

Manjit Kaur and othersRespondents

2) FAO-4548-2016

Manjeet KaurAppellant

Versus

Shamsher Singh and othersRespondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rajneesh Malhotra, Advocate
for the appellant (in FAO-405-2016) and
for respondent No.2 (in FAO-4548-2016).

Mr. Parveen Kumar Rohilla, Advocate
for respondent No.1.

Mr. B.S. Bairagi, Advocate
for respondent No.3.

HARPREET SINGH BRAR, J.

1. The Insurance Company through instant appeal bearing FAO No.405 of 2016 is seeking setting aside of the award dated 28.10.2015 passed by Motor Accidents Claim Tribunal, Panipat (in short 'Tribunal').

2. The claimant through instant appeal bearing FAO No.4548 of 2016 seeking enhancement of the compensation awarded vide award dated 28.10.2015 passed by the said Tribunal.

3. Both the appeals are arising out of the same award, therefore, both are being heard together and decided through a common judgment.

FACTUAL BACKGROUND

4. Brief facts of the present case are that on 16.02.2012 at about 5:00 PM, Sonu @ Mangat Singh son of Sukhvinder Singh @ Sukha, left for village Bharkhera, District Bundi, (Rajasthan) from village Faridpur, District Panipat. At about 11:30 PM, they reached Jhajjar bypass where they took lift in a Canter (hereinafter 'offending vehicle') bearing Registration No.HR-46B-3821 going to Rewari. The driver of the said vehicle was driving the offending vehicle at a high speed, rashly and negligently, despite the request of the deceased and his co-passenger-Jaspal to drive at a moderate speed. At about 12:15 AM, when they reached village Machhrauli, the driver hit a truck preceding them, due to which, front cabin of the offending vehicle was broken and the deceased-Sonu @ Mangat Singh succumbed to the injuries sustained in the accident.

5. The learned Tribunal has framed the following issues:

1. Whether deceased Sonu died in Motor Vehicles accident due to the rash and negligent driving of respondent No.1 of the vehicle bearing registration No.HR-46B-3821?OPP
2. Whether the claimants are entitled to be compensated by the respondents on account of death of deceased in the motor vehicle accident, if Yes, how much and from whom?OPP
3. Whether the respondent No.1 has infringed the conditions of the insurance policy, if so, what its effect?OPR

4. Relief.

6. Learned Tribunal after adjudicating on different issues held that the claimant-Manjeet Kaur is entitled to grant of compensation of a sum of Rs.6,21,000/- on account of death of Sonu @ Mangat Singh. Claimant-Manjeet Kaur shall be further entitled to interest @ 7.5% per annum on the amount of compensation, if the amount is deposited within a period of two months from the date of passing of the award, failing which, respondents shall be liable to pay interest @ 9% per annum on the amount of compensation till its realization.

CONTENTIONS

7. Learned counsel for the Insurance Company has contended that the deceased-Sonu @ Mangat Singh was a gratuitous passenger and he is not covered by the Insurance Policy as the vehicle was registered as a 'goods vehicle' and was not supposed to be carrying passengers and has relied upon judgment of the Hon'ble Supreme Court in ***Anu Bhanvara Etc. Vs. Iffco Tokio General Insurance Company Ltd. and others* 2022 (2) SCC (Cri.) 121.** Hence, for all intents and purposes, the Insurance Company cannot be held liable for the death of an unauthorized gratuitous passenger.

8. A submission has further been made that in such a case, the claim would only be maintainable against the driver and owner of the offending vehicle. The learned Tribunal has committed a grave irregularity by making Insurance Company and the owner of the offending vehicle jointly and severally liable to compensate the claimants. In this context, he has relied upon the judgment of this Court in ***Ajay Kumar and others Vs. Darshana Devi and others* 2019 (2) Law Herald 1536.**

9. On the other hand, learned counsel for the claimant has contended that the learned Tribunal has wrongly assessed the income of the deceased and

that compensation awarded for loss of love and affection is on the lower side. The learned Tribunal has also not awarded anything for the loss of estate and 50% deduction was made on account of personal expenses, whereas, since the claimant-Manjeet Kaur was residing with the deceased, as such, the deduction should have been 1/3rd.

