IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Date of Decision: 15.02.2019

(1) FAO-5115-2006 (O&M)

New India Assurance Company Limited

…..Appellant

Versus

Kanwaljit Kaur and others

…..Respondents

(2) FAO-5116-2006 (O&M)

New India Assurance Company Limited

…..Appellant

Versus

Parminder Kaur and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present: Mr. R.N. Singal, Advocate for the appellant-
New India Assurance Co. Ltd.

Mr. Ashwani Arora, Advocate as Amicus Curiae.

Respondents proceeded against ex-parte.

ARUN KUMAR TYAGI, J.

1. This order disposes of **FAO-5115-2006 (O&M)** filed against award dated 21.08.2006 passed by learned Motor Accidents Claims Tribunal, Patiala (for short "the Tribunal") in MACT case No.82T/20.06.2006/10.04.2004 titled Kanwaljit Kaur Vs. Mohan Singh and others and **FAO-5116-2006 (O&M)** filed against award dated 21.08.2006 passed by the above-said Tribunal in MACT No.82AT/20.06.2006/10.04.2004 titled Parminder Kaur and another Vs. Mohan Singh and others, as

common questions of facts and law are involved in the same.

2. Both the above-said cases, out of which the above-said appeals have arisen, were filed under Section 163-A of the Motor Vehicles Act, 1988 (for short “the M.V. Act”) for award of compensation for death of Sohan Singh and Amrita Preet Kaur, respectively due to injuries suffered in accident arising out of the use of Car bearing registration No. PB-39-7272,

3. Briefly stated, the factual matrix, emerging from the abovesaid claim petitions and giving rise to filing of the above said appeals is that on 02.01.2004, deceased Sohan Singh, his wife Parminder Kaur, Kanwaljit Kaur-wife, Manjit Kaur-mother and deceased Amrita Preet Kaur-minor daughter of respondent No.2-Harvinder Singh were going from Patiala to Jalandhar in Car bearing registration No.PB-39-7272 driven by respondent No.2-Harvinder Singh. When the car reached near Village Sahnewal, respondent No.2 driver-Harvinder Singh could not control the speed of the car and struck against the rear portion of a truck going ahead of the car due to which Sohan Singh, who was sitting on the front seat and Amrita Preet Kaur, who was resting in his lap, suffered injuries and died on the spot.

4. Parminder Kaur, widow and Jagjit Singh, minor son of deceased Sohan Singh, while impleading his mother Balbir Kaur as proforma respondent No.4, filed MACT No.82AT/20.06.2006/ 10.04.2004 titled Parminder Kaur and another Vs. Mohan Singh and others under Section 163-A of the M.V. Act alleging that deceased Sohan Singh was aged about 32 years at the time of

his death and earning ₹40,000/- per annum by working as clerk with Sh. B.S. Jandu, Advocate at Patiala. They spent ₹20,000/- on transportation of his dead body and ₹20,000/- on his funeral. The claimants being dependents and legal heirs of deceased Sohan Singh are entitled to payment of compensation for his death with costs and interest from respondents No.1 and 2 owner and driver and respondent No.3 insurer jointly and severally.

5. Kanwaljit Kaur-mother of deceased Amrita Preet Kaur filed MACT No.82T/20.06.2006/10.04.2004 titled Kanwaljit Kaur Vs. Mohan Singh and others pleading that deceased Amrita Preet Kaur was aged about six years and was helping the claimant in her household affairs and was having notional income of ₹15,000/- per annum. The claimant spent ₹20,000/- on transportation of her dead body and ₹20,000/- on her funeral. The claimant being legal heir of deceased Amrita Preet Kaur is entitled to payment of compensation for her death with costs and interest from respondents No.1 and 2 owner and driver and respondent No.3 insurer jointly and severally.

6. The claim petitions were contested by the respondents. In their joint written statements respondents No.1 and 2-owner and driver took preliminary objections as to non-maintainability, lack of territorial jurisdiction, etc. and denied their liability while pleading that the car was insured with respondent No.3.

7. In its written statements, respondent No.3 took objections as to non-maintainability, lack of territorial jurisdiction,

non-joinder of necessary parties, claim petitions being collusive, respondent No.2 not having valid and effective driving license, breach of terms and conditions of the insurance policy by respondent No.1 etc. and denied its liability.

