

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of decision: 21.5.2019

1.

FAO No.3876 of 2014(O&M)

New India Assurance Co. Ltd.

.....Appellant

VERSUS

Parmod Singh and others

.....Respondents

2.

FAO No.8960 of 2014(O&M)

New India Assurance Co. Ltd.

.....Appellant

VERSUS

Shiwani and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vinod Gupta, Advocate for the appellant/insurance company.

Mr. S.D. Bansal, Advocate for respondent No.1- Parmod Singh in FAO No.3876 of 2014.

REKHA MITTAL, J.

This order will dispose of FAO Nos.3876 and 8960 of 2014 as these have emerged out of the same award dated 07.02.2014 passed by the Motor Accidents Claims Tribunal, Panchkula whereby compensation has been assessed on account of death of Mrs. Nazreen Nisha Ali and injuries sustained by Shiwani in a motor vehicular accident that took place on 27.12.2010.

The Tribunal awarded Rs.1,04,19,880/- to Parmod Singh and three children of Mrs. Nazreen Nisha Ali with regard to her death and a sum of Rs.1,49,434/- in respect of injuries sustained by Shiwani. For facility of reference, facts are taken from FAO No.3876 of 2014.

Counsel for the appellant would argue that application for compensation in regard to death of Mrs. Nazreen Nisha Ali was filed by Parmod Singh claiming himself to be husband of said Mrs. Nazreen Nisha Ali. After evidence was closed by the parties, an application was filed for impleading Nashiyat, Nazeerah and Nazifah stated to be minor daughters of Mrs. Nazreen Nisha Ali and sought to be impleaded through their maternal grandfather-cum-natural guardian Sh. Farzand Mohammad, residents of House No.13079, Sturat Place, Surrey, British Columbia, Canada. The application for impleadment of Nashiyat etc. was allowed by the Tribunal vide order dated 19.11.2013. The insurance company challenged order dated 19.11.2013 by way of revision before this Court and proceedings before the Tribunal were stayed vide order dated 05.02.2014. It is further argued that during stay being operational and effective, the Tribunal decided the claim applications vide order dated 07.02.2014.

Another submission made by counsel is that the Tribunal adjourned the case on number of occasions in order to ensure service of respondents No.4 to 6 namely Nashiyat and others allowed to be added as party vide order dated 19.11.2013 but later without ensuring their service or adducing any additional evidence to prove that Nashiyat and others are children of Mrs. Nazreen Nisha Ali, thus, entitle to get compensation, the Tribunal decided the claim application. In addition, it is argued that vide

order dated 07.02.2014, the Tribunal permitted the claimants to tender documents Ex.P94 to P105 by way of rebuttal and on the same very day the applications were allowed without an opportunity to the insurance company to examine the documents tendered in rebuttal and make submissions in this regard. According to counsel, there was no issue framed by the Tribunal in regard whereof the respondents/claimants tendered the documents Ex.P94 to P105 by way of rebuttal and the aforesaid documents cannot be taken into consideration for deciding the claim proceedings without providing an opportunity to the insurance company to say something about admissibility and evidential value of these documents. The last submission made by counsel is that in the zimini order dated 07.02.2014, the claim petitions are stated to be dismissed but actually the Tribunal has allowed compensation more than Rs.1 crore with regard to death of Mrs. Nazreen Nisha Ali.

Counsel representing the respondents would contend that there is nothing on record suggestive of the fact that order of stay passed by this Court on 05.02.2014 was ever brought to the notice of Tribunal on 07.02.2014 or prior thereto, therefore, the allegations raised by the insurance company that claim applications have been decided despite stay granted by this Court are bereft of merit and unfounded. It is further argued that the Tribunal put its best efforts to serve respondents No.4 to 6 but eventually disposed of the claim applications subsequent to filing of an affidavit by Parmod Singh, noticed in the order dated 28.01.2014. It is further argued that proceedings before the Tribunal are summary in nature and not amenable to strict principles of law of evidence or procedure prescribed in the Code of Civil Procedure, 1908 to be applied. The factum

of dismissal of claim applications in zimini order dated 07.02.2014 appears to be the result of typographical error and the same cannot enure to benefit of insurance company for finding fault in the award.

Be that as it may, it is undisputed position of the case that the insurance company challenged the order dated 19.11.2013 by way of revision before this Court and the Court granted stay qua the proceedings pending before the Tribunal. The Tribunal decided the claim applications on 07.02.2014 when the order of stay was in force.

The application for compensation was filed in January 2011. Subsequent to conclusion of evidence by both the parties as the respondents closed evidence vide order dated 25.10.2013, an application was filed to bring on record other legal heirs of deceased Mrs. Nazreen Nisha Ali. Eventually, the application was disposed of by the Tribunal vide order dated 19.11.2013. Neither the Tribunal ensured presence of newly added respondents nor any evidence was adduced with regard to status of newly added respondents except tendering documents marked as Ex.P94 to P105. The Tribunal decided the case on the same very day on which the documents Ex.P94 to P105 were tendered into evidence in the statement made by counsel for the claimants. As has been rightly argued by counsel for the insurance company, there was no opportunity with the insurance company to examine the documents Ex.P94 to P105 as the Tribunal heard the case immediately and posted the matter after lunch for orders. The Tribunal without ensuring service of newly added respondents, in a haste, decided the case on the day the documents Ex.P94 to P105 were taken on record. No doubt, neither the strict principles of law of evidence nor of procedure prescribed in Code of Civil Procedure, 1908

are applicable to claim proceedings but the manner in which the Tribunal has proceeded to decide the case granting compensation of more than Rs.1 crore with regard to death of Mrs. Nazreen Nisha Ali cannot be approved particularly in the circumstances that proceedings before the Tribunal were stayed by this Court on 05.02.2014. As per the settled position in law, justice should not only be done but it should appear to have been done.

Keeping in view the aforesaid, interest of justice commands that the awards passed by the Tribunal with regard to death of Mrs. Nazreen Nisha Ali and injuries sustained by Shiwani are set aside and the matter is remitted to the Tribunal for deciding the cases afresh after ascertaining relationship of claimant Parmod Singh and respondents No.4 to 6 with Mrs. Nazreen Nisha Ali (since deceased) and their entitlement to get compensation.

In view of what has been discussed hereinbefore, the appeals are allowed. The award passed by the Tribunal allowing compensation in regard to death of Mrs. Nazreen Nisha Ali and injuries sustained by Shiwani is set aside. The matter is remitted to the Tribunal for deciding the cases afresh, in accordance with law. The parties through their counsel are directed to appear before the Tribunal on 10.07.2019. The Tribunal shall put its best efforts to dispose of the cases within a period of six months of the parties putting in appearance.

MAY 21, 2019

‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no