2024:PHHC:070535

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

231 (Four cases)

**Date of Decision: 17.05.2024.**

**(1) CWP-10000-2024 (O&M).**

**NEW INDIA ASSURANCE COMPANY LIMITED**

.. Petitioner

Versus

**BALBIR KAUR AND OTHERS**

... Respondents

*** *** ***

**2) CWP-10014-2024 (O&M).**

**NEW INDIA ASSURANCE COMPANY LIMITED**

... Petitioner

Versus

**BALJINDER SINGH AND OTHERS**

... Respondents

*** *** ***

2024:PHHC:070535

**(3)** **CWP-10027-2024 (O&M).**

**NEW INDIA ASSURANCE COMPANY LIMITED**

... Petitioner

Versus

**SMT. ANJU AND OTHERS**

... Respondents

**4)** **CWP-10163-2024 (O&M).**

**NEW INDIA ASSURANCE COMPANY LIMITED**

.. Petitioner

Versus

**SWARAN SINGH AND OTHERS**

... Respondents

**CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.**

Present: Mr. Satpal Dhamija, Advocate,
for the petitioner.

Mr. Sanjiv Kodan, Advocate,
for Reliance General Insurance Company Limited.

**VINOD S. BHARDWAJ, J. (ORAL)**

The above mentioned four writ petitions involve a similar issue and thus are being decided by a common judgment.

For the facility of reference, brief facts have been extracted from **CWP-10000-2024 titled as 'New India Assurance Company Limited Vs. Balbir Kaur and others**.'

The factual matrix of the case is that on 10.01.2010 at about 12 hours midnight Paramjit and Sukhwinder Singh were travelling in Bolero Jeep bearing Registration No.HR-06S-9415 along with four other persons and all six were going to Karnal side from Delhi. When they reached opposite Malik Petrol Pump, then the said Jeep hit against TATA truck bearing registration No.HR-37-A-3855 which was parked in the middle of the road without any parking signals due to which the occupants of the jeep received injuries which proved fatal to all the occupants. Six claim petitions were thus filed, the details of which, as mentioned in paragrapn No.2 of the writ petition, are extracted as under:-

| Sr. No. | MACT Claim petition NO. | Claimants | Amount of compensation |
|---|---|---|---|
| 1 | 185 of 2011 | Surinder Kaur and another | Rs.5,44,000/- on account of death of Paramjeet Singh |
| 2 | 186 of 2011 | Sukhvinder Singh and another | Rs.5,44,000/- on account of death of Vikramjeet Singh |
| 3 | 41 of 2011 | Balbir Kaur and others | Rs.5,44,000/- on account of death of Gurpreet Singh |
| 4 | 42 of 2011 | Swaran Singh and others | Rs.5,44,000/- on account of death of Vicky |
| 5 | 11 of 2011 | Baljinder Singh and others | Rs.5,44,000/- on account of death of Deepak @ Deep Singh |
| 6 | 12 of 2011 | Smt. Anju and others | Rs.9,04,000/- on account of death of Shiv Kumar |

It is averred that in MACT Case No.185 of 2011 titled as Surinder Kaur Vs. Lakhbir Singh and others and MACT Case No.186 of 2011, titled as Sukhvinder Singh Vs. Lakhbir and others, the Reliance General Insurance Company was impleaded as a respondent whereas the said Reliance General Insurance Company was not impleaded as a respondent in the remaining four claim petitions that were preferred by Balbir Kaur and others, Swaran Singh and others, Baljinder Singh and others and Smt. Anju and others respectively.

The said MACT petitions were decided by a common order awarding different compensations. However, the compensation had been apportioned in the ratio of 75:25 percent amongst the petitioner-New India Assurance Company Limited and Reliance General Insurance Company Limited.

Aggrieved of the above said award, the claimants preferred appeals before the High Court. The said appeals were later decided in the National Lok Adalat held on 12.03.2022 by recording the statement of the Advocate appearing on behalf of the petitioner-New India Assurance Company Limited whereby he agreed to enhancement of compensation for and on behalf of the petitioner-New India Assurance Company Limited.

The above said award dated 12.03.2022 passed by the National Lok Adalat has now been challenged in the present writ petitions on the ground that the Advocate who had actually entered settlement on behalf of the petitioner-New India Assurance Company Limited was not an empanelled counsel of the petitioner-New India Assurance Company Limited and was thus not authorized to make any statement of settlement of claim, for and on behalf of the petitioner-New India Assurance Company Limited and/or to give rise to any binding liability. The matter came up for hearing on 02.05.2024 before this Court, when the following order was passed:-

