

(2016) 09 SHI CK 0110
In the High Court Of Himachal Pradesh
Case No : FAO No. 271 of 2011

ICICI Lombard General Insurance Company Limited	APPELLANT
Vs	
Gita Devi	RESPONDENT

Date of Decision : 23-09-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, Section 170, Section 3

Citation : (2017) AAC 641

Hon'ble Judges : Mr. Mansoor Ahmad Mir, CJ.

Bench : Single Bench

Advocate : Mr. Divya Raj Singh, vice Mr. Jagdish Thakur, Advocates, for the Appellant; Mr. Arun Kumar, vice Mr. R.R. Rahi, Advocates, for the Respondent Nos. 1 to 3; Nemo, for the Respondent Nos. 4 to 6

Final Decision : Disposed Off

Judgement

Mr. Mansoor Ahmad Mir, C.J.(Oral)—Subject matter of this appeal is award, dated 30th September, 2010, made by the Motor Accident Claims Tribunal (I), Mandi (for short "the Tribunal") in Claim Petition No. 15 of 2009, titled as Geeta Devi and others v. Meera Devi and others, whereby compensation to the tune of Rs. 7,93,000/- with interest @ 9% per annum from the date of petition till its realization came to be awarded in favour of the claimants and against the insurer (for short "the impugned award").

2. The claimants and the legal representatives of owner/insured-cum-driver of the offending vehicle have not questioned the impugned award, thus, has attained finality so far it relates to them.

3. The insurer has questioned the impugned award on the grounds taken in the memo of appeal.

4. The claimants had invoked the jurisdiction of the Tribunal in terms of the mandate of Section 166 of the Motor Vehicles Act, 1988 (for short "MV Act") for grant of compensation, as per the breakups given in the claim petition, was

resisted by the respondents in the claim petition on the grounds taken in the respective memo of objections.

5. Following issues came to be framed by the Tribunal on 22nd May, 2009:

"1. Whether on 31.10.2008 at 9.00 P.M. near Shana Pangna the driver was driving the bus No. HP657530 rashly and negligently and caused death of Sh. Harish Kumar? OPP

2. If issue No. 1 is proved, to what amount of compensation the petitioners are entitled to and from whom? OPP

3. Whether the driver of bus No. HP657530 was not holding a valid and effective driving licence to drive the bus at the time of accident? OPR

4. Whether the accident has been caused due to rash and negligent driving of the driver of bus No. HP657530 and Pick up Van as alleged? OPR

5. Relief."

6. The claimants have examined three witnesses and one of the claimants herself appeared in the witness box. One of the legal representatives of owner/insured-cum-driver has appeared in the witness box. The insurer has not led any evidence.

Issues No. 1 and 4:

7. There is no dispute viz-a-vis issues No. 1 and 4.

Accordingly, the findings returned by the Tribunal on issues No. 1 and 4 are upheld.

8. Before dealing with issue No. 2, I deem it proper to determine issue No. 3.

Issue No. 3:

9. Learned proxy counsel appearing on behalf of the appellant-insurer argued that the driver of the offending vehicle was not having a valid and effective driving licence to drive the same.

10. It was for the insurer to prove issue No. 3 by leading evidence, has not led any evidence, thus, has failed to discharge the onus. However, I have gone through the findings recorded by the Tribunal in para 22 of the impugned award. The Tribunal has rightly recorded the said findings and decided the issue against the insurer. Accordingly, the findings returned by the Tribunal on issue No. 3 are upheld.

Issue No. 2:

11. The insurer cannot question the adequacy of compensation. In terms of the mandate of Sections 147 and 149 of the MV Act read with the terms and conditions contained in the insurance policy, the insurer has limited grounds

available, but, it can contest the claim petition on other grounds provided permission in terms of Section 170 of the MV Act has been obtained.

12. The insurer can seek permission to contest the claim petition on all grounds available to it and in case permission has not been sought and granted, it is precluded from questioning the award on adequacy of compensation or any other ground, which is not otherwise available to it.

13. This question arose before the Apex Court in the case titled as United India Insurance co. Ltd. v. Shila Datta & Ors., reported in 2011 AIR SCW 6541, and the matter was referred to the larger Bench.

14. The question again arose before the Apex Court in the case titled as Josphine James v. United India Insurance Co. Ltd. & Anr., reported in 2013 AIR SCW 6633. It is apt to reproduce paras 8, 17 and 18 of the judgment herein:

"8. Aggrieved by the impugned judgment and award passed by the High Court in MAC Appeal No. 433/2005 and the review petition, the present appeal is filed by the appellant urging certain grounds and assailing the impugned judgment in allowing the appeal of the Insurance Company without following the law laid down by this Court in Nicolletta Rohtagi's case and instead, placing reliance upon the Bhushan Sachdeva's case. Nicolletta Rohtagi's case was exhaustively discussed by a three judge bench in the case of United India Insurance Company v. Shila Datta, 2011 10 SCC 509. Though the Court has expressed its reservations against the correctness of the legal position in Nicolletta Rohtagi decision on various aspects, the same has been referred to higher bench and has not been overruled as yet. Hence, the ratio of Nicolletta Rohtagi's case will be still applicable in the present case. The appellant claimed that interference by the High Court with the quantum of compensation awarded by the Tribunal in favour of appellant and considerably reducing the same by modifying the judgment of the Tribunal is vitiated in law. Therefore, the impugned judgments and awards are liable to be set aside.

