IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.7501 of 2016 (O&M)
Date of Decision: 23.10.2017

New India Assurance Company ... Appellant

Versus

Satinder Kaur and others ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.C. Gupta, Advocate,
for the appellant.

Mr. Abhishek Sanghi, Advocate,
for respondents No.1 and 2.

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RAJIV NARAIN RAINA, J.(Oral)

1. Heard counsel at considerable length. This is case for remand to the Motor Accident Claims Tribunal, Patiala made out by the appellant. The reasons follow.

2. The driver of the offending vehicle was served in the proceedings by substituted service by way of munadi. He failed to put in appearance and was proceeded against ex parte by the order of the Tribunal. The insured respondent No.4 herein (Harbhajan Singh) owner of offending vehicle also did not put in appearance before the Tribunal. There appears to be no doubt that the vehicle was insured with the appellant company. The accident took place on August 03, 2011 which led to death on August 11, 2011. The claim application was filed in 2015 before the Tribunal at Patiala. When the turn of the Insurance Company came to produce its evidence it

filed an application for summoning the insured respondent Harbhajan Singh the owner of Motor Cycle No.PB-11AE-2870 as a witness of the Insurance Company even while the respondent was ex parte and, therefore, was not contesting the claim.

3. The application has been dismissed by the Motor Accident Claims Tribunal, Patiala by order dated August 11, 2016. The reasons assigned for declining the application to the mind of the Tribunal were that the respondent-company in question is defending rights and interest in its own capacity. It deserves mention that earlier, the appellant Insurance Company had filed an application under Section 170 of the Motor Vehicles Act, 1988 ("1988 Act") seeking to take over the defences open to the insured to defend its own interest. That application was allowed by the Tribunal on July 21, 2016.

4. The second reason assigned by the Tribunal in declining the summoning application is that the Insurance Company has to defend its case by leading its own positive evidence to prove that they are not liable to indemnify the insured or that the claim petition has been filed in collusion with the other parties with one and another to extract compensation. The last reason given for rejecting the application is that the application has been filed just to delay the disposal of the claim petition. For these reasons, the request has been rejected and leave to summon declined to examine the respondent owner as witness of the Insurance Company when the law does not permit force to compel appearance.

5. I can hardly support any of the reasons assigned by the Tribunal in making the impugned order especially when the application under Section

170 of the 1988 Act had been allowed then substantial opportunity should be given to the Insurance Company for summoning the owner and putting him to cross-examination to elicit the truth. Obviously, the witness would not come on his own to inculpate himself but what he may or may not say in the witness box is not subject matter of the debate today since the Tribunal has sufficient power to summon the owner of offending vehicle *suo motu* even without an application if it embarks in search of justice when Insurance Company alleges collusion between the parties to claim compensation. The flaws in the order I think are somewhat fundamental in nature which keeps the interlocutory order dated August 11, 2016 for being legally sustained as it may result in a miscarriage of justice. The Tribunal is a seeker of justice and the effort of the Court must always be to tread the path where truth triumphs and in order to achieve that purpose the order is set aside, counsel finding themselves *ad idem* after open debate on the issue in Court that the case demands a remand to the Tribunal from the stage of presentation of the application at the commencement of the evidence of the insurance company.

6. As a result, it would necessarily follow that not only the impugned order but the entire award must fall to make way for a fresh determination on merits after taking into consideration the deposition of the owner upon summoning him. It will be in the discretion of the Tribunal to deal with that evidence in its wisdom and discretion and having regard to relevance and weightage to be attached to the oral testimony after it is recorded. Any remand inevitably results in delay and in a case of compensation of claimants arising out of fatal motor accident delay can hurt

legitimate expectancy and thus the Tribunal in the wake of this order will endeavour to collect the limited remand evidence within reasonable time, say, three months and thereafter proceed to pass a fresh award after hearing the parties on new matter and its effect. No other evidence will be allowed to be let in. The statutory amount of ₹25,000/- deposited by the Insurance Company to maintain this appeal is ordered to be returned to it after following due procedure as requested by counsel for the appellant.

7. The appeal is allowed to the extent indicated above to serve the ends of justice.

(RAJIV NARAIN RAINA)
JUDGE

23.10.2017
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Whether speaking/reasoned *Yes*

Whether reportable *No*