IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-1061-2006(O&M)

Smt.Baljit Kaur and another

...Appellant

Versus

Raj Kumar and others

...Respondents

(2) FAO-1205-2006(O&M)

New India Insurance Company Ltd.

...Appellant

Versus

Smt.Baljit Kaur and others

...Respondents

Date of Decision:-9.9.2019

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Ashwani Arora, Advocate
for the appellants in FAO-1061-2006 and
for respondents No.1 and 2 in FAO-1205-2006.

Mr.Ashwani Talwar, Advocate
for the appellant in FAO-1205-2006 and
for respondent No.3 in FAO-1061-2006.

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H.S. MADAAN, J.

By this order, I shall dispose of two FAOs i.e. FAO-1061-2006 filed on behalf of appellants/claimants – Smt.Baljit Kaur and another and FAO-1205-2006 filed on behalf of appellant – insurance company, which have arisen out of the same accident.

Briefly stated, facts of the case are that on account of death of Gurbachan Pal, aged about 49 years and 10 months in a motor vehicular accident, which took place on 4.5.2004 at about 7:10 p.m. in the area of near Tribune Chowk, Chandigarh, statedly on account of rash and negligent driving of Qualis vehicle bearing registration No.CH03M/9463 (hereinafter referred to as the offending vehicle) by respondent No.1, his widow – Smt.Baljit Kaur, aged about 48 years and son Baljinder Singh, aged about 18 years, had brought a claim petition under Section 166 of the Motor Vehicles Act against the respondents i.e. Raj Kumar – driver, Ashok Kumar Manchanda – owner and New India Assurance Company Ltd. - insurer of the offending vehicle, claiming compensation of Rs.25 lakhs.

On being put to notice, all the respondents had put in appearance and offer a contest.

Issues on merits were framed. Parties were afforded adequate opportunities to lead evidence.

On conclusion of trial, the Motor Accidents Claims Tribunal, Chandigarh (hereinafter referred to as the Tribunal) while allowing the petition partly vide award dated 29.11.2005, awarded compensation of Rs.7,26,732/- along with interest @ 7.5% per annum from the date of filing of the petition to the claimants in equal shares payable by the respondents No.2 and 3 jointly and severally. However, it was observed that respondent No.3 would be entitled to recover the paid amount from respondent No.2. The manner in which the compensation is to be apportioned is also given in the award.

The appellants/petitioners/claimants being of the view that the compensation awarded was on lower side, have approached this Court by way of filing an appeal seeking enhancement of compensation.

On the other hand, respondent No.3 – insurance company feeling that it should be absolved of its liability instead of giving rights to recover the awarded amount from respondent No.2, also filed an appeal.

Notices of the appeals were issued to the respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

Learned Tribunal while determining the quantum of compensation payable has taken the age of deceased to be 49 years and 10 months considering his date of birth as 21.7.1954, the accident having taken place on 4.5.2004. The deceased had retired as Captain from Indian Army and was getting a pension. His last drawn pension was Rs.6,480/- per month. He was serving with Punjab Ex-Serviceman Corporation, Chandigarh on monthly salary of Rs.4,200/-. The Tribunal carried out deduction of Rs.586/- from such salary taking his monthly be as Rs.3,614/-. Obviously, the Tribunal fell in error in deducting Rs.586/- from the monthly salary of deceased, rather his net salary is to be taken into consideration, which comes out to Rs.4,200/-, in that way his monthly income was Rs.10,680/- (4200 + 6480).

The Tribunal has not added any amount towards future prospects. In view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** when the deceased was in the age group of 40 to 50 years, an addition of 25% to the monthly income should be made. Doing that the monthly income of the deceased is taken as Rs. 10,680 + 2670 = Rs.13,350/-.

In terms of the ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77*** the Tribunal has rightly deducted 1/3rd of the monthly income of the deceased towards his personal and living expenses. Doing that the dependency of claimants comes out to Rs.8,900/- per month, annual dependency comes out to Rs.8900 x 12 = Rs.1,06,800/-.

