IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

I.

FAO-6409-2016 (O&M)
Reserved on 3.7.2023
Date of Decision: 6.10.2023

United India Insurance Company Limited

....Appellant

VERSUS

Sushma and others

....Respondents

II.

FAO-4132-2017 (O&M)

Smt. Sushma and others

....Appellants

VERSUS

Rajbir and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by : Mr. V.K.Sheoran, Advocate,
for the appellant in FAO-4132-2017 and
for the respondents in FAO-6409-2016.

Mr. Ram Avtar, Advocate,
for the appellants in FAO-6409-2016 and
for the respondents in FAO-4132-2017.

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KARAMJIT SINGH, J.

This order shall dispose of the appeal bearing FAO-6409-2016 titled as United India Insurance Company limited v. Sushma and others (filed by the insurance company for setting aside of the impugned award) and appeal bearing FAO-4132-2017 titled as Smt. Sushma and others v. Rajbir and others (filed by the claimants/appellants for enhancement of compensation) awarded by the Motor Accident Claims Tribunal, Bhiwani (in short, "the Tribunal") vide impugned award dated 31.5.2016.

2. Case of the claimants in brief is that claimant No.1-Sushma is widow while claimants No.2 and 3 are parents of deceased-Manjeet aged about 24 years. On 17.3.2014 at about 3:00 p.m., deceased-Manjeet was travelling in Tata Sumo No.HR01L-9127 which was driven by Rajbir and when they reached near village Jhulli and Bhariwas, one blue bull suddenly came on the road and Rajbir while trying to save the said animal lost control and Tata Sumo struck against a tree. Due to the said accident, Manjeet died at the spot and DDR No.20-A dated 18.3.2014 was lodged in Police Station Tosham with regard to the said accident. Aforesaid Tata Sumo was owned by respondent No.2 and insured with respondent No.3. The deceased was student and also used to do tuition work and his monthly income was ₹ 3300/-. The claimants sought compensation worth ₹ 25 lakh on account of death of Manjeet in the aforesaid accident and accordingly, filed claim petition under Section 163-A of the Motor Vehicles Act.

3. The claim petition was contested by the respondents. Respondents No.1 and 2 filed joint written statement in which they took plea that at the time of the accident, Tata Sumo in question was being driven by respondent No.1 at a moderate speed. However, they have not disputed the fact that Manjeet died on account of injuries sustained by him in the said accident and further took plea that the accident had not taken place due to negligence of respondent No.1.

4. Respondent No.3 filed separate written statement taking preliminary objections that the driver of the vehicle in question was not having effective and valid driving licence at the time of the alleged accident

and that the insurance company is not liable to pay any compensation. On merits, the factum of accident was denied. It was also denied that Manjeet was earning ₹ 3300/- per month. It was further pleaded that Tata Sumo in question was insured with the answering respondent for private use only but at the time of the alleged accident, it was used by the driver and owner in breach of the terms and conditions of the insurance policy to carry private passengers for hire or reward and it being 'Act Policy' did not cover risk of any passenger.

5. On the pleadings of the parties, following issues were framed in the case: -

1. Whether the accident in question took place on 17.3.2014 at about 3:00 p.m. between village Jhulli and Bhariwas, falling within the area of Police Station Tosham, due to involvement of the offending vehicle i.e. Tata Sumo bearing registration No.HR01L-9127 resulting to cause death of Manjeet son of Chaju Ram? OPP.
2. If issue no.1 is proved, to what amount and from whom, the petitioners are entitled for the compensation? OPP
3. Whether the present claim petition is not maintainable? OPR
4. Whether the petitioners have no locus standi and cause of action to file the present petition? OPR
5. Whether the respondent no.1 was not holding a valid effective and genuine driving license at the time of alleged accident and therefore, the vehicle was being plied in violation of terms and conditions of the insurance policy?

OPR-3.

6. Relief.

6. Counsel for claimants examined Sushama widow of deceased as PW1 and produced documents Ex.P1 to P4 including copy of post mortem examination report of Manjeet and copy of driving licence of respondent No.1-Rajbir.

7. On the other hand, counsel appearing on behalf of respondents No.1 and 2 examined RW1-Rajbir. Counsel for respondent No.3 tendered into evidence insurance policy Ex.R1.

8. After hearing counsel for the parties, the Tribunal decided all the issues in favour of the claimants and assessed the monthly income of the deceased as ₹3300/- and awarded compensation worth ₹6,00,200/- to the claimants with interest @ 7% per annum with direction to respondent No.3-insurance company to deposit awarded amount within 45 days, failing which, the payment is to be made with interest @ 9% per annum. All the three respondents were jointly and severally held liable to pay the awarded amount.

