

(2011) 04 P&H CK 0140

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 4035 of 2001 (O and M)

National Insurance Company Limited

APPELLANT

Vs

Jasbir Kaur and Others

RESPONDENT

Date of Decision : 18-04-2011

Acts Referred:

Constitution of India, 1950 — Article 227
Motor Vehicles Act, 1988 — Section 149(2), 166, 170, 173
Penal Code, 1860 (IPC) — Section 279, 304A, 337

Citation : (2011) 162 PLR 585 : (2011) 5 RCR(Civil) 682 : (2011) 3 TAC 579

Hon'ble Judges : Ram Chand Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ram Chand Gupta, J.—The present revision petition has been filed under Article 227 of the Constitution of India against award dated 12.3.2011 passed by learned Motor Accident Claims Tribunal, Rohtak, (hereinafter to be referred as "the Tribunal"), in a petition u/s 166 of the Motor Vehicles Act, 1988 (hereinafter to be referred as "the Act") for compensation filed by Respondents-Petitioners against the present Petitioner-Insurance Company alongwith driver and owner of truck bearing No. HR-21GA/0117, involved in the accident.

2. I have heard learned Counsel for the parties and have gone through the whole record carefully including the impugned award passed by learned Tribunal.

3. Brief facts relevant for the decision of present revision petition are that on the intervening night of 8-9.3.1999, Jagdish Singh (deceased) was driving his car bearing No. DL-2CK/4175, while returning from Bikaner to Delhi alongwith Norang Singh, his brother-in-law, his wife, Jasbir Kaur and Nasib Kaur. When they reached near Meham, truck bearing No. HR-21GA/0117 came from opposite direction which was being driven by its driver in a very rash and negligent manner, and hit against their car, due to which all the occupants sustained injuries. Jagdish Singh succumbed to the injuries in the hospital. FIR No. 44,

dated 9.3.1999 under Sections 279, 337, 304-A IPC with Police Station Meham, was registered against driver of the truck. Respondents-claimants filed petition for compensation on account of death of Jagdish Singh being widow and son of Jagdish Singh on the plea that they were dependent upon Jagdish Singh. They claimed compensation of Rs. 10,00,000/-. Plea has been taken that Jagdish Singh was 50 years of age and was self employed and used to do transport business under the name and style of M/s Rajasthan Prem Krishna Transport Company and used to earn Rs. 10,000/- per month from the said business.

4. Joint written statement was filed by driver and owner of the offending truck contesting the petition. Separate written statement was filed by present Petitioner, i.e., insurer of the truck.

5. On the pleadings of the parties, the following issues were framed for adjudication by learned Tribunal:

1. Whether the accident in question between truck No.HR-21GA/0117 and Maruti Car No. DL-2CK/4175 had taken place due to rash and negligent driving of truck by Respondent No. 1? OPP.

2. Whether death of Jagdish Singh had taken place due to the injuries sustained by him during the accident in question? OPP.

3. Whether the Petitioners are entitled to any compensation, if so, to what amount and from whom? OPP.

4. Whether Respondent No. 1 was not holding a valid driving licence at the time of accident in question? OPR-3.

5. Relief.

6. Parties adduced evidence in support of their respective contentions before learned Tribunal. Learned Tribunal vide its impugned award held that Respondents-claimants are entitled to Rs. 7,19,800/-, as compensation alongwith interest @ 9% per annum from the date of filing of petition till its realisation.

7. Aggrieved against the said award, the present revision petition has been filed by Petitioner-Insurance Company.

8. At the very outset, it has been contended by learned Counsel for the Respondents-claimants that present revision petition is not maintainable as Petitioner-Insurance Company could file appeal u/s 173 of the Act, which requires for deposit of Rs. 25,000/- and hence, it is contended that as the said mandatory amount has not been deposited within period of limitation prescribed for filing of appeal and no appeal was filed by Petitioner-Insurance Company, the present revision petition is not maintainable. On the point he has placed reliance upon Baldev Singh v. Kamaljit Kaur AIR 2005 NOC 93 (P&H).