The Tribunal has used multiplier of 9, whereas in terms of Sarla Verma's case (supra), when the deceased was in the age group of 46 to 50 years, multiplier of 13 should be allowed. Doing that the compensation payable comes out to Rs. 1,06,800 x 13 = 13,88,400/-.

In view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors.***(supra), the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-. The total compensation comes out to Rs.13,88,400 + 70,000 = 14,58,400/-.

The Tribunal has awarded compensation of Rs.7,26,732/-.

In this way, the enhanced amount comes out to Rs.7,31,668/- (14,58,400 - 7,26,732). The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.7,31,668/-.

With such modification, the FAO-1061-2006 filed on behalf of the claimants is allowed partly with costs.

Observing that the cheque for the premium given by the insured had bounced, though respondent No.3 insurance company was held liable to make the payment to discharge the liability under the award to the claimants but it was given recovery rights. The insurance company is feeling aggrieved by such direction contending that it should have been absolved of its liability to pay compensation since no valid agreement of insurance had come into being. However, the contract between the insurance company and the insured may not be a legal and valid one for want of payment of insurance premium. However, qua the third party since the insurance policy was ineffective on the date of accident, the liability of insurance company is certainly there.

Learned counsel for the claimants had referred to few judgments in that regard; first being FAO-3719 of 2005 titled ***New India Assurance Co. Ltd. Versus Mrs.Sudesh Kumari and others*** decided on 28.3.2006 by a Division Bench of this Court wherein it was observed as under:

After hearing learned counsel for the parties, we are of the view that the question which would arise for determination is 'whether the insurer is liable to pay compensation to the injured in a motor vehicle accident even if it has cancelled the policy issued in respect of an offending vehicle on account of dishonouring of cheque for payment of premium, when the accident has taken place within the period covered by the policy.?' The aforementioned question has been answered by the judgment of the Hon'ble Supreme Court in Inderjit Kaur's case (supra), holding that the appellant-Insurance Company was not absolved of its *obligation to third parties under the policy merely because it did not receive the premium. It has further been held that the insurance company is to be blamed because it had issued the policy upon receipt of only a cheque towards the premium in contravention of the provisions of Section 64-VB of the Insurance Act, 1938 and the public interest which is served by a policy of insurance must prevail over the interest of the insurance company. The aforementioned view has been followed the Hon'ble Supreme Court in the case of* **New India Assurance Co. Ltd. v. Rula, (2000) 3 SCC 195***. The view of their Lordships' in Inderjit Kaur's case (supra) are discernible from para 9 and 10 of the judgment and the same reads as under:*

> *" 9. We have, therefore, this position. Despite the bar created by Section 64 VB of the Insurance Act, the appellant, an authorised insurer, issued a policy of insurance to cover the bus Without receiving the premium therefore. By reason of the provisions of Sections 147(5) and 149(1) of the Motor Vehicles Act, the appellant became liable to indemnify third parties in respect of the liability which that policy covered and to satisfy awards of compensation in respect thereof notwithstanding its entitlement (upon which we do not express any opinion) to avoid or cancel the policy for the reason that the cheque issued in payment of the premium thereon had not been honoured.*
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> *10. The policy of insurance that the appellant issued was a representation upon which the authorities and third parties were entitled to act. The appellant was not absolved of its obligations to*

third parties under the policy because it did not receive the premium. Its remedies in this behalf lay against the insured."

In view of above, there is no room to interfere in the award passed by the learned Tribunal. The appeal is wholly without merit and is, thus, liable to be dismissed.

In ***Oriental Insurance Co. Ltd. Versus Sivankutty and others, 2006 ACJ 106***, dealing with an eventuality where the cheque for the payment of insurance premium had been dishonoured and insurance policy was cancelled, it was observed that the insurance company was liable though remedy was there against the insured and it was entitled to reimbursement.

Therefore, the Tribunal was justified in granting recovery rights to the insurance company and not dismissing the claim petition against it.

Consequently, FAO-1205-2006 filed on behalf of the insurance company stands dismissed.

9.9.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No