9. The claimants being aggrieved by the said award have filed FAO-4132-2017. Even the insurance company being not satisfied with the award has filed FAO-6409-2016.

10. Counsel for the claimants while assailing the impugned award has *inter alia* submitted that at the time of accident, minimum wages of unskilled worker were fixed as ₹5547/- in the State of Haryana and in this manner, the monthly income of the deceased assessed by the Tribunal as ₹ 3300/- requires to be enhanced to ₹ 5547/-. It has been further contended

that while passing the impugned award, the Tribunal ignored the aspect of future prospects of the deceased who was a student and was also doing tuition work. Counsel for the claimants has further submitted that in the impugned award, no compensation was granted by the Tribunal under the conventional heads of loss of consortium, loss of estate and loss of love & affection as per law laid down by Hon'ble Apex Court in **National Insurance Company Limited** v. **Pranay Sethi and others** (2017) 16 SCC 680 and **Magma General Insurance Company Limited** v. **Nanu Ram @ Chuhru Ram,** (2018) 18 SCC 130

11. On the other hand, counsel appearing on behalf of insurance company has submitted that the insurer is not liable to pay any compensation to the claimants. Counsel for insurance company has further submitted that no doubt, Tata Sumo in question was insured with appellant insurance company at the relevant time but the insurance policy Ex.R1 was not a 'Package policy' but was Statutory/Act policy and the liability of the gratuitous passenger of the vehicle was not covered under the said policy. It has been further contended that as per guidelines issued by IRDA dated 16.11.2009, the gratuitous passenger is not covered under the “Statutory Policy”. Counsel for the insurance company has further contended that in the instant case, deceased-Manjeet was neither driver nor employee of the insured and was carried as a gratuitous passenger in Tata Sumo and as such, risk of the said passenger was not covered under the insurance policy Ex.R1 even as per aforesaid guidelines of IRDA. In support of his arguments, counsel for respondent No.3 has placed reliance on the decision of Hon'ble Supreme Court in **United India Insurance Company Limited, Shimla** v.

Tilak Singh and others 2006 (3) RCR (Civil) 168 wherein it was held that as the insurance policy was a statutory policy and hence it did not cover risk of death of or bodily injury to pillion rider of insured two wheeler, he being gratuitous passenger.

12. Counsel for the insurance company has further referred to **National Insurance Company Limited** v. **Balakrishanan and another** 2013 (1) RCR (Civil) 762 wherein also, the Hon'ble Supreme Court held that it was 'Act Policy' which stands on a different footing from a Comprehensive/Package policy and that in case of 'Act Policy', the insurance company is not liable to pay compensation to a person travelling in a insured car, who sustained injuries on account of motor vehicle accident.

13. In rebuttal, counsel for the claimants has argued that the insurance company could not be exonerated from its liability as the vehicle in question was properly insured with it at the time of the accident. It was further submitted that it has come on record that the deceased was relative of respondent No.1 and as such, he could not be treated as a gratuitous passenger. Counsel for the claimants has further submitted that the guidelines issued by IRDA are not binding on the Tribunal as well as this Court. It is further submitted that in the Motor Vehicles Act, there is no distinction between 'Act Policy' or 'Package Policy' as has been held by this Court in FAO-4287-2005 (O&M) and XOBJC No.57-CII-2013; **Shiv Lochan Singh @ Bhola** v. **National Insurance Company Limited and others;** decided on 27.11.2017

14. I have considered the submissions made by the counsel for the

parties.

15. Admittedly, the claimants filed claim petition under Section 163-A of the Motor Vehicles Act for grant of compensation on account of death of Manjeet son of claimants No.2 and 3 in a motor vehicle accident. Claimant No.1 is widow of Manjeet. As per 2nd schedule to Section 163-A of the Motor Vehicles Act, ceiling limit of the income of victim is ₹ 40,000/- per annum. In the present case, no reliable document was produced by the claimants with regard to annual income of the deceased who was aged about 24 years. In the given circumstances, the learned Tribunal rightly assessed the monthly income of the deceased as ₹ 3300/- and annual income of the deceased as ₹ 39600/-. The learned Tribunal rightly deducted 1/3rd towards the personal expenses of the deceased and thus, assessed the annual dependency of the claimants on the deceased as ₹ 26,400/-. The age of the deceased being 24 years, the learned Tribunal rightly applied multiplier of 18 and in this manner, assessed the total dependency of the claimants as ₹ 4,75,200/-. The learned Tribunal also provided funeral expenses and transportation charges worth ₹ 25,000/- and compensation worth ₹ 1 lakh on account of breakage of emotional bondage and assessed the total compensation as ₹ 6,00,200/-.

