IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3096-2017(O&M) with
XOBJC-159-CII-2017(O&M)
Reserved on:-11.5.2023
Date of Pronouncement:-17.5.2023

National Insurance Company Ltd.

...Appellant

Versus

Rajinder Kaur and others

...Respondents

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

Present: Mr.O.P. Sharma, Advocate
for the appellant.

Mr.Sushil Saini, Advocate
for respondents No.1 and 2/cross-objectors.

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<u>H.S. MADAAN, J.</u>

**<u>CM-10223-CII-2017 in
FAO-3096-2017 &
CM-19298-CII-2017 in
XOBJC-159-CII-2017</u>**

For the reasons mentioned in the applications, the same are allowed and delay of 11 days in filing of FAO-3096 of 2017 and delay of 20 days in refiling of XOBJC-159-CII-2017 stand condoned.

**<u>FAO-3096-2017(O&M) with
XOBJC-159-CII-2017(O&M)</u>**

1. Briefly stated, facts of the case are that on 4.12.2015 Gurparminder Singh @ Babbu, aged about 27 years, resident of House No.221, Kamla Devi Avenue, Fatehgarh Churiyan Road, Amritsar along with Harminder Singh and Gurinder Singh was going from Chandigarh towards Shimla in a Skoda car bearing registration No.PB-02-BZ-8525

(hereinafter referred to as the ill-fated car) being driven by Harminder Singh – respondent No.1 in a rash and negligent manner; at about 3:00 a.m. when they had reached at turning of Koti, District Solan (H.P.), respondent No.1 lost control over the offending car; resultanlty the car turned turtle and met with an accident due to which Gurparminder Singh @ Babbu, Gurinder Singh and Harminder Singh suffered multiple injuries; Gurparminder Singh @ Babbu had succumbed to those injuries at the spot, whereas the other injured were taken to ESI Hospital, Parwanoo in an ambulance; due to his serious condition Harminder Singh was referred to PGI, Chandigarh. Formal FIR no.117 dated 4.12.2015 for the offences under Sections 279/304-A IPC was recorded at Police Station Parwanoo, District Solan(H.P.) on the basis of statement of Gurinder Singh.

2. As per the version of the claimants, Gurparminder Singh @ Babbu was aged about 27 years and was serving in Reefership Marine Services, Ltd. Canon's Court, 22, Victoria Street, Hamilton, Bermuda working as a Second Officer at Vessel M.V. Dole, Africa earning $ 5066.98 equivalent to Rs.3,29,355/- per month and due to his death, great pecuniary loss has been caused to his parents i.e. mother Rajinder Kaur aged about 59 years and father Balbir Singh, aged 61 years both residents of village Jethuwal, Tehsil and District Amrtsar. Both of them had filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) before Motor Accident Claims Tribunal, Amritsar (hereinafter referred to as the Tribunal) and at that time they were residents of House No.221, Kamla Devi Avenue, Fatehgarh

Churiyan Road, Amritsar. In the claim petition, the petitioners/claimants had impleaded Harminder Singh – driver, Gursatinder Kaur – owner and National Insurance Company Ltd. - insurer of the ill-fated car claiming compensation to the tune of Rs.5 crores..

3. On getting notice, all the three respondents had appeared and filed separate written statements.

4. In the written statement filed by respondent No.1, he had raised preliminary objections that he was not liable to pay any compensation because he was having a valid driving licence issued by Licensing Authority, Rajpura, at the time of accident. On merits, such respondent admitted the accident but denied that it was caused due to his rash and negligent driving, rather he stated that he was driving the car when suddenly a wild animal crossed the road due to which he immediately applied brakes, resultantly the car turned turtle and the accident took place. He prayed for dismissal of the claim petition.

In the written statement brought on behalf of respondent No.2, she had raised preliminary objections challenging the maintainability of the claim petition submitting that the car in question was duly insured with respondent No.3 at the relevant time, therefore, respondent No.3 insurance company was liable to satisfy the award. On merits, such respondent controverted the assertions in the claim petition while praying for dismissal of the same.

In the written statement submitted on behalf of respondent No.3 insurance company, it had also taken up various legal objections with regard to maintainability of the claim petition contending that the claimants are neither LRs (Legal Representatives) nor were dependents on the earning of the deceased and they had not suffered any monetary or financial loss on account of death of Gurparminder Singh @ Babbu and further the claim petition was bad for misjoinder and non-joinder of necessary parties. According to such respondent, terms and conditions of the insurance policy were violated and respondent No.1 was not having a legal and valid driving licence to drive the car. Refuting the remaining assertions, such respondent also prayed for dismissal of the claim petition.

5. Issues on merits were framed and the parties were afforded adequate opportunities to lead evidence in support of their respective claims.

6. After hearing arguments, the Tribunal vide award dated 21.11.2016 accepted the claim petition partly and awarded compensation of Rs.92,83,440/- to the claimants, payable by respondents No.1 to 3 jointly and severally with interest @ 7.5% per annum from the date of filing of the petition till actual realization.

7. Feeling dissatisfied with the impugned award, respondent No.3 insurance company had approached this Court by way of filing the present appeal, notice of which was given to the respondents. Respondents No.1 and 2 have appeared and filed cross-objections seeking enhancement of compensation.