ISSUE

10. Having heard the learned counsel for the parties and perusing the records with their able assistance, the following issue arises for adjudication by this Court:-

“Whether compensation may be awarded on account of death of an unauthorized gratuitous passenger? If yes, whether the owner/driver of the offending vehicle or the Insurance Company are liable to pay the same?.”

OBSERVATIONS AND ANALYSIS

11. Learned counsel for the Insurance Company has relied upon **Anu Bhanvara (supra)** to claim that the owner and driver of the offending vehicle alone are liable to pay the compensation. A copy of the driving license of the driver is available on record as Ex.R-5, according to which, he was authorized to drive the offending vehicle on the date of occurrence. There is no evidence on record that the driving license of the driver was not legal or valid in any manner. A copy of the Insurance Policy is available on record as Ex.R-6, according to which, the offending vehicle was fully insured with the Insurance Company under a package policy valid till 28.03.2012.

12. A Coordinate Bench of this Court in **Surinder Kaur Vs. Smt. Rano Devi and others, 2016 SCC Online P&H 8111**, speaking through Justice Amol Rattan Singh, has dealt with an identical issue where the Insurance Company alone was made liable to pay the compensation awarded by the

learned Tribunal. The relevant paras are reproduced as under:-

“20. As regards the issue of liability of the respondent-insurance company to pay the compensation, instead of the appellant-owner of the car, learned counsel for the appellant reiterates that the Hon'ble Supreme Court in the case of Amrit Lal Sood v. Kaushalya Devi Thapar, (1998) 3 SCC 744, has empathetically held that even if a passenger travelling in a private car is a gratuitous passenger, he would be covered within the meaning of the term “third party policy”, if the insurance policy is a “package policy”.

21. He further submits that the ratio of the judgment in Amrit Lal Soods' case (supra), though without reference to that case, was again reiterated in Rani Gupta v. United India Insurance Co. Ltd., AIR 2009 (SC) 3226.

22. A perusal of the evidence led before the Tribunal shows that the policy in question (Ex.R-1) which was valid from the midnight of 07.08.2004 to the midnight of 06.08.2005, was indeed a package policy (for a private vehicle) issued on 06.08.2004 and as learned counsel for the respondent-insurance company has not been able to distinguish the aforesaid judgments, consequently, the policy in question being a package policy for a private car, this appeal has to be allowed as per the ratio of the aforesaid judgments and accordingly is allowed.”

13. In these circumstances, there remains no ambiguity that the Insurance Company is liable to pay full amount of the compensation to the claimant-Manjeet Kaur, being insurer of the offending vehicle.

14. Furthermore, a three Judge Bench of the Hon'ble Supreme Court in ***Amrit Lal Sood and another Vs. Kaushalaya Devi Thapar and others*** (1998) 3 SCC 744, speaking through Justice M. Srinivasan has held as under:-

“8. Thus under Section II (1)(a) of the policy the insurer has agreed to indemnify the insured against all sums which the insured shall become legally liable to pay in respect of death of or bodily injury to “any person”. The expression “any person” would undoubtedly include an occupant of the car who is gratuitously travelling in the car. The remaining part of clause (a) relates to cases of death or injury arising out of and in the course of employment of such person by the insured. In such cases the liability of the insurer is only to the extent necessary to meet the requirements of Section 95 of the Act. Insofar as gratuitous passengers are concerned there is no limitation in the policy as such. Hence under the terms of the policy, the insurer is liable to satisfy the award passed in favour of the claimant. We are unable to agree with the view expressed by the High court in this case as the terms of the policy are unambiguous.”

15. The schedule of premium under the Insurance Policy (Ex. R-6), clearly indicates that the basic third party cover has been included, which covers any damages or loss suffered by a third party in case of an accident.

