

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

**FAO No. 4655 of 2008 (O&M)
Date of Decision: August 03, 2017**

Oriental Insurance Co.

..Appellant(s)

Versus

Rupa and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mrs. Vandana Malhotra, Advocate
for the appellants.

None for respondent no.1.

Respondents no.2 & 3 already *ex parte*.

ANITA CHAUDHRY, J.

Notice was given to the respondents, appearance was made only on behalf of respondent no.1. The other respondents failed to appear. Today no-one has appeared for respondent no.1.

This appeal is by the insurance company seeking modification of the award on two scores.

The counsel for the insurance company urges that the claim petition had been filed seeking compensation for the injury suffered in the accident and the Tribunal had found that the injured had died two years after the accident and as the claimants had failed to prove any nexus between the injury and death, therefore, the legal

heirs were only entitled to the loss to the estate and not compensation which is as personal to the deceased. The counsel refers to ***Bhagwati Bai and anr. Vs. Bablu @ Mukund and Ors. 2007(1) RCR (Civil) 723*** and submits that the driver did not have any permit and notice had been issued to produce the permit and the insurance company had done what was necessary and even after that the document was not produced, therefore, an adverse inference should have been drawn and the insurance company should have been given the right to recover the amount after satisfying the award in favour of the claimants since there was a violation of the policy terms.

The Tribunal had allowed the following compensation on the following heads:-

1.	Disability	Rs.50,000/-
2.	Medical bills	Rs.1,28,787/-
3.	Special Diet	Rs.7,000/-
4.	Loss of income	Rs.23,500/-
5.	Non-Pecuniary damages	Rs.1,00,000/-
	TOTAL	Rs.3,09,287/-

The accident had taken place on 12.08.2005. The injured had died on 11.08.2007. Para no.14 of the award records a finding that the claimants had failed to prove any nexus between the injuries and death. The claimants were unable to lead any evidence that any

treatment was taken subsequent to his discharge from the hospital but still the Tribunal allowed compensation for disability and for non-pecuniary damages which were personal to the deceased. After the death of the injured the legal representatives could not prosecute or claim compensation except as regards the claim for pecuniary claim for estate of the claimant. The legal representatives could ask for loss to the estate which would be towards the medical expenses, expenses on the diet, expenses on the travelling or the amount paid to the doctors or loss of income for the period of treatment. The claim could not be allowed with respect to disability as well or non-pecuniary damages, therefore, the award has to be modified and it is held that the claimants were not entitled to the amount for the disability i.e. Rs.50,000/- and Rs.1 lac allowed for non-pecuniary damages and the amount that was payable was Rs.1,28,787/- + Rs.7,000/- + Rs.23,500/- = Rs.1,59,287/-.

Now coming to the second issue raised by the appellants, the offending vehicle was a canter which was registered in Himanchal Pradesh. The accident took place between Pinjore and Kalka. No permit was produced and the vehicle was plying outside the area permitted, therefore, the insurance company was entitled to recovery rights after satisfying the claim against the owner and driver. The appeal is allowed on the above terms, the award is modified and recovery rights are given to the insurance company. The insurance

company would pay the amount to the claimants with interest as ordered by the Tribunal if not already paid and then recover the same from the owner-driver.

The appeal is partly allowed.

August 03, 2017

sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No