IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 31.01.2025

1. FAO-553-2022 (O&M)

Reliance General Insurance Company Limited ...Appellant(s)

Vs.

Leepika and others ...Respondent(s)

AND

2. FAO-1620-2022 (O&M)
Leepika and others ...Appellant(s)

Vs.

Anil and others ....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sachin Ohri, Advocate for the appellant-Insurance Co.

Mr. Sandeep Kumar Yadav, Advocate for respondents No. 1 to 4-claimants.

Mr. Chanderhas Yadav, Advocate and Mr. Aman Singh, Advocate for respondents No. 5 and 7.

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<u>NIDHI GUPTA, J.</u>

<u>FAO-553-2022:</u>

The present FAO-553-2022 has been filed by the Insurance Company seeking modification and absolving of the appellant from the liability imposed upon it for the payment of compensation of Rs. 29,05,600/- granted to the claimants/respondents No. 1 to 4 herein, vide

Award dated 16.12.2021 passed by ld. Motor Accident Claims Tribunal, Narnaul (hereinafter referred to as “the Tribunal”) in claim petition No. 158 dated 17.09.2019 filed under Section 166/140 of the Motor Vehicles Act (hereinafter referred to as “the Act”). The 4 claimants are the 2 minor daughters and the parents of the deceased Sonu Kumar @ Sonu, who is stated to have been about 28 years of age at the time of accident.

FAO-1620-2022:

The present FAO-1620-2022 has been filed by the claimants seeking enhancement of compensation of Rs.29,05,600/- awarded by the Tribunal, vide Award dated 16.12.2021 passed in MACT Case No. 158 dated 17.09.2019 filed under Section 166/140 of the Act. The 4 claimants are the two minor daughters and parents of the deceased Sonu Kumar @ Sonu, who was stated to have been about 28 years old at the time of accident. The above said compensation was granted by the learned Tribunal alongwith interest @ 9% per annum from the date of institution of claim petition till realization.

2. Both the above said appeals are being disposed of by this common order as both appeals relate to the same accident, between same parties, and challenge in both the claim petitions is to the Award dated 16.12.2021 passed by the learned MACT, Narnaul.

3. For the sake of facility, facts are being drawn from FAO-553-2022 filed by the Insurance Company.

4. Brief facts of the case are that the learned Tribunal upon appraisal of the pleadings, and the oral and documentary evidence

adduced by the parties, concluded that deceased-Sonu Kumar had died due to the injuries suffered by him in a motor vehicular accident that took place on 10.06.2019 due to the rash and negligent driving of Swift Dzire Car bearing registration No. DL7CK-8615 (hereinafter referred to as 'the offending vehicle'), which was being driven by respondent No. 5; owned by respondent No.6; and insured by the appellant. An FIR No. 175 dated 10.06.2019 (Ex.P12), under Sections 279, 304A IPC was registered at Police Station Khol in respect of the present accident.

5. Learned counsel for the appellant-Insurance Company seeks modification of the Award and the absolving of the appellant-Insurance Company from the liability of payment of compensation to the claimants, on the ground that there was misrepresentation on the part of the insured in getting the Insurance Policy. Learned counsel submits that the offending vehicle was previously insured with New India Assurance Co. Ltd. from 09.06.2018 to 08.06.2019 vide Insurance Policy (Ex.R7). It is submitted that on the basis of the said Policy, the appellant-Insurance Company issued the current Policy (Ex.R2), for the period 09.06.2019 to 08.06.2020. Learned Counsel contends that however, it was subsequently discovered by the appellant that the previous policy (Ex.R7) which was allegedly issued by New India Assurance Co. Ltd. in respect of the offending vehicle, was fake. Thus, the present policy (Ex.R2) was obtained by the insured on the basis of misrepresentation regarding the previous Policy (Ex.R7). It is only upon receiving information under RTI that the appellant discovered that the Policy

allegedly issued by New India Assurance Co. Ltd. (Ex.R7) was a fake Policy. It is submitted that the insured deliberately misled and misrepresented to the appellant with the explicit purpose of avoiding pre-inspection of offending vehicle, which is required in case the vehicle is not previously insured with any Insurance Company. It is argued that as such, the present Policy (Ex.R2) was issued without conducting the pre-inspection of the offending vehicle as it was issued in continuity of the previous Policy – which is fake. It is pointed out that as per the underwriting guidelines of the Company and Regulations of IRDA, pre-inspection of the vehicle is mandatory before issuing Policy in case vehicle is not insured with any other Company. In the present case, due to the existence of the previous Policy (Ex.R7), pre-inspection was not done and present Policy (Ex.R2) was issued in continuity. It is contended that accordingly, the insured had obtained the present Policy (Ex.R2) upon misrepresentation of facts; and therefore, the appellant is not liable to pay the impugned compensation.