Once the Insurance Company has charged premium from the insured on

account of coverage of third party, the ratio of the judgment in ***Surinder Kaur (supra)*** as well as ***Amrit Lal Sood (Supra)*** would be applicable. In a two Judge Bench of the Hon'ble Supreme Court in ***Rani Gupta and others Vs. United India Insurance Company Limited and others*** AIR 2009 (SC) 3226, speaking through Justice S.B. Sinha has while dismissing the appeal has upheld the ratio of law laid down by the Delhi High Court and following observations were made:-

“5. The first respondent preferred an appeal there against. The question raised before the High Court was as to whether the deceased having been travelling as a gratuitous passenger in a private car would fall within the meaning of 'third party' and, thus, would be covered by the statutory policy under Section 147 of the Act. The learned Judge noticed that the policy was "Private Car Package Policy" as notified by the Tariff Advisory Committee with effect from 1.7.2002 the terms and conditions whereof are:

"Section II - Liability To Third Party

1. Subject to the limits of liability as laid down in the Schedule hereto the Company will indemnify the insured in the event of an accident caused by or arising out of the use of the vehicle against all sums which the insured shall become legally liable to pay in respect of:

(i) death of or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured.

(ii) Damage to property other than property belonging to the insured or held in trust or in the custody or control of the insured."

It was furthermore opined that the object and purpose of Sections 146 and 147 is that policy of insurance should cover liability in respect of death or bodily injury of a person including the owner of the goods or his authorized representative who may be carried in a goods vehicle/carriage as defined in Section 2 (14) of the Act."

16. Once the Insurance Company has deducted premium for third party, it cannot escape its liability. In view of the facts and circumstances of the case and the ratio laid down in the aforementioned decisions, this Court is of the considered opinion that the Insurance Company is liable to pay the compensation to the claimants.

17. The next issue which requires adjudication by this Court is as to whether the power under Order 41 Rule 33 C.P.C. can be invoked to mould the relief when respondent No.1-Shamsher Singh (FAO-4548-2016) has not filed any appeal against the award dated 28.10.2015 ?

18. Furthermore, Section 168 of the Act casts a statutory obligation on the Tribunal as well as this Appellate Court to award a compensation which is just and reasonable. This Court, therefore, must pass an appropriate order to deliver complete justice by awarding just and reasonable compensation while exercising powers under Order XLI Rule 33, in performance of its statutory duty imposed by Section 168 of the Act. It must be understood that what is fair and reasonable compensation would depend on the facts and circumstances of each case. The appeal is an extension of the proceedings before the Tribunal and in the interest of justice, this Court cannot refuse the relief to a party only because of a procedural clog.

19. The Hon'ble Supreme Court in ***Helen C. Rebello (Mrs.) and Others Vs. Maharashtra State Road Transport Corporation and another*** 1999 (1) SCC 90, had emphasized that the Act is a beneficial piece of legislation and the primary object of the Court has to be to assist the injured person or the family of the deceased. In this context, a reading of Order XLI Rule 33 of the Code of Civil Procedure should be made. The same is reproduced as under:-

"33. Power of Court of Appeal: The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection, and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees."

20. A two Judge Bench of the Honb'le Supreme Court, speaking through Justice S. Rajendra Babu, has examined the scope of power of the Appellate Court under Order XLI Rule 33 of the Code of Civil Procedure in the case of ***K. Muthuswami Gounder Vs. N. Palaniappa Gounder*** reported as (1998) 7 SCC 327 and observed as under:-

"10. Order 41 Rule 33 enables the appellate court to pass any decree or order which ought to have been made and to make such further order or decree as the case may be in favour of all or any of the parties even though (i) the appeal is as to part only of the decree;(ii) such party or parties may not have filed an appeal. The necessary condition for exercising the power under the Rule is that the parties to the proceeding are before the court and the question raised properly arises (sic out of) one of the judgments of the lower court and in that event, the appellate court could consider any objection to any part of the order or decree of the court and set it right."

