In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:30.1.2019

<u>FAO No. 2234 of 2005(O&M)</u>

National Insurance Company Limited

---Appellant

vs.

Rinki Bansal and others

---Respondents

<u>FAO No. 2235 of 2005(O&M)</u>

National Insurance Company Limited

---Appellant

vs.

Saroj Rani and others

---Respondents

<u>FAO No. 2236 of 2005(O&M)</u>

National Insurance Company Limited

---Appellant

vs.

Ramnik Jain and others

---Respondents

<u>FAO No. 2237 of 2005(O&M)</u>

National Insurance Company Limited

---Appellant

vs.

Kaushalya Devi and others

---Respondents

<u>FAO No. 1021 of 2007(O&M)</u>

National Insurance Company Limited

---Appellant

vs.

Mukesh Kumar and others

---Respondents

FAO No. 1355 of 2007(O&M)

National Insurance Company Limited

---Appellant

vs.

Mohinder Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Deepak Suri, Advocate
for the National Insurance Company.

Mr. Ashok Jindal, Advocate
for the appellant in FAO-1355 of 2007

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Rekha Mittal, J.

This order will dispose of FAO Nos. 2234 to 2237 of 2005, 1021 and 1355 of 2007 as these have emerged out of the same occurrence that took place on 25.1.2001 in which several persons sustained injuries that proved fatal for Parshotam Kumar, Vinod Kumar, Rajiv Kumar and Shivji Ram.

FAO Nos. 2234 to 2237 of 2005

The appeals have been filed by the National Insurance Company, insurer of truck bearing registration No. HR-58-7270, the alleged offending vehicle.

Sukhwinder Singh, registered owner of the aforesaid truck has been impleaded as a party but the insurance company failed to ensure service of said Sukhwinder Singh nor furnished his correct address in compliance with the orders passed by this Court. A relevant extract from order dated 16.4.2018, reads as follows:-

> "Dasti notice issued for service of Sukhwinder Singh has not been received back.
>
> Last opportunity is provided to the insurance company to ensure service of Sukhwinder Singh, owner of the offending vehicle by obtaining dasti process, failing which it may be of adverse consequence.
>
> List on 10.7.2018.
>
> Photocopy of this order be placed on the files of other connected cases."

In view of the above, there is no option with the court except to dismiss the appeals against registered owner of the aforesaid truck, insured with the appellant-insurance company and ordered accordingly.

The sole submission made by counsel for the insurance company is that the insured issued a checque for payment of premium but the same got dishonouned on its presentation to the bank on 19.4.2000 and policy was cancelled much before the accident that took place on 25.1.2001, therefore, there was no subsisting contract of insurance under which the insurance company can be held liable to pay compensation by way of indemnification of the insured. In the alternative, it is argued that even if the insurance company is directed to indemnify the claimants, insurance company is entitle to have right of recovery against the insured.

The appeals against the insured/registered owner of the offending vehicle have been dismissed by this court, noticed hereinbefore.

The insurance company cannot press for modification of the award prejudicial to the interest of the insured in the given scenario. As such contention raised by insurance company is not tenable and accordingly rejected.

No other point has been raised.

For the foregoing reasons, the appeals fail and are accordingly dismissed, leaving the parties to bear their own costs.

FAO Nos. 1021 and 1355 of 2007

FAO No. 1021 of 2007 has been filed by Mukesh Kumar seeking enhancement of compensation on account of damage to Car bearing No.HR-25-A 1286 whereas the other appeal has been preferred by the insurance company to assail quantum of compensation assessed by the Tribunal.

Counsel for the claimant would argue that invoice value of the car was Rs. 3,39,000/- proved by PW6. The damaged car was of 2000 model and unfortunately met with an accident within one year of its manufacturing. It is further argued that the Motor Accidents Claims Tribunal, Bathinda (in short "the Tribunal") has depreciated value of the car to the extent of 40% by taking a view from rules of income tax. It is further argued that depreciation in value of the car is liable to be reduced and adequate compensation may be allowed.

Counsel representing the insurance company has assailed liability to pay compensation on the premise that insurance policy issued in favour of Sukhwinder Singh in respect of Truck bearing No. HR-58-7270 was cancelled long ago before the occurrence in question had taken place.

In addition, it is argued that even as per policy, liability of the insurance company with regard to damage to third party property is restricted to Rs. 6000/-.

Counsel for the claimant, in reply, would argue that neither the insurance company can seek modification of the award in absence of an opportunity of being heard is provided to Sh. Sukhwinder Singh nor can it be allowed to contend that liability is limited to Rs. 6,000/- and the amount over and above Rs. 6000/- would be payable by the driver and owner of the offending truck.

Before adverting to the submissions made by counsel for the claimant with regard to enhancement of compensation, it is appropriate to deal with contention raised by the insurance company either to escape liability to pay compensation or restrict its liability to Rs, 6000/-. As has rightly been argued by counsel for the claimant and so held by this Court hereinbefore while disposing of FAO Nos. 2234 to 2237 of 2005, vide order of even date, the insurance company cannot seek modification of the award to escape liability to pay compensation as it failed to ensure service of Sukhwinder Singh, registered owner of the vehicle. In this view of the matter, contentions raised by counsel for the insurance company are not tenable and accordingly rejected.

This brings the court to quantum of compensation assessed by the Tribunal. The Tribunal has awarded a sum of Rs. 2,07,000/- by taking into consideration invoice value of Rs. 3,39,000/- and deducting 40% on account of depreciation. Taking a reasonable view in an effort to assess just and reasonable compensation, depreciation value would be taken to the extent of 25% and accordingly, claimant shall be entitle to compensation to the tune of Rs.2,54,250/-(3,39,000-84,750(25%) in regard to damage to car in question.

The Additional amount of Rs. 47,250/-(2,54,250-2,07,000)is payable with interest @ 7.5% per annum from the date of petition till realization to be paid by the driver, owner and insurer of the offending vehicle, jointly and severally.

In view of what has been discussed hereinabove, appeal filed by the claimant is partly allowed in the aforesaid terms. However, appeal filed by the insurance company fails and is accordingly dismissed, leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

30.1.2019
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No