6. In support of his contentions, Learned counsel for the appellant-Insurance Company relies upon judgment of Coordinate Bench of this Court passed in '***Rajveer Singh Gurjar vs. Veer Singh***' ***Law Finder Doc Id # 1117238,*** wherein it is held that if specific defence is taken by Insurance Company that contract of insurance was void ab initio, and forged insurance certificate is produced by insured to show that vehicle was earlier insured by New India Insurance Company, then *No sum is payable by insurer where representation of facts was false*.

7. Learned counsel for the appellant also places reliance upon the judgment of Coordinate Bench in '***Munshi Ram and another vs. Balkar Singh and others' Law Finder Doc Id # 763962,*** wherein it is held that response received through RTI is of a public officer and it is a public document and would require no further corroboration in the manner contemplated under Section 77 of the Evidence Act; and that such a Document must be taken to be true of what its recital states.

8. Ld. counsel for the appellant also relies upon a Division Bench judgment of the Kerala High Court in '***Siby Paul vs. Praveen Kumar G.N. and others' 2010(5)RCR (Civil) 143,*** wherein it is held that if wearing of helmet could have prevented the death or injury or reduce the impact of accident, MACT can attribute contributory negligence on the part of the rider and can reduce the compensation amount.

9. It is further submitted that the impugned Award deserves to be set aside also on the ground that it has undisputedly come on record that the deceased was not wearing a helmet at the time of accident. The cause of death in the present case is a head injury as is evident from the Post Mortem Report (Ex.P-13). These facts are also evident from the Motor Accident Reconstruction Report (Annexure A-7). It is contended that as such, there was contributory negligence on the part of the deceased. However, this aspect of the matter was not considered by the learned Tribunal while passing the impugned Award.

10. It is thirdly contended by the appellant-Insurance Company that the father of the deceased/claimant No.4/respondent No.4 herein,

was not entitled to compensation as he was a pensioner. He was not dependent on the deceased and therefore, deduction of 1/3rd ought to have been made by the ld. Tribunal towards the personal expenses of the deceased; whereas deduction of 1/4th has been made. It is prayed that accordingly, the appellant be absolved and the insured be directed to make the payment of the compensation awarded by the learned Tribunal.

11. Per contra, learned counsel for the claimants opposes the prayer made on behalf of the appellant-Insurance Company and contends that the Policy in question is valid. The Insurance Company cannot absolve itself of its liability for the reason that it was the duty of the Insurance Company to check whether the previous Policy if any, produced by the insured, is fake or not.

12. Learned counsel for the claimants further contends that no reliance can be placed upon the above mentioned Motor Accident Reconstruction Report (Annexure A-7), as the person who had allegedly prepared the said Report has not been examined, and merely the Report has been placed on record. The said Report is therefore, not proven in accordance with law. In this regard, ld. counsel for the claimants places reliance upon judgment passed by a Coordinate Bench of this Court in ***'Bhup Singh and others vs. Mainpal and others' Law Finder Doc Id # 1583533,*** wherein it is held that merely because deceased was not wearing helmet at time of accident, it cannot be held that they contributed towards accident; and that Breach of rules in driving two

wheeler without helmet by itself cannot be treated as composite or contribution to negligence on their part.

13. As regards the third contention regarding the claimant No.4/father of the deceased being pensioner, learned counsel for the claimants contends that no such ground has been raised by the appellant in its written statement before the ld. Tribunal and even no evidence has been led in this regard by the appellant; therefore, there is no proof on record to established that the father of the deceased was the pensioner.

14. It is further submitted that the claimants are entitled to enhancement of compensation as nothing has been granted to them by way of filial and parental consortium. It is accordingly prayed that the compensation amount be enhanced.