8. Issues were framed and the parties were given opportunity to produce their evidence.

9. On perusal of the material on record and consideration of the submissions made by the learned counsel for the parties, the claim petitions were allowed by the Tribunal vide separate awards dated 21.08.2004 wherein the Tribunal held that Sohan Singh and Amrita Preet Kaur died due to accident arising out of the use of Car bearing registration No.PB-39-7272. In MACT No.82AT/20.06.2006/10.04.2004 titled Parminder Kaur and another Vs. Mohan Singh and others the Tribunal assessed income of deceased Sohan Singh as ₹36,000/- per month and by applying multiplier of 17 awarded compensation of ₹5,76,000/- with costs and interest @ 6% per annum from the date of filing of the claim petition till payment to the claimants and respondent No.4. In MACT No.82T/20.06.2006/10.04.2004 titled Kanwaljit Kaur Vs. Mohan Singh and others the Tribunal assessed notional income of Amrita Preet Kaur as ₹15,000/- per annum and by applying multiplier of 15 awarded compensation of ₹2,25,000/- with costs and interest @ 6% per annum from the date of filing of the claim petition till payment to the claimant-Kanwaljit Kaur. The Tribunal held the respondents No.1 to 3 to be jointly and severally liable for payment of the above said compensation amounts.

10. Feeling aggrieved, the insurance company has preferred present appeals against the above said awards.

11. Notice of the appeals was served on the respondents. On non-appearance of the respondents despite due service, the respondents were proceeded against ex parte vide order dated 18.02.2015. However, vide order dated 21.04.2018, Mr. Ashwani Arora, Advocate was appointed as Amicus Curiae to assist the Court in the case.

12. Mr. Ashwani Arora, learned Amicus Curiae has argued that the Tribunal while assessing income of the deceased did not make any addition towards future prospects. The Tribunal did not award any amount towards funeral expenses, loss of consortium and loss of estate in both the cases which may be awarded. The Tribunal awarded interest at the very low rate of 6% per annum which may also be enhanced. The claimants have not filed any appeal or cross-objections and suffered themselves to be proceeded against ex parte in the present appeals but the question of award of just compensation to the claimants can be adjudicated upon by this Court in view of Order 41 Rule 33 of the Code of Civil Procedure, 1908. In support of his arguments learned Amicus Curiae has relied upon the observations in **National Insurance Company Limited Vs. Pranay Sethi and Others, 2017 (4) R.C.R. (Civil) 1009 and Mamta Garg (deceased) through her LRs Vs. Haryana State Transport Controller, Chandigarh and others, FAO No.2787 of 2001 decided on 03.10.2018**.

13. Mr. R. N. Singal, learned Counsel for the appellant-insurance company has argued that the Tribunal committed an error in calculating the amount of compensation in MACT No.82AT/20.06.2006/10.04.2004 titled Parminder Kaur and another Vs. Mohan Singh and others and the award may be modified to rectify the same.

14. No doubt, the claimants in the above said claim petitions have not appeared on notice of the present appeals and have not filed any appeal or cross-objections but in view of mandatory duty to award just compensation and provisions of Order 41 Rule 33 of the Code of Civil Procedure, 1908 the questions as to quantum of compensation payable in both the cases can be adjudicated upon in the present appeals.

15. It is now well settled that in motor accident claim case under Section 163-A of the M.V. Act compensation has to be assessed as per the structured formula given in Second Schedule of the M.V. Act. No deviation there from is permissible except in case of motor accident claim case for payment of compensation to child for permanent disablement in accordance with the directions given in **Master Mallikarjun Vs. Divisional Manager, the National Insurance Company Limited and another 2013 A.C.J. 244 (Supreme Court)**. Reference in this regard may be made to judgments of Co-ordinate Benches of this Court in **Mohit Garg and another Vs. Afrojan and others FAO No.3460 of 2004 (O & M) decided by Hon'ble Punjab and Haryana High Court on 15.05.2014** where similar view was taken. In the

absence of any empowering statutory provision in section 163-A or Second Schedule of the M.V. Act no addition can be made in the income of the deceased at the time of his death towards future prospects.