16. There is no challenge to the aforesaid amount of compensation awarded by the learned Tribunal on behalf of the owner, driver or insurer of the vehicle in question. However, the claimants are seeking enhancement of the compensation awarded by the learned Tribunal. This Court is of the view that claimant No.1 (wife of the deceased) is entitled to get ₹ 52,000/- as loss of consortium and ₹ 19,500/- as loss of estate as per ratio laid down

in **Pranay Sethi's case** (supra). However, the claimants are not entitled to get any additional compensation under the head of future prospects as the present petition is filed under Section 163-A of the Motor Vehicles Act and in the 2nd schedule to Section 163-A of the Motor Vehicles Act, there is no provision to provide compensation on account of future prospects of the deceased.

17. So, in the present case, the award passed by the learned Tribunal requires to be enhanced by ₹ 71,500/- along with interest at the rate awarded by the learned Tribunal from the date of claim petition till its realization.

18. It is fully proved on record that at the time of the accident, deceased-Manjeet was travelling in a Tata Sumo No.HR01-L-9127 driven by Rajbir and suddenly, blue bull came on the road and in order to save the said animal, Rajbir lost control over the vehicle and the same struck against a tree and due to the said accident, Manjeet died and the matter was reported to the police and DDR No.20-A dated 18.3.2014 was registered in Police Station Tosham with regard to the said accident. The aforesaid Tata Sumo was insured with the appellant insurance company and the concerned insurance policy is Ex.R1. Admittedly, the deceased was neither owner nor driver of Tata Sumo in question. From the perusal of the insurance policy Ex.R1, it is evident that it was 'liability only policy' and it being 'Statutory/Act policy' would cover only third party risk. Deceased-Manjeet Singh who was travelling in Tata Sumo vehicle could not be considered as a third party and rather he is to be treated as a gratuitous passenger. In the present case, the claimants have failed to prove that any additional premium

was paid by the insured to cover the risk of occupant/gratuitous passenger of the insured vehicle. An occupant/gratuitous passenger of a private vehicle is not to be construed as a third party unless it is a comprehensive package policy and additional premium is paid to cover the risk of such passenger.

19. A profitable reference in this regard can be made to judgment in **Tilak Singh's case** (supra) wherein a pillion rider of scooter who died in a motor vehicle accident was considered as a gratuitous passenger and the insurance company was not held liable to pay compensation as the insurance policy was a statutory policy. In **General Manager, United India Insurance Company Limited** v. **M. Laxmi and others,** (2009) ACJ 104, the Hon'ble Supreme Court while placing reliance on the ratio laid down in **Tilak Singh's case** (supra), allowed the appeal filed by the insurance company and exonerated the insurer of the scooter in case of death of a pillion rider in motor vehicle accident and the said pillion rider was termed as gratuitous passenger. Further, in **Balakrishanan's case** (supra), Hon'ble Apex Court again held that 'Act Policy' stands on a different footing from a comprehensive policy and remitted the matter to the Tribunal to scrutinize the policy in a proper perspective and, if necessary, by taking additional evidence and if the conclusion is arrived at that the policy in question is a “Comprehensive/Package Policy”, the liability would be fastened on the insurer. As far as other findings recorded by the Tribunal and affirmed by the High Court are concerned, they remained undisturbed.

20. Likewise, Hon'ble Apex Court in **Oriental Insurance Company Limited** v. **Surendra Nath Loomba and others** 2013 (1) RCR

(Civil) 603 while relying upon the law laid down in **Tilak Singh's case** (supra), observed as follows : -

> "21. 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 than 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" which 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."

21. In view of aforestated authoritative pronouncements of Hon'ble Apex Court holding that an occupant/passenger in a private car is not a third party, the finding recorded by the Tribunal that the insurance policy issued, covers risk of such persons and, therefore, the insurance company is liable to pay compensation is illegal and contrary to the above cited law laid down by Hon'ble Supreme Court. In view of settled position of law, as discussed above, the claimants cannot take any benefit of the decision

passed by this Court in **Shiv Lochan Singh @ Bhola's** case (supra).

22. In the instant case, it stands proved that the insurance policy was an “Act Policy” and no additional premium was received by the insurance company to cover the risk of such passenger. Therefore, liability foisted on the insurance company cannot be sustained and accordingly, it is hereby set aside and the liability is fastened on the owner and driver of the vehicle in question to compensate the claimants.

23. In view of above, FAO-6409-2016 filed by the appellant insurance company is allowed and the impugned award is set aside qua the appellant insurance company.

24. FAO-4132-2017 is partly allowed and the award passed by the learned Tribunal is enhanced by ₹ 71,500/- along with interest as has been awarded by the learned Tribunal. The entire amount of compensation including enhanced compensation is to be paid by the owner and driver of the car in question, to claimant No.1-Sushma widow of Manjeet.

(KARAMJIT SINGH)
JUDGE

October 6, 2023
Paritosh Kumar

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