IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.6895 of 2015
Date of Decision: 25.05.2018

National Insurance Company Limited ....Appellant

Vs.

Gurmel Kaur and others ....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Pardeep Goyal, Advocate, for the appellant.

Mr.JPS Sidhu, Advocate, for
the applicant/respondents No.1 to 3.

*****

<u>RITU BAHRI, J. (ORAL)</u>

Present appeal has been preferred by the appellant/Insurance Company (for short 'the appellant'), against award dated 14.05.2015, passed by the learned Motor Accident Claims Tribunal, Mansa (for short, 'the Tribunal') vide which compensation to the tune of 7,80,000/- was awarded to the claimants on account of death of Amrik Singh in a motor vehicular accident which took placed on 20.03.2014.

<u>FACTS NOT IN DISPUTE</u>

On 20.03.2014, Amrik Singh since deceased alongwith respondent No.1 Nazam Singh had gone to meet his niece at village Singo, in car bearing No.PB-03AQ(T)-9111 which was being driven by respondent No.1 Nazam Singh, where she was married. When the said car reached near Petrol Pump, Village Sekhupura, then its front right tyre suddenly punctured, resulting of which, said car became out of control and struck in the right side kikkar tree standing on the left side of road. As Amrik Singh was sitting on the front seat of that care near the driver seat, so he has suffered multiple grievous injuries on several parts of his body, whereas respondent No1 Nazam Singh had also suffered some minor injuries on his body. The deceased Amrik Singh was taken to Civil Hospital, Talwandi Sabo, from there, he was referred to Bathinda but he had died on the way to the injuries suffered by him. A DDR No.21 dated 20.03.2014 Ex.P2 has been registered with regard to the abovesaid accident.

COMPENSATION ASSESSED BY MACT

The Tribunal held that the deceased was 39 years old as per his postmortem report Ex.C1. The claimants have not produced any reliable proof of income, as such, learned Tribunal has taken his income as labourer. The factum of accident had been proved and the offending vehicle was insured with appellant/Insurance Company herein. The compensation has been assessed as under:

Sr.No.	Heads of compensation	Amount
1	Income as per daily wages	Rs.6000/- per month
3.	Deduction 1/3th	Rs.6,000/- ---- Rs.2000/- =Rs.4000/- per month
4.	Total loss of dependency after applying multiplier	Rs.4000/- X 12 X 15= Rs.7,20,000/-
5.	Loss of love and affection	Rs.30,000/-
6.	Transportation and last rites	Rs.30,000/-
	Total	Rs.7,80,000/-

Learned counsel for the appellant/Insurance Company has come up in appeal on the ground that compensation has been wrongly assessed as the claim petition has been filed under Section 163-A and the income of the deceased cannot exceed Rs.40,000/- per annum as prescribed in the IInd

Schedule and took the income of the deceased as Rs.72,000/- per annum which is beyond the scope of the abovesaid provision. On the other hand, the learned counsel for the claimants/respondents/ have vehemently opposed the present appeal and contends that the compensation awarded by the Tribunal is on the lower side and deserves to be enhanced.

RE-ASSESSED COMPENSATION

I have heard learned counsel for the parties and perused the record.