21. A two Judge Bench of the Hon'ble Supreme Court in ***Dhangir Vs. Madan Mohan*** AIR 1988 SC 54, speaking through Justice Jagannatha Shetty, had made the following observations:-

"15. XXX

The appellate court could exercise that power in favour of all or any of the respondents although such respondent may not have filed any appeal or objection. The sweep of the power under Rule 33 is wide enough to determine any question not only between the appellant and respondent, but also between respondent and co-respondents. The appellate court could pass any decree or order which ought to have been passed in the circumstances of the case. The appellate court could also pass such other decree or order as the case may require. The words "as the case may require" used in Rule 33 Order 41 have been put in wide terms to enable the appellate court to pass any order or decree to meet the ends of justice. What then should be the constraint? We do not find many. We are not giving any liberal interpretation. The rule itself is liberal enough. The only constraints that we could see may be these: That the parties before the lower court should be there before the appellate court. The question raised must properly arise out of judgment of the lower court. If these two requirements are there, the appellate court could consider any objection against any part of the judgment or decree of the lower court. It may be urged by any party to the appeal. It is true that the power of the appellate court under Rule 33 is discretionary. But it is a proper exercise of judicial discretion to determine all questions urged in order to render complete justice between the parties. The court should not refuse to exercise that discretion on mere technicalities."

22. A Constitutional Bench in ***Panna Lal Vs. State of Bombay*** AIR 1963 SC 1516, speaking through Justice Das Gupta, observed as under:-

“12. Even a bare reading of Order 41, Rule 33 is sufficient to convince any one that the wide wording, was intended to empower the appellate court to make whatever order it thinks fit, not only as between the appellant and the respondent but also as between a respondent and a respondent. It empowers the appellate court not only to give or refuse relief to the appellant by allowing or dismissing the appeal but also to give such other relief to any of the respondents as "the case may require". In the present case, if there was no impediment in law the High Court could therefore, though allowing the appeal of the State by dismissing the plaintiff's suits against it, give the plaintiff a decree against any or all the other defendants. who were parties to the appeal as respondents. While the very words of the section make this position abundantly clear the illustration puts the position beyond argument.”

23. A two Judge Bench of the Hon'ble Supreme Court, speaking through Justice Asok Kumar Ganguly in ***Pralhad Vs. State of Maharashtra*** 2010 (10) SCC 458, has made the following observations:-

“18. The provision of Order 41, Rule 33 of Civil Procedure Code is clearly an enabling provision, whereby the Appellate Court is empowered to pass any decree or make any order which ought to have been passed or made, and to pass or make such further or other decree or order as the case may require. Therefore, the power is very wide and in this enabling provision, the crucial words are that the Appellate Court is empowered to pass any Order which ought to have been made as the case may require. The expression 'Order ought to have been made' would obviously mean an Order which justice of the case requires to be made. This is made clear from the expression used in the said Rule by saying 'the court may pass such further or other Order as the case may require.' This expression 'case' would mean the justice of the case. Of course, this power cannot be exercised ignoring a legal interdict or a prohibition clamped by law.”

24. A Full Bench of the Madhya Pradesh High Court in ***Prakramchand Vs. Chuttan and others*** 1991 AIR (Madhya Pradesh) 280, speaking through Justice Dr. T.N. Singh, has examined the power under Order XLI Rule 33 to pass such orders in favour of a party who has not preferred any appeal against the impugned award under the Act. The Full Bench while answering the reference in the aforementioned decision has held that the High Court can invoke the provisions of Order XLI Rule 33 even in the absence of any appeal or cross-objection by a party and following was observed:-

