

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 24.08.2017****FAO No.6617 of 2011 (O&M)**

New India Assurance Company Ltd.

...Appellant

Vs.

Jaspal Singh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINAPresent: Mr. Vinod Gupta, Advocate,
for the appellant.Mr. Nirbhay Singh Gill, Advocate, for
Mr. Munish Gupta, Advocate, for respondents No.1 & 4.Mr. K.S.Cheema and Ms. Harveen Kaur, Advocates,
for respondents No.3.**RAJIV NARAIN RAINA, J. (ORAL)**

The star argument raised by Mr. Vinod Gupta for the appellant – Insurance Company, is regarding Issue No.4. Issue No.4 was framed as follows:

“4. Whether the tractor trolley bearing No.PB-54-C-3916 was being driven in violation of the terms and conditions of the insurance company? OPR-3”

It is his submission in first appeal for the first time that the tractor trolley was not insured for commercial use and, therefore, the Insurance Company cannot indemnify insured of offending vehicle because the terms of the policy were violated. Onus probandi of the issue was placed on respondent No.3, the appellant - Insurance Company.

The Motor Accident Claims Tribunal, Hoshiarpur vide award dated 16.08.2011 decided Issue No.4 by observing in Para.28 as follows:

“28. Onus to prove this issue was placed upon the respondent No.3, but no evidence has been lead in respect of this issue by the said respondent. Moreover, learned counsel for respondent No.3 even not addressed any arguments during the course. Therefore, this issue is also decided against the respondent No.3 and in favour of claimants.”

When neither evidence was produced by the Insurance Company on whom burden was to prove violation of policy nor arguments were addressed during the time of hearing, then the Tribunal cannot be faulted in deciding the issue against respondent No.3 and in favour of the claimants. It is not the case that after the passing of the award, the Insurance Company approached the concerned Judge by an affidavit that what he recorded in his award was not as per what transpired in the Court at the time of hearing. Judicial record is not open to rebuttal unless the grievance is brought to the notice of the Judge who passed the order, reminding him before it is too late as memory fades for him to pass appropriate orders.

Neither has a specific ground been taken in this appeal that arguments were pressed regarding issue No.4 but were not noticed although evidence, if not adduced, was not required since the issue could be decided on the basis of the insurance policy and other evidence on record. It is well settled, as said before, judicial record cannot be controverted except by an affidavit filed before the Judge himself and if not so done the opportunity is lost forever.

When a point is not pressed before the Tribunal, none can be raised at the first appeal stage and, therefore, I have no doubt in mind that no interference is called for on this point canvassed.

The second argument advanced by the counsel in challenge to the award is that at the time of accident i.e. in the year 2008, the deceased was a student of Engineering and his income has been assessed at Rs.7000/- per month, which is on the much higher side. I am not impressed with this argument. A three Judge Bench of Supreme Court in Munna Lal Jain & another Vs. Vipin Kumar Sharma & others, (2015) 6 SCC 347 as well as in other decisions reported as Ashvinbhai Jayantilal Modi Vs. Ramkaran Ramchandra Sharma & another, (2015) 2 SCC 180 and Arvind Kumar Mishra Vs. New India Assurance Co. Ltd. & another, 2010 (4) RCR (Civil) 917 considered identical issues involving death of youngsters pursuing professional courses, wherein presumptive income has been assessed in cases of engineering student, student of medicine etc. in conformity with the dispensation in the present appeal. The student may not earn income, but does also share many sundry duties at home and outside, which labour can be assessed in terms of money on contributing labour to the common wealth of the family for which accommodation I see no reason to tinker with the income assessed by the Tribunal which is not wide off the mark.

No other ground was pressed.

Accordingly, the instant appeal is dismissed.

24.08.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>