9. to 16.

17. The said order was reviewed by the High Court at the instance of the appellant in view of the aforesaid decision on the question of maintainability of the appeal of the Insurance Company. The High Court, in the review petition, has further reduced the compensation to Rs. 4,20,000/from Rs. 6,75,000/which was earlier awarded by it. This approach is contrary to the facts and law laid down by this Court. The High Court, in reducing the quantum of compensation under the heading of loss of dependency of the appellant, was required to follow the decision rendered by three judge Bench of this Court in Nicolletta Rohtagi case (2002) 7 SCC 456 : AIR 2002 SC 3350 : 2002 AIR SCW 3899, and earlier decisions wherein this Court after interpreting Section 170 (b) of the M.V. Act, has rightly held that in the absence of permission obtained by the Insurance Company from the Tribunal to avail the defence of the insured, it is not permitted to contest the case on merits. The aforesaid legal principle is applicable to the

fact situation in view of the three judge bench decision referred to though the correctness of the aforesaid decision is referred to larger bench. This important aspect of the matter has been overlooked by the High Court while passing the impugned judgment and the said approach is contrary to law laid down by this Court.

18. In view of the aforesaid reasons, the Insurance Company is not entitled to file appeal questioning the quantum of compensation awarded in favour of the appellant for the reasons stated supra. In the absence of the same, the Insurance Company had only limited defence to contest in the proceedings as provided under Section 149 (2) of the M.V. Act. Therefore, the impugned judgment passed by the High Court on 13.1.2012 reducing the compensation to 4,20,000/- under the heading of loss of dependency by deducting 50% from the monthly income of the deceased of Rs. 5,000/- and applying 14 multiplier, is factually and legally incorrect. The High Court has erroneously arrived at this amount by applying the principle of law laid down in *Sarla Verma v. Delhi Transport Corporation*, 2009 6 SCC 121 instead of applying the principle laid down in *Baby Radhika Gupta's* case regarding the multiplier applied to the fact situation and also contrary to the law applicable regarding the maintainability of appeal of the Insurance Company on the question of quantum of compensation in the absence of permission to be obtained by it from the Tribunal under Section 170 (b) of the M.V. Act. In view of the aforesaid reason, the High Court should not have allowed the appeal of the Insurance Company as it has got limited defence as provided under section 149(2) of the M.V. Act. Therefore, the impugned judgment and award is vitiated in law and hence, is liable to be set aside by allowing the appeal of the appellant."

15. Thus, the insurer can question the adequacy of compensation only if it has sought permission under Section 170 of the MV Act.

16. In the present case, the application filed by the insurer under Section 170 of the MV Act was dismissed by the Tribunal vide order, dated 22nd May, 2009. Thus, the insurer is precluded from questioning the adequacy of compensation. Accordingly, the findings recorded by the Tribunal on issue No. 2 are upheld.

17. The only ground available to the insurer for questioning the impugned award was breach of the terms and conditions of the insurance policy, has not led any evidence, thus, has failed to do so.

18. However, the Tribunal has fallen in an error in awarding interest at the rate of 9% per annum, which was to be awarded as per the prevailing rates.

19. It is beaten law of the land that the rate of interest should be awarded as per the prevailing rates, in view of the judgments rendered by the Apex Court in cases titled as *United India Insurance Co. Ltd. and others v. Patricia Jean Mahajan and others*, reported in (2002) 6 SCC 281; *Santosh Devi v. National Insurance Company Ltd. and others*, reported in 2012 AIR SCW 2892; *Amrit Bhanu Shali and others v. National Insurance Company Limited and others*,

reported in (2012) 11 SCC 738; Smt. Savita v. Binder Singh & others, reported in 2014 AIR SCW 2053; Kalpanaraj & others v. Tamil Nadu State Transport Corpn., reported in 2014 AIR SCW 2982; Amresh Kumari v. Niranjan Lal Jagdish Pd. Jain and others, reported in (2015) 4 SCC 433; and Mohinder Kaur and others v. Hira Nand Sindhi (Ghoriwala) and another, reported in (2015) 4 SCC 434, and discussed by this Court in a batch of FAOs, FAO No. 256 of 2010, titled as Oriental Insurance Company v. Smt. Indiro and others, being the lead case, decided on 19.06.2015.

20. Having said so, I deem it proper to reduce the rate of interest from 9% per annum to 7.5% per annum from the date of filing of the claim petition till its realization.

21. Having glance of the above discussions, the impugned award is modified and the appeal is disposed of, as indicated herein above.

22. Registry is directed to release the awarded amount in favour of the claimants strictly as per the terms and conditions contained in the impugned award through payee's account cheque or by depositing the same in their respective bank accounts.

23. Excess amount, if any, be released in favour of the appellant-insurer through payee's account cheque.

24. Send down the record after placing copy of the judgment on the Tribunal's file.