A perusal of the Award shows that accident took place as right tyre suddenly punctured, resulting of which, said car became out of control and struck in the right side kikkar tree standing on the left side of road and there was no other vehicle involved in the accident. Keeping in view in such kind of accident, this Court is of the view that the claim petition is maintainable under Section 166 of Motor Vehicles Act. The Co-ordinate Bench of this Court in the case of **Harmesh Kumar @ Ramesh Kumar Versus Inderjit Singh and others 2014(3) RCR (Civil) 408** has held that when an accident took place when a stray cattle crossed the road and claim petition under 166 of Motor Vehicles Act had been dismissed by the Tribunal. While the first appeal, the Award of the Tribunal was set aside and the matter was remanded back to the Tribunal for fresh consideration and directions were issued for passing an appropriate order on merits on the issue regarding apportionment of negligence between the drivers of both the vehicles as there was a duty cast on the Tribunal to elicit the truth and provide for compensation wherever death or injury results by the use of a motor vehicle. It was further observed that a driver or passenger could not say that an animal was negligent for it is illogical and does not come within the realm of logical reasoning. The reasoning is that any person that drives must factor his own driving skills and not look for excuses of how another agency that is not human has created a situation that had diminished his own driving skills. However, the driver at best stated that they were tactful to avoid hitting a cattle and still save themselves from the situation of collusion. Negligence cannot be attributed to any person other than a human agency. The claim petition under 166 of the Motor Vehicles Act was held to be maintainable. In the present case claim petition has been entertained under 163 of the Motor Vehicles Act as front tyre suddenly punctures, resulting of which, said car became out of control and struck in the right side kikkar tree standing on the left side of road. The occupant of the car Amrik Singh suffered multiple injuries and thereafter, died on the way. The accident has taken place on account of rash and negligent driving of respondent No.1 i.e. Nazam Singh as the vehicle out of his control on account of the tyre being punctured. Hence, claim petition under 166 of the Motor vehicle Act in such situation would be maintainable keeping in view the judgment passed in **Harmesh Kumar's judgment (Supra).**

This Court is exercising its inherent revisional powers and converting this petition under section 166 of the Motor Vehicles Act. A reference at this stage can be made by a judgment passed in the case of **United India Insurance Company Limited Vs. Shila Datta and others 2012(1) RCR (Civil) 582,** the Hon'ble Supreme Court was considering the Section 170 of the Motor Vehicles Act by which the Tribunal during inquiry can suo moto issue notice to the insurer for the reasons to be recorded in writing directing the insurer to be made a party to the proceedings. A claim petition can be entertained even suo moto by Tribunal by treating report of the accident sent to it by the police. The suo moto power can be exercised if during inquiry the Tribunal finds and satisfies itself that there is any collusion between the claimant and the owner/driver or where the owner/driver has failed to contest the claim, a direction can be given to the insurer to take all the pleas under Section 149(2) of the Motor Vehicles Act or any other grounds that are available to the driver/owner.

A reference can be made in the case of **Sudesh Sharma and others Vs. Prahlad Kumar Garg and another passed in FAO No.2492 of 2002**, wherein, it is held that a conversion of an application under Section 163-A to 166 cannot be resisted by an insurer on a plea that such a conversion would result in undertaking a larger slice of liability if the negligence is established. In this case, this Court had allowed the application for conversion of a claim petition under Section 163 to 166 of the Motor Vehicles Act.

Since the present appeal is now converted from Section 163 of the M.V.Act to Section 166 of the Motor Vehicles Act, the compensation is assessed in view of the judgment of Hon'ble Supreme Court in the case of **National insurance Company Ltd. Vs. Pranay Sethi and others passed in SLP (Civil) No.25590 of 2014**, the compensation is re-assessed as follows:-

Sr.No.	Heads of compensation	Amount
1	Income as per salary sleep	Rs.6,000/- per month
2.	Future prospect 40%	Rs.6,000 + Rs.2400/-= Rs.8400/-
3.	Deduction 1/3th	Rs.8400/- ----Rs.2800/-= Rs.5600/-
4.	Annual loss of dependency after applying the multiplier	Rs.5600/- X 12 X 15= Rs.10,08,000/--

5.	Conventional heads	Rs.70,000/-
	Total amount	Rs.10,78,000/-
	Enhanced amount of compensation	Rs.10,78,000/- ---- Rs.7,80,000/- =Rs.2,98,000/-

Resultantly, the modified amount of compensation of Rs.2,98,000/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 7.5% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in a case of **Shri Nagar Mal and Ors Vs. The Oriental Insurance Company Limited and Others Passed in Civil Appeal No.448 of 2018**. Remaining conditions of disbursal of amount shall remain unaltered. With the aforesaid modification in the impugned award, the appeal of the Insurance Company is dismissed to the above extent.

(RITU BAHRI)
JUDGE

25.05.2018
anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No