16. In MACT No.82AT/20.06.2006/10.04.2004 titled Parminder Kaur and another Vs. Mohan Singh and others the Tribunal held deceased Sohan Singh to be aged about 32 years and assessed his income as ₹36,000/- per annum and applied the multiplier of 17. However, the Tribunal committed an error in calculating the amount and wrongly assessed death compensation as ₹5,76,000/-. On application of multiplier of 17 to annual income of ₹36,000/- the amount comes to ₹6,12,000/-. In view of note to para No.1 of the Second Schedule of the M.V. Act the amount of compensation so arrived at in the case of fatal accident claims has to be reduced by 1/3rd in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. When so reduced the death compensation payable to the claimants and respondent No.4 comes to ₹4,08,000/- In view of para No.3 of the Second Schedule of the M.V. Act claimant No.1 is entitled to payment of ₹5,000/- towards loss of consortium and the claimants and respondent No.4 are entitled for payment of amount of ₹2,000/- towards funeral expenses and ₹2,500/- towards loss of estate. Accordingly, the total compensation payable to the claimants and respondent No.4 comes to ₹4,17,500/-

17. In MACT No.82T/20.06.2006/10.04.2004 titled Kanwaljit Kaur Vs. Mohan Singh and others the Tribunal held deceased Amrita Preet Kaur to be aged about 6 years and assessed her notional income as ₹15,000/- per annum and by applying the multiplier of 15 correctly assessed death compensation as ₹2,25,000/-. Due to inapplicability of note to para No.1 of the Second Schedule of the M.V. Act the amount of compensation so arrived at is not required to be reduced by 1/3rd towards personal expenses of the victim. In view of para No.3 of the Second Schedule of the M.V. Act the claimant is entitled for payment of amount of ₹2,000/- towards funeral expenses and ₹2,500/- towards loss of estate. Accordingly, the total compensation payable to the claimant comes to ₹2,29,500/-

18. In the present case, the Tribunal directed the payment of compensation amount with interest at the rate of 6% per annum from the date of filing of the claim petition till realization of the whole amount which is stated by learned Amicus Curiae to be inadequate and the question which arises is as to what would be the appropriate rate of interest.

19. In claim petitions under Section 163-A or 166 of the M.V. Act, the Motor Accidents Claims Tribunal is empowered by Section 171 of the M.V. Act to award interest from the date of making the claim at such rate as may be specified by it. In awarding interest, the Motor Accident Claims Tribunal is not bound by the provisions of Section 34 of the Code of Civil Procedure, 1908 to restrict the award of interest to 6 % per

annum. In **Puttamma and others Vs. K.L.Narayana Reddy and another 2014 (1) R.C.R. (Civil) 443,** Hon'ble Apex Court observed in para 60 as under:-

> "This Court in **Abati Bezbaruah Vs. Deputy Director General, Geological Survey of India and another (2003) 3 SCC 148** noticed that varying rate of interest is being awarded by the Tribunals, High Courts and this Court. In the said case, this Court held that the rate of interest must be just and reasonable depending on the facts and circumstances of the case and should be decided after taking into consideration relevant factors like inflation, change in economy, policy being adopted by the Reserve Bank of India from time to time, how long the case is pending, loss of enjoyment of life etc."

In **Supe Dei and others Vs. National Insurance Company Ltd. and another 2009 (4) SCC 513**, Hon'ble Apex Court held that 9% per annum would be the appropriate rate of interest to be awarded in Motor Accidents Claims compensation cases. In **Sube Singh and another Vs. Shyam Singh (Dead) and others 2018 (2) R.C.R. (Civil) 131 (SC)** rate of interest of 6% per annum awarded by the Motor Accidents Claims Tribunal was modified by Hon'ble Supreme Court of India to 9% per annum.

20. In view of the observations in above referred judicial precedents, mercantile rate of interest prevalent, rate of interest allowed by Nationalized Banks on fixed deposit receipts and other relevant factors, it will be appropriate to modify the rate of interest of 6% per annum awarded by the Tribunal to 9% per annum.

21. Mr. R. N. Singal, learned Counsel for the appellant-Insurance Company has argued that the car was insured under "Act Policy" and occupants of the car not being third party were

not covered by the insurance policy and respondent No.3-Insurance Company was not liable for payment of compensation to the claimants. Therefore, the impugned awards fastening joint and several liability to respondent No.3-Insurance Company are liable to be set aside and respondent No.3-Insruance Company is entitled to recover the amount of compensation from respondent No. 2 owner of the car in question. In support of his arguments learned counsel for the appellant Insurance Company has placed reliance on the observations made by Hon'ble Supreme Court in **National Insurance Company Ltd. Vs. Balakrishnan and another : (2013) 1 SCC 731.**

22. On the other hand, Mr. Ashwani Arora, learned Amicus Curiae has argued that no such objection was raised by respondent No.3-Insurance Company in its written statement or at the time of arguments before the Tribunal. Therefore, this objection could not be raised for the first time in the appeals before this Court. The learned Amicus Curiae has further argued that the Tariff Advisory Committee issued instructions vide circular made effective w.e.f. 25.03.1977 to the effect that death or bodily injury to any person conveyed in car or on two wheeler would be covered by 'Third Party/Act Policy' provided such person is not carried for hire or reward. In view of the above-said instructions the claimants are entitled for payment of compensation by respondent No.3-Insurance Company jointly and severally and the appeals are liable to be dismissed. In support of his arguments, learned Amicus Curiae has placed reliance on the

observations in **National Insurance Company Limited Vs. Smt. Surjit Kaur and others, 2017(1) RCR (Civil) 640** and **United India Insurance Company Vs. Prem Singh and others 2001 ACJ 1445**.