> *"Present:- Mr. Satpal Dhamija, Advocate for the petitioner(s).*
>
> *Learned counsel appearing on behalf of the petitioner(s) inter alia contends that the Advocate, who had entered into an agreement on behalf of the petitioner(s)-Insurance Company was actually not an empanelled counsel with the Company, nonetheless the petitioner-Insurance Company is ready and willing to pay the amount as has been agreed upon in the above said award so that the interest of the claimant is not prejudicially affected. He contends that the grievance is only with respect to the apportionment of the compensation in the ratio as awarded by the Motor Accident Claims Tribunal, Panipat.*
>
> *Notice of motion for 17.05.2024.*
>
> *Mr. Rajneesh Malhotra, Advocate, who is present in the Court and is on the Panel of the Reliance General Insurance Company Ltd., is directed to seek instructions in the present case.*
>
> *A photocopy of this order be placed on the files of connected cases."*

The petitioner-New India Assurance Company Limited nonetheless agreed to the settlement amount as awarded in favour of the claimants. The readiness and willingness of the petitioner-New India Assurance Company Limited was also recorded on the said date. The sole grievance espoused by the counsel for the petitioner-New India Assurance Company Limited was also recorded on the said date to the effect that since the original award passed by the Motor Accidents Claims Tribunal directed apportionment of compensation in the ratio of 75:25 between the petitioner-New India Assurance Company Limited and Reliance General Insurance Company, hence, the enhanced compensation as agreed to, for and on behalf of the petitioner-New India Assurance Company Limited ought to have also been apportioned between the petitioner-New India Assurance Company Limited as well as Reliance General Insurance Company in the same ratio.

Pursuant to the order dated 02.05.2024, Mr. Sanjiv Kodan, Advocate, has appeared on behalf of Reliance General Insurance Company Limited and has submitted that the Reliance General Insurance Company Limited was party in only two of the MACT petitions that had been filed before the Tribunal and that in the remaining four petitions, Reliance General Insurance Company Limited was not party before the Motor Accidents Claims Tribunal. He submits that even though the Reliance General Insurance Company Limited did share the burden of apportionment in the above four FAO’s as well qua the amount as awarded by the Motor Accidents Claims Tribunal, however, the liability cannot be legally fastened against the Reliance General Insurance Company Limited considering that it was never impleaded as a party in the said claim petitions before the

Motor Accidents Claims Tribunal as well as in the first appeals. He thus submits that issue of apportionment would not arise or operate against the Reliance General Insurance Company Limited.

The aforesaid objection taken by the Reliance General Insurance Company Limited is factually not disputed by the counsel for the petitioner-New India Assurance Company Limited. He, however, contends that since the award had already been passed and that they had also shared the liability in the ratio as ordered, hence, the said ratio ought to be applied even now.

I have heard learned counsel appearing for the respective parties and have also gone through the documents appended along with the present petition with their able assistance.

Without adverting to the factual aspects narrated above and which are not in dispute, what is borne clearly out of the same is that the order of apportionment in the ratio of 75:25 per cent had been directed against the Reliance General Insurance Company Limited by the Motor Accidents Claims Tribunal since a common award was passed by the Motor Accidents Claims Tribunal. Undisputedly, in the above four claims petitions as well oblivious of the fact that Reliance General Insurance Company was not a party. It was also not a party in the present Court in first appeals against order that was filed by the claimants. Consequently, the Reliance General Insurance Company Limited cannot be directed to share the liability, once it has not been impleaded as a party and has not been afforded an opportunity to defend its interests. Merely because a common award was passed by Motor Accidents Claims Tribunal and the Reliance General Insurance Company discharged the liability and honoured the same, cannot be legally construed that an enforceable liability, in the said ratio, shall be fastened against the Reliance General Insurance Company even in respect of the matters where it was not a party and no claim was lodged against it by the insured/claimants. Nonetheless since it has already paid the amount to the extent as awarded by the MACT and Reliance General Insurance Company never challenged the said award, the same is not being modified or interfered into.

Still further, the acceptance of settlement is a unilateral act of the petitioner-New India Assurance Company Limited and it cannot later be permitted to dispute its own consent by seeking that it was under a bona fide wrong impression. Having accepted the settlement, even if later, there is a ratification of the settlement and the same need not be re-opened afresh.

The petitioner-New India Assurance Company Limited itself was the sole contesting respondent in these four petitions and since it does not dispute the factum of settlement that had been arrived at, the belief nurtured by petitioner-New India Assurance Company Limited cannot be the basis to fasten liability on a person or a juristic entity that was not a party and against whom the claim was not lodged by the claimants as well.

I find that the said order as prayed for would amount to fastening the liability on a person who is alien to the proceedings and was not a party to the same.

Under the given circumstances, I find that the prayer for apportionment of compensation as sought for by the counsel for petitioner-New India Assurance Company Limited, cannot be acceded to, at this stage, on account of the above said technical flaw.

The present writ petitions are accordingly dismissed at this stage.

A photocopy of the order be placed on the file of each connected case.

**May 17, 2024** **(VINOD S. BHARDWAJ**
**raj arora** **JUDGE**

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