“6. For the view, we have taken, we find support in Manjula Devi (1968 Jab LJ 189) (supra). It has been held that the range and sweep of the discretionary power envisaged under Order 41, Rule 33 is very wide as it enables the appellate Court to use it in a proper case even in favour of a party who has neither appealed nor filed the cross-objection so as to pre-

vent justice being defeated. Two decisions of the Apex Court, Pannalal v. State of Bombay, AIR 1963 Supreme Court 1516 and Nirmala Bala v. Balai Chand, AIR 1965 Supreme Court 1874 were considered in that case. The Court, in allowing cross-objection of the claimant, modified the award and held, liable the party exonerated by the Tribunal. That was done exercising jurisdiction under Order 41, Rule 33, while rejecting the contention, at the same time, that in an appeal u /Section 110-D, cross-objection could not be filed as appeal was not under Civil Procedure Code. Not only provisions of Order 41, Rule 22, Civil Procedure Code were held inexhaustive, those of Rule 14 of the Rules framed under the Act were similarly held inadequate and not impinging on Court's power under Order 41, Rule 33."

25. In this context, a reference can be made to the judgment of the Hon'ble Supreme Court passed in ***State of Punjab Vs. Bakshish Singh 1998 (8) SCC 222***, where it was held that under Order XLI Rule 33, the Appellate Court has a wide power to pass such decree or order as ought to have been passed, irrespective of the fact that the party in whose favour the power is sought to be exercised has not filed any appeal or cross-objection, in order to do complete justice.

26. Therefore, in the light of the peculiar facts and circumstances of this case, this Court deems it appropriate to exercise its power and discretion under Order XLI Rule 33 of the Code of Civil Procedure read with Section 168 of the Act and mould the relief which ought to have been granted by the learned Tribunal.

CONCLUSION

27. After careful consideration of the arguments of both the parties and perusal of the records, this Court is of the opinion that the amount of compensation needs to be redetermined as per the judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009***, and ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009 (6) SCC 121***.

28. The learned Tribunal has erred in not awarding any amount towards future prospects. This Court deems it fit to award 40% towards the same. Further, Rs.25,000/- is awarded towards litigation expenses and Rs.18,150/- towards loss of estate {as per *Pranay Sethi (Supra)*}.

Sr. No.	Head	Amount
A	Pecuniary	
1.	Income	Rs.4500/- per month
2.	Annual Income	Rs.4500 x 12 = Rs.54,000/-
3.	Future Prospects (40%)	40/100 x 54,000 = Rs.21,600/- (54,000 + 21, 600 = Rs.75, 600/-)
4.	Deduction (50%)	50/100 x 75, 600 = Rs.37,800/- (75,600 – 37, 800 = Rs.37,800/-)
5.	Multiplier (18)	37,800 x 18 = Rs.6,80,400/-
	Total of Column A	Rs.6,80,000/-
B	Non-Pecuniary	
1.	Loss of Love and Affection	Rs.1,00,000/-
2.	Transportation	Rs.10,000/-
3.	Funeral Expenses	Rs.25,000/-
4.	Litigation Expenses	Rs.25,000/-
5.	Loss of Estate	Rs.18,150/-
	Total of Column B	Rs.1,78,150/-
	Total Compensation (A + B)	Rs.8,58,550/-

29. While calculating the interest on the basis of 7.5% per annum as per *Sarla Verma (supra)* and *Pranay Sethi (supra)*, this Court while condoning the delay of 104 days in filing the appeal by the claimant vide order dated 18.09.2018, has observed as under:-

“This is an application for condonation of delay of 104 days of filing the appeal. For the reasons recorded, this application is allowed and delay is condoned. It is, however, clarified that the appellant would not be entitled to interest for the said period, in case the compensation is enhanced.”

Therefore, the claimant is not entitled to the interest for the aforesaid period i.e. 104 days.

30. Consequently, the appeal filed by the Insurance Company (FAO-405-2016) is dismissed and appeal filed by the claimant (FAO-4548-2016) is partially allowed. The Insurance Company is directed to pay the redetermined

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amount of compensation i.e. Rs.8,58,550/- to the claimant. The Insurance Company is directed to pay the same within a period of two months from the date of passing the order along with interest at the rate of 7.5% per annum. In case any amount is paid towards the compensation by the Insurance Company, the same shall be deducted from the redetermined amount of compensation.

(HARPREET SINGH BRAR)
JUDGE

02.06.2023
Neha

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