23. In its written statement filed in both the cases, respondent No.3-Insurance Company had denied its liability under the insurance policy. The Tribunal was required to adjudicate upon the question of liability of respondent No.3-Insurance Company under the insurance policy to indemnify the insured. The Tribunal committed material irregularity and erred in fastening the liability on respondent No.3-Insurance Company to indemnify the insured without considering the terms and conditions of the Insurance policy. In the facts and circumstances of the case, I am of the considered view that the question of raising of the objection by respondent No.3-Insurance Company for the first time in the present appeals does not arise. Even otherwise, the question of liability of respondent No.3-Insurance Company under the 'Third Party/Act Policy' being question of law can be raised even for the first time in these appeals before this Court and can be adjudicated upon in view of Order 41 Rule 33 of the C.P.C.

24. In order to ascertain as to whether the Insurance Policy Ex.-R-2 of the car in question captioned "Private Car Policy A Liability Only" is 'Third Party/Act Policy' or "Comprehensive/ Package Policy" terms and conditions of the policy have to be

looked into. For this purpose, Schedule of premium of the insurance policy Ex.-R2 is reproduced as under:-

SCHEDULE OF PREMIUM (In Rs.)			
		B : T.P – Basic:	660.00
		Compulsory PA to owner-Driver Amount 200000	100.00
		WC to employee:	25.00
		Gross (B):	725
		Gross OD & TP:	725
		Loading on TP Premium:	301.00
Gross (A)		Net Premium	1,026
		Service Tax:	82
Minimum Premium	Rs.100	Net amount Payable (Rounded):	1,108

25. A perusal of copy of insurance policy Ex.-R-2 captioned “Private Car Policy A Liability Only” and terms and conditions thereof shows that the car was insured under statutory ‘Third Party/Act Policy’ and not under ‘Comprehensive/Package Policy’.

26. In **United India Insurance Co. Ltd., Shimla v. Tilak Singh and others. : (2006) 4 SCC 404** Hon'ble Supreme Court held that where the policy is a statutory policy or an Act only policy, a gratuitous passenger in a private vehicle would not be covered for any bodily injury or death under the policy of insurance.

27. **In M. Muthu Krishna v. R. Brindha and Others, 1982 A.C.J. (Supp.) 428; New India Assurance Co. Ltd. v. Kuppuswamy Naidu and Others, 1988 ACJ 774; New India Assurance Company Ltd. v. K. Rajanna and Others, 1995 A.C.J. 1015; New India Assurance Company Ltd. v. Ashok**

Kumar Acharya and Others, 1995 A.C.J. 189; Surjit Singh v. Santosh Kumar and Others, 1989 A.C.J. 466 it was held that the Act Policy does not cover the passenger on the pillion as pillion rider is not a third party. In **National Insurance Company Limited Vs. Smt. Surjit Kaur and others, 2017(1) RCR (Civil) 640 and United India Insurance Company Vs. Prem Singh and others 2001 ACJ 1445** (relied upon by learned Amicus Curiae) pillion riders on two wheelers were held to be covered by the 'Act Policy' and insurance company was held to be liable to indemnify the insured in view of instructions issued by the Tariff Advisory Committee made effective w.e.f. 25.3.1977 that death or bodily injury to any person including person conveyed in or on the motor cycle would be covered irrespective of the fact whether it is 'Act Policy' or a 'Comprehensive Policy' provided such person is not carried for hire or reward. However, these judgments, which are based on instructions made effective w.e.f. 25.3.1977, are applicable to pillion riders on two wheelers only. Therefore, the observations in **National Insurance Company Limited Vs. Smt. Surjit Kaur and others, 2017(1) RCR (Civil) 640 and United India Insurance Company Vs. Prem Singh and others 2001 ACJ 1445** (relied upon by learned Amicus Curiae) are not applicable and are not of any help in determining the question involved in the present case.

