

(2016) 09 SHI CK 0089
In the High Court Of Himachal Pradesh
Case No : FAO No. 240 of 2010.

National Insurance Company Ltd. - Appellant @HASH Smt. Reena Sharma and Others

Date of Decision : 02-09-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 170

Citation : (2016) AAC 2244

Hon'ble Judges : Mansoor Ahmad Mir, CJ.

Bench : Single Bench

Advocate : Mr. Bhupender Pathania, vice Mr. I.N. Mehta, Advocates, for the Appellant; Mr. Anup Rattan, Advocate, for the Respondent No. 1; Mr. Abhay Gupta, Advocate, for the Respondent No. 2; Nemo, for the Respondent No. 3

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, CJ.(Oral) - Subject matter of this appeal is judgment and award, dated 17th March, 2010, made by the Motor Accident Claims Tribunal (II), Kangra at Dharamshala, H.P. (for short "the Tribunal") in MACP No. 60/2005, titled as Reena Sharma v. The CTU Chandigarh and others, whereby compensation to the tune of Rs. 2,91,500/- with interest @ 7% per annum came to be awarded in favour of the claimant-injured and against the insurer (for short "the impugned award").

2. The claimant-injured, owner-insured and driver of the offending vehicle have not questioned the impugned award on any count, thus, has attained finality so far it relates to them.

3. The insurer has questioned the impugned award only on the ground of adequacy of compensation.

4. The question is - whether the appeal is maintainable? The answer is in the negative for the following reasons:

5. In terms of the mandate of Sections 147 and 149 of the Motor Vehicles Act, 1988 (for short "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.

6. It is apt to reproduce Section 170 of the MV Act herein:

"170. Impleading insurer in certain cases. - Where in the course of any inquiry, the claims Tribunal is satisfied that -

(a) there is collusion between the person making the claim and the person against whom the claim is made, or

(b) the person against whom the claim is made has failed to contest the claim,

it may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in sub-section (2) of section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made."

7. 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.

8. This question arose before the Apex Court in the case titled as and the matter was referred to the larger Bench.

9. 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."

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

11. In the present case, it has to be seen whether the insurer has sought any such permission?

12. I have gone through the record, which does disclose that neither any such application was filed by the insurer nor such permission was granted. Mr. Bhupender Pathania, learned proxy counsel appearing on behalf of the insurer, frankly conceded that no such permission was sought.

13. Having said so, the only ground of attack projected and urged is not available to the insurer. However, I have gone through the impugned award, it appears that the amount awarded is meagre. But, unfortunately, the claimant-injured has not questioned the adequacy of the compensation, thus, the same is upheld.

14. Viewed thus, the impugned award is upheld and the appeal is dismissed.

15. The Registry is directed to release the awarded amount in favour of the claimant-injured strictly as per the terms and conditions contained in the impugned award through payee's account cheque or by depositing the same in her bank account.

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