IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.1320 of 2018 (O & M)
Date of Decision:-19.3.2018

United India Insurance Company Ltd.

...Appellant

Versus

Moksh and others

...Respondents

CORAM:- HON'BLE MRS. JUSTICE REKHA MITTAL

Present:- Mr. Ashwani Talwar, Advocate
for the appellant.

Mr. Vivek Khatri, Advocate
for the respondents.

REKHA MITTAL J.(Oral)

CM No.4832-CII of 2018

Heard.

Allowed as prayed for.

Delay of 05 days in filing the appeal is condoned.

FAO No.1320 of 2018

The present appeal is directed against the award dated 23.10.2017 passed by the Motor Accidents Claims Tribunal, Hisar, whereby compensation has been awarded on account of death of Satyawan Singh in a motor vehicular accident that took place on 18.12.2015.

Counsel for the appellant would inform that appeal has been preferred by the insurance company to assail its liability to pay compensation as well as quantum of compensation assessed by the Tribunal. It is argued that the insurance company examined Vikram, Deputy Manager, United India Insurance Company Limited, Hisar as RW1 and he deposed that policy No.01098131140200000650 of vehicle No.HR-21G-9050 was not issued by their company. Ex.R-2, complaint was sent to the Superintendent of Police, Kancheepuram and letters were written to Vizza Insurance Broking Service Private Limited, Insurance Regulatory Development Authority (IRDA) and General Insurance Council with the subject of fake motor insurance policy. It is further argued that as insurance company did not receive any premium regarding the policy in question as per the premium collection Register Ex.R-9, insurance company has wrongly been fastened with liability to pay compensation.

With regard to quantum of compensation, it is argued that Tribunal hs determined income of the deceased on the basis of income tax return for the assessment year 2014-2015 to the tune of Rs.3,10,000/- but while deducting 1/3rd for personal expenses of the deceased, there was mistake in calculation whereby an amount of Rs.10,333/- has been deducted for personal expenses and annual dependency has been computed @ Rs.2,99,667/-. Further argued that Tribunal has awarded Rs.2,20,000/- under conventional heads discussed in para 22 to 24 of the award but the same is liable to be restricted to Rs.70,000/- in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Limited vs.**

Pranay Sethi and others, 2017 SCC 1270.

Counsel for the caveator/claimants would urge that any mistake while calculating loss of dependency may be corrected by this Court but the claimants may be allowed benefit of future prospects @ 40% as the deceased was approximately 31 years old. He has supported the award negating plea of the insurance company that policy in question was not issued by the insurance company or the insurance company is entitle to be exonerated of its liability. It is further argued that even if an agent of the insurance company has committed an illegality and embezzled the premium amount, insurance company cannot deny payment of compensation to the claimants but it may take recourse to remedy in law for the alleged mischief, committed by its agent.

I have heard counsel for the parties, perused the paper book, particularly the award dated 23.10.2017.

The Tribunal in para 29 of the award has dealt with the policy in question being not fake, therefore, insurance company being liable to pay compensation. Admittedly, the insurance company has not cancelled the policy but sought to proceed against its agent by whom the policy in question has been issued. As has been rightly argued by counsel for the claimants, if agent of the insurance company has committed some wrong that may entitle a criminal action against him but insurance company cannot disown its liability to pay compensation under a policy issued by its authorized agent or broker. As per the settled position in law, the principal is liable for the acts of its agent. In this view of the matter, Tribunal has rightly negated plea of the insurance company challenging its liability to pay compensation.

The Tribunal has awarded compensation of Rs.50,14,672/-, detailed hereunder :-

Annual income of the deceased	Rs.3,10,000/-
Deduction for personal expenses	1/3rd (Rs.10,333/-)
Multiplier	16
Loss of dependency	Rs.47,94,672/-
Expenses on transportation	Rs.20,000/-
Loss of love and affection to claimants	Rs.1,00,000/-
Loss of estate	Rs.50,000/-(to claimants No.1 and 3.
Loss of consortium	Rs.1,00,000/-

As per the latest income tax return for the assessment year 2014-2015, annual income of the deceased is Rs.3,10,565/- and the entire income is to be taken into account for computing loss of dependency. After deducting 1/3rd qua personal expenses of the deceased and applying multiplier of '16', loss of dependency comes to Rs.46,37,771/- (Rs.3,10,565 x 16) + (40%) - (1/3rd).

Under conventional heads, claimants shall be entitled to Rs.70,000/-, detailed hereunder :-

Loss of consortium	Rs.40,000/-
Loss of estate	Rs.15,000/-
Funeral expenses	Rs.15,000/-

Total compensation is Rs.47,07,771/- and the compensation is liable to be reduced to the extent of Rs.3,06,901/- (Rs.50,14,672 – Rs.47,07,771/-). The insurance company shall be entitled to recover the excess amount, if already paid, by filing an application before the Tribunal.

The appeal is disposed of in the aforesaid terms.

March 19, 2018 **(REKHA MITTAL)**
Vijay Asija **JUDGE**

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No