28. In **National Insurance Company Limited v. Balakrishnan and another : (2013) 1 SCC 731** Hon'ble Supreme Court referred to judgment of Hon'ble Delhi High Court in

Yashpal Luthra and another Vs. United India Insurance Co. Ltd. and another : 2009 (30) RCR (Civil) 641, distinguished 'Comprehensive/Package Policy' from the 'Act Policy' and relying on the circulars issued by the Insurance Regulatory and Development Authority (IRDA) held that 'Act Only Policy' cannot cover risk of an occupant in a car, but in a comprehensive/package policy, the liability would be covered. Relevant para of the judgment of Hon'ble Supreme Court is reproduced as under:-

> "In view of the aforesaid factual position, there is no scintilla of doubt that a comprehensive/package policy would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an Act Policy stands on a different footing from a Comprehensive/Package Policy. As the circulars have made the position very clear and the IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a Comprehensive/Package Policy covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the Act Policy while admittedly cannot cover a third party risk of an occupant in a car. But, if the policy is a Comprehensive/Package Policy, the liability would be covered. These aspects were not noticed in the case of Bhagyalakshmi (supra) and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as the IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same."

29. In the present case the insurance policy Ex.R-2 is only 'Third Party/Act Policy'. Admittedly, deceased-Sohan Singh and Amrita Preet Kaur were gratuitous passengers in the car. In view of the law laid down by Hon'ble Supreme Court in **National**

Insurance Company Limited v. Balakrishnan and another: (2013) 1 SCC 731 deceased Sohan Singh and Amrita Preet Kaur, being 'gratuitous passengers' in the car, cannot be treated as 'third-party'. Therefore, respondent No.3-Insurance Company is not liable under the present 'Third Party/Act Policy' to indemnify the insured respondent No.1-owner for payment of compensation to the claimants and respondent No.3-Insurance Company could not be directed by the Tribunal to jointly and severally pay the compensation amounts to the claimants. It may also be observed here that under Section 163-A of the M.V. Act, driver is not liable for payment of compensation. Therefore, only respondent No.1-owner of the car in question is liable for payment of compensation to the claimants in both the cases. However, in view of the provisions of the M.V. Act, respondent No.3-Insurance Company will be liable to pay the compensation amounts to the claimants in the first instance and then recover the same from the insured-respondent No.1-owner by filing executions in accordance with law. Consequently, the findings of the Tribunal on issue No.3 in MACT case No.82AT/20.06.2006/10.04.2004 titled Parminder Kaur and another Vs. Mohan Singh and others and on issue No.2 in MACT case No.82T/20.06.2006/10.04.2004 titled Kanwaljit Kaur Vs. Mohan Singh and others are partly erroneous and liable to be reversed and the awards in both the cases are liable to be modified accordingly to that extent.

30. It follows from the above discussion that in MACT No.82AT/20.06.2006/10.04.2004 titled Parminder Kaur Vs. Mohan

Singh and others the claimants and respondent No.4 are entitled to payment of compensation amount of ₹4,17,500/- (instead of ₹5,76,000/- awarded by the Tribunal) with costs and interest at the rate of 9% per annum from the date of filing of the petition till realization. Out of the amount of ₹4,17,500/- claimant No.1 will be entitled to ₹2,17,500/- and claimant No.2 will be entitled to ₹1,50,000/- and respondent No.4 will be entitled to ₹50,000/- and the excess amount of ₹1,58,500/- awarded to them by the Tribunal, if already paid, will be liable to be recovered accordingly from claimants No.1 and 2. In MACT No.82T/ 20.06.2006/10.04.2004 titled Kanwaljit Kaur Vs. Mohan Singh and others the claimant is entitled to payment of compensation amount of ₹2,29,500/- with costs and interest at the rate of 9% per annum from the date of filing of the petition till realization. However, the amount of compensation of ₹2,25,000/- already awarded to the claimant will be liable to be deducted from the amount calculated as above. The directions of the Tribunal as to the manner of disbursement of amount of compensation to claimants shall also apply to the disbursement of enhanced amount of compensation.

31. Respondent No.3-Insurance Company is directed to pay the compensation amounts to the claimants, if not already paid, in the first instance and then recover the same from respondent No.1-owner by filing executions in accordance with law.

32. In view of the above discussion, the appeals are allowed with no order as to costs of present appeals and the awards dated 21.08.2006 passed in both the MACT cases are modified as mentioned above.

(ARUN KUMAR TYAGI)
JUDGE

15.02.2019
Vinay/kothiyal

Whether Speaking/reasoned	Yes
Whether Reportable	Yes