an accident. The thief is caught and it is ascertained that he had not licence. Can the Insurance Company disown liability? The answer has to be an emphatic "No". To hold otherwise would be to negate the very purpose of compulsory insurance. The injured or relatives of person killed in the accident may find that the decree obtained by them is only a paper decree as the owner is a man of straw. The owner himself would be an innocent sufferer. It is for this reason that the Legislature, in its wisdom has made insurance, at least third party insurance, compulsory. The aim and purpose being that an Insurance Company would be available to pay. The business of the Company is to insurance.

> In all businesses there is an element of risk. All persons carrying on business must take risks associated with that business. Thus it is equitable that the business which is run for making profits also bears the risk associated with it. At the same time innocent parties must not be made to suffer or loss. These provisions meet these requirements. We are thus in agreement with what is laid down in aforementioned cases viz. that in order to avoid liability it is not sufficient to show that the person driving at the time of accident was not duly licensed. The Insurance Company must establish that the breach was on the part of the insured."

6. A single Bench judgment of this Court in **National Insurance Company Limited Vs. Rohit Sharma, 2013(20) RCR (Civil) 40,** has also taken the same view and I respectfully agree with it.

7. In this view of the matter, the appeal is allowed. Respondent No.2-New India Assurance Company Limited, is held liable to pay the compensation as assessed, to the claimants-appellants, within a period of three months, from the date of receipt of a certified copy of this judgment alongwith interest @ 7.5% per annum, from the date of the claim petition till the date of payment. No costs.

(SUDHIR MITTAL)
JUDGE

December 01, 2017
Ramandeep Singh

Whether speaking / reasoned Yes / No
Whether Reportable Yes/ No