15. No other argument is raised on behalf of the parties.

16. I have heard learned counsel for the parties and perused the case file in great detail.

17. It has firstly been contended on part of the appellant-insurance Company that the appellant is not liable to pay the compensation amount as the present Insurance Policy (Ex.R2) was obtained by the insured on the basis of the misrepresentation of facts *in-as-much* as the previous Policy (Ex.R7) on the basis of which the present Policy (Ex.R2) was issued, was fake. I find no merit in the said contention of the appellant as, before issuing the present Policy (Ex.R2) the onus was upon the appellant to verify the information provided by the insured.

Admittedly, this was not done by the appellant. In fact, no action whatsoever was taken by the appellant for more than two years. In the present case, the date of accident is 10.06.2019; whereas RTI application/Ex.R4 was made by the appellant more than 2 years thereafter on 11.10.2021; in respect of which reply dated 22.10.2021 (Annexure A-4)/Ex.R5, was received. Thus, the information provided by the insured was taken at face value by the appellant, and no action was taken by the appellant. Even no FIR in this matter was lodged by the appellant till 26.10.2021. From the above facts it would appear that due diligence was not carried out by the appellant-Insurance Company prior to issuance of the present Policy (Ex.R2). Thus, the plea of fake policy cannot now be taken by the appellant at this belated stage to absolve itself of its liability in making payment of the compensation amount as it is established from the facts noted above that it was the appellant-Insurance Company that was not vigilant and had not exercised due diligence prior to issuance of the present policy (Ex.R2). Even otherwise accident has taken place within validity of current policy Ex.R-7 and not the previous one, therefore, appellant insurance company cannot escape from his liability.

18. It is pertinent to mention here that neither any witness from previous insurer was got examined by appellant insurance company. Thus, current policy issued by appellant is genuine and inspection was the duty of the appellant only and it was the duty of the appellant to check validity of previous policy prior to issuance of current policy. It is also pertinent that the Claim petition was filed on 17.09.2019 and no complaint for fake

document has been filed by appellant insurance company against owner of the vehicle upto 28.10.2021. It is just before passing of the Award that complaint (Annexure A-5) was filed whereas same was not placed on record before Tribunal, therefore, same cannot read into evidence at this stage.

19. Further, even the information supplied under RTI vide reply dated 22.10.2021 as per which the previous Policy was stated to be fake, cannot be relied upon as no employee of New India Assurance Co. Ltd. was summoned by the appellant to prove the said Report and establish that the previous policy (Ex.R7) was fake. As such, mere receipt of information under RTI would by itself not prove that the Policy (Ex.R7) is fake. Moreover, even as per the reply dated 22.10.2021 (Annexure A-4)/Ex.R5, received from New India Assurance Co. Ltd., all that has been stated is that "*the system is showing **NIL** details for the same.*" and that "*the system is showing **NO RESULTS***" ……… *"So, **it seems the policy attached with RTI application is a FAKE POLICY**."* It is my considered view that no definite information has been given even by the New India Assurance Co. Ltd. certifying unequivocally that the policy in question/Ex.R7, was fake. All that has been stated is that '*it seems*' that the Policy is fake as the system was not showing any details in respect of the previous policy.

20. I am also in agreement with the reasoning of the learned Tribunal that in not summoning the employee of New India Assurance Co. Ltd., valuable right of cross-examining the said employee has been denied

to the insured. As regards the reliance placed upon by learned counsel for the appellant in ***Munshi Ram and another's case (supra)*** holding that information received through RTI is of a public officer and it is a public document and would not require further corroboration, the same is distinguishable as the said ruling was made in regard to the driving licence of the driver therein; whereas in the present case RTI information has been received in respect of the Insurance Policy which was required to be proven in accordance with law.

21. It is also pertinent that the current policy was issued on 09.06.2019 i.e. one day *prior* to the accident. Had the said Policy (Ex.R2) been issued even a few hours after the accident, the intent of the insured, and the veracity of the said Policy could have been put under shadow of doubt. However, in the present case, the Policy (Ex.R2) was issued prior to the accident and was therefore, valid Policy. For this reason as well, the veracity of the current policy cannot be doubted and no mala fide intent can be attributed to the insured.