9. On the other hand, it has been contended by learned Counsel for the

Petitioner-Insurance Company that in this case no appeal could be filed by the Insurance Company as no application was also filed by Petitioner-Insurance Company u/s 170 of the Act before learned Tribunal making prayer to allow it to contest the claim petition on all the grounds available to the insured. Hence, it is contended that when Petitioner-Insurance Company was having no independent right of appeal to challenge the award on merits, the only remedy available with the Petitioner-Insurance Company was to invoke jurisdiction of this Court under Article 227 of the Constitution of India by way of filing the present revision petition, as on the very face of it, the award passed by learned Tribunal is illegal. He has also placed reliance upon a Division Bench judgment of this Court in National Insurance Company Limited and Anr. v. Smt. Balbir Kaur and Ors. 2000(2) PLR750 , wherein it was held that in case where insurance company did not plead any collusion between claimants and the insured and did not plead that insured failed to contest the claim and did not pray for allowing it to contest the claim on any of the grounds available to the insured by filing proper application u/s 170 of the Act, insurer cannot be allowed to challenge the award on merits by filing the appeal before this Court u/s 173 of the Act. Reliance has also been placed upon a judgment rendered by Hon"ble Apex Court in National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, , wherein as well, it was held that insurer is having right to appeal on the grounds permissible u/s 149(2) of the Act in case conditions embodied in Section 170 of the Act are not satisfied and, however, where the conditions mentioned u/s 170 of the Act are satisfied and the Tribunal passes an order permitting the insurer to avail the grounds available to the persons against whom the claim is made, the insurer can contest the claim on such grounds and in case of an adverse award, can file an appeal challenging the quantum of compensation or the findings regarding negligence of the offending vehicle and, however, mere omission on the part of the insured to file an appeal u/s 173 of the Act, would not entitle the insurer to file an appeal challenging the quantum of compensation or the findings regarding negligence.

10. Hence, in view of this legal proposition, there is no force in the argument of learned Counsel for the Respondents-claimants that Petitioner-Insurance Company was having right to appeal u/s 173 of the Act by depositing Rs. 25,000/- and that as Insurance Company failed to file the appeal, present revision petition is not maintainable. Rather in view of legal proposition settled by Division Bench of this Court in Smt. Balbir Kaur and Ors. case (supra) and by Hon"ble Apex Court in Nicolletta Rohtagi and Ors. case (supra) in this case Insurance Company was having no right to file appeal to challenge the award on merit as it had not obtained permission of the Tribunal u/s 170 of the Act to contest the petition on all grounds available to the insured.

11. Hence, as Insurance Company was having no right to file appeal, the present revision petition has been filed by Insurance Company to invoke jurisdiction of this Court under Article 227 of the Constitution of India on the plea that on the very face of it, award passed by learned Tribunal is illegal.

12. Only point argued by learned Counsel for the Petitioner-Insurance Company is that while discussing income of deceased in para No. 11 of the award, learned Tribunal has relied upon copies of various income tax returns of the deceased and that the last income tax return for assessment year 1998-99 shows the income of deceased as Rs. 70,880/-, on which Rs. 4260/- was paid as tax and that net income comes to Rs. 66620/-. It is further contended that income tax returns for the previous years were showing less income. It is further contended that, however, learned Tribunal had taken income of deceased as Rs. 8,000/- per month, without any basis and without even discussing as to how the earning of deceased was taken as Rs. 8,000/- per month. Learned Counsel for the Respondents-claimants has not been able to show to this Court the basis on which income of deceased was taken by learned Tribunal as Rs. 8,000/- per month. He has also placed reliance upon various tax returns filed by deceased during his life-time regarding his income and the last income tax return is for the assessment year 1998-99, according to which his total income comes to Rs. 70,880/-, per annum.

13. Law has been well settled by Hon"ble Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, that in case deceased was self employed, the Courts will usually take only the actual income at the time of death for the purpose of calculation of compensation unless there are rare and exceptional cases involving special circumstances.

14. In this case no such rare and special circumstances are made out by learned Tribunal. Hence, the actual income of the deceased at the time of death can be taken as Rs. 70,880/- per annum as per income tax return for the assessment year 1998-99 and after deducting income tax paid, i.e., Rs. 4260/-, the net income comes to Rs. 66620/-, which can be rounded off to Rs. 67,000/- and hence, learned trial Court has committed illegality and material irregularity in taking the income of the deceased as Rs. 8,000/- per month.

15. Further there is no dispute that deceased was 50 years of age as has been held by learned Tribunal. There is also no dispute that besides deceased, there are two dependents, i.e., his wife and son, who are present Respondents-claimants. Hence, as per Smt. Sarla Verma and Ors." case (supra), 1/3rd of the income can be deducted as personal and living expenses of deceased. Further by taking into consideration the age of deceased as per decision of Smt. Sarla Verma and Ors." case (supra), multiplier of 13 is to be applied in this case. Hence, total compensation comes to Rs. $67000 \times 13 \times 2/3$, i.e., Rs. 5,80,666.67, rounded off Rs. 5,80,700/-. In addition to this, the Respondents-claimants are also held entitled for Rs. 10,000/- on account of loss of consortium, another Rs. 5,000/- on account of loss of estate, and Rs. 5,000/- as funeral expenses, thus, making the total compensation to Rs. 6,00,700/-.

16. Hence, the present revision petition is partly accepted. Impugned award passed by learned Tribunal is modified to the extent that Respondents-claimants are held entitled to 6,00,700/- as compensation alongwith future interest @ 9%

per annum from the date of filing of the petition till realisation.