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

9. Learned counsel for the appellant/insurance company has contended that the accident had taken place due to negligence of car driver

Harminder Singh and no other vehicle was involved in the accident; the deceased was occupant of the ill-fated Skoda car, in that way, he was a gratuitous passenger; the insurance policy was act/liability policy, which covers only third party and not occupant, therefore, insurance company was wrongly made liable to pay compensation. In support of his that contention, he has referred to judgments ***Oriental Insurance Company Ltd. Versus Surendra Nath Loomba and others, 2013(1) RCR(Civil)603*** by the Apex Court and ***National Insurance Company Ltd. Versus Balakrishnan and another, 2013(1) RCR(Civil)762*** and ***The New India Assurance Company Versus Promila Devi and others, 2021(2) SimLC 890***.

10. Whereas learned counsel for the respondents/claimants has controverted such assertions stating that appellant insurance company was rightly held liable to pay compensation. He has referred to judgment by a Co-ordinate Bench of this Court i.e. ***Shiv Lochan Singh @ Bhola Versus National Insurance Company Ltd. and others, 2018(1) RCR(Civil) 559*** wherein it was observed that in terms of Sections 147 and 149 of Motor Vehicle Act, 1988, the wording 'Every Person' includes other passengers travelling in private passenger car and pillion rider of motorcycle. It was further observed that law does not recognise any postulate of 'one-mess' between two living persons and any two individuals are separate and distinct legal entities with independent rights and liabilities, therefore the claim cannot be thrown away merely because claimant happen to be family members of negligent offender. It was further observed that term every person includes even passengers travelling in a private passenger

car and pillion rider of motorcycle. In that judgment, the judgments referred to by learned counsel for the appellants i.e. ***Oriental Insurance Company Ltd. Versus Surendra Nath Loomba and others*** and ***National Insurance Company Ltd. Versus Balakrishnan and another*** (supra) were considered. In another judgment i.e. ***National Insurance Company Ltd.Versus Smt.Surjit Kaur and others, 2017(1) RCR(Civil) 640*** by a Single Judge of this Court, in view of the instructions of Tariff Advisory Committee followed by the insurance company, it was held that pillion riders are covered under the Act policy and insurance company is liable to indemnify the insurer. A Division Bench of Kerala High Court had also dealt with this point in judgment ***Oriental Insurance Company Ltd. Versus Daniel, 2000 ACJ 1391*** had held that gratuitous passengers travelling in a private car is a third party and insurance company is liable under an Act policy.

11. With regard to the other submissions made by learned counsel for the insurance company on the point of quantum of compensation that deceased was not on the roll of the company and was having 6 months contract only, therefore, his income is to be taken for 6 months and not that of year as has been done in the present case. Ex.P10 goes to show that it was last and latest contract for the year 2015 and deceased was not permanent employee of the company.

12. Whereas these submissions are also strongly refuted on behalf of the respondents/claimants.

13. After considering the submissions made by learned counsel for the parties, I do not find myself in agreement with learned counsel for

the appellant in that regard. The deceased at the time of his death was serving in Reefership Marine Services, Ltd. Canon's Court, 22, Victoria Street, Hamilton, Bermuda working as Second Officer at Vessel M.V. Dole, Africa, though the document placed on record may be reflecting the contract for 6 months but that does not go to show that the contract would not have been extended or he could not have found employment with some other shipping company after the termination of his contract with the first company or that there would have been any waiting period in between.

14. Furthermore, there is nothing to show that the earning of the deceased would have decreased in future. Rather in routine, the income gets enhanced.

15. Learned Tribunal has dealt with this aspect in detail and I do not find any fault therewith.

16. No other point was advanced by learned counsel for the insurance company.

17. I do not see any reason to decrease the compensation amount. The Tribunal had fallen in error in considering the ages of claimants for the purpose of using of multiplier. In terms of the judgment by the Apex Court i.e. ***Giasi Ram and another Versus ICICI Lombard General Insurance Co. Ltd. and others, 2022 LiveLaw(SC) 828***, the age of the deceased and not the age of the dependents in case of death of bachelor is to be made basis for multiplier. Therefore, in terms of judgment ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil) 77***, multiplier of 17 is to be applied.

18. Thus the compensation is worked out to Rs.1,74,78,720/- (1028160 x 17).

19. The Tribunal has further awarded an amount of Rs.25,000/- as funeral expenses and Rs.5,000/- as loss of estate.

20. However, as per the latest judgment ***Shri Ram General Insurance Co. Ltd. Versus Bhagat Singh Rawat & Ors., Civil Appeal Nos.2410-2412/2023 [@ SLP[C] Nos.11669-11671/2020]***, the claimants are to be granted a sum of Rs.40,000/- in total under the head loss of consortium. The claimants are further entitled to get Rs.15,000/- as funeral expenses and Rs.15,000/- for loss of estate.

21. Doing that the compensation comes out to be Rs.1,75,48,720/-(1,74,78,720+40000+15000+15000).

22. The Tribunal has awarded a sum of Rs.92,83,440/-.

23. In this way, the enhanced amount comes out to Rs.82,65,280/- (1,75,48,720 – 9283440).

24. The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization.

25. Of the compensation awarded, the liability shall be joint and several of all the respondents. The amount shall be apportioned as follows:

1. Petitioner No.1 - Rajinder Kaur(mother) - 50%
2. Petitioner No.2 - Balbir Singh (father) - 50%

26. With such modification, XOBJC-159-CII-2017 filed by the claimants are allowed partly with costs.

27. Consequently, FAO-3096-2017 filed by the appellant/insurance company stands dismissed.

Since the main appeal stands dismissed and cross-objections allowed partly, the miscellaneous application(s) if any, stand disposed of accordingly.

17.5.2023 **(H.S.MADAAN)**
Brij **JUDGE**

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