22. Further, in contending that the deceased was liable for contributory negligence as he was not wearing helmet at the time of accident, learned counsel for the appellant has relied upon a Motor Accident Reconstruction Report dated 28.8.2020 (Annexure A-7). However, admittedly, the person(s) who had allegedly prepared the said Report have not been examined, and merely the Report has been placed on record before this Court. In fact, it appears from the record that the said Report was not even exhibited by the appellant before the learned

Tribunal. The said Report is therefore, not just not proven in accordance with law, but is unreliable. Even further, the ld. Tribunal in para no. 15 of the Award has clearly held that no such question has been put to any of the witnesses PW-1 father of deceased, PW-2 Sanjay Eyewitness. Even otherwise Insurance company has not led any evidence that not wearing helmet was a cause of accident. For not wearing helmet, there is a penalty under the Act where person can be challaned but Insurance company cannot escape from his liability.

23. As regards the contention of the appellant that the father of the deceased was a pensioner. Admittedly, no such plea was raised by the appellant in its written statement before the learned Tribunal; and, therefore, the said plea cannot be raised at this stage. Moreover, no evidence whatsoever has been brought to the notice of this Court by the learned counsel for the appellant to indicate whether the father of the deceased was a pensioner or not.

24. For the aforesaid reasons, the FAO-553-2022 filed by the Insurance Company titled as 'Reliance General Insurance Company vs. Leepika and others' is **dismissed**.

25. As regards the prayer of the claimants in the cross-appeal bearing FAO no.1620 of 2022 seeking enhancement of the awarded compensation on the singular ground that nothing has been granted to the claimants by way of consortium, the said argument is factually incorrect. A perusal of the record of the case shows that the learned

Tribunal upon appraisal of the pleadings, as also the evidence led before it, awarded just and fair compensation in the following manner:

26. The age of the deceased was taken to be 28 years at the time of accident. Although it was a pleaded case before the learned Tribunal that the deceased was earning Rs. 20,000/- p.m. by working as shopkeeper/driver and doing agriculture and dairy farming work, however, no evidence was led by the claimants to support the said averments. Accordingly, learned Tribunal had assessed the income of the deceased to be Rs.13,000/-p.m. as that of the daily labourer. The annual income of the deceased was assessed to be Rs. 13000X12=Rs.1,56,000. As there were 4 claimants/dependants, deduction of 1/4th was correctly made from his income; thus, taking his annual income to be Rs.1,17,000. As the deceased was 28 years, multiplier of 17 was applied; and total loss of dependency suffered by the claimants was worked out to Rs.1,17,000X17=Rs.19,89,000/-. As the deceased was 28 years of age, addition of 40% i.e. Rs.7,95,600/- was correctly made towards future prospects. Furthermore, a sum of Rs.16,500/- was granted towards loss of estate and a sum of Rs.16,500/- was granted towards funeral expenses. The record further bears out that it is factually incorrect for the claimants to state that nothing has been granted by way of consortium as a sum of Rs.44,000/- each has been granted to the claimants No. 3 and 4 i.e. the parents of the deceased by way of filial consortium. The total compensation under various heads is tabulated as under:-

Loss of dependency:	Rs.19,89,000/-
Loss of future prospects:	Rs.7,95,600/-
Loss of estate:	Rs.16,500/-
Funeral expenses:	Rs.16,500/-
Loss of Filial Consortium:	Rs.44,000/- (to petitioner no.3)
Loss of Filial Consortium:	Rs.44,000/- (to petitioner no.4)

27. The total above said compensation was granted alongwith interest @ 9% per annum from the date of institution of petition till its realization. The appellant-Insurance Company and respondents No. 5 and 6 driver and owner respectively were held jointly and severally liable to pay the above said compensation.

28. As per recent judgments of the Hon'ble Supreme Court in "**Shri Ram General Insurance Co. Ltd. Vs. Bhagat Singh Rawat & Others" Civil Appeal Nos.2410-2412/2023** and "**Mehmooda Bee & Others Vs. National Insurance Co. Ltd." (@ SLP (C) No.16767 of 2022)** and "**Bebi Giri Vs. National Insurance Co. Ltd." Civil Appeal No.6551 of 2022,** it has been held that total sum of Rs.77,000/- only can be granted under the conventional heads.

29. No case law to the contrary has been cited by learned counsel for the claimants.

30. Learned counsel for the appellant as well as learned counsel for the claimants are unable to controvert or dispute the above said facts, findings and/or the legal position as noted above.

31. In view of the above, both the appeals stand **dismissed**.

32. Pending application(s) if any also stand(s) disposed of.

31.01.2025 **(NIDHI GUPTA)**
Divyanshi **JUDGE**

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