

(2016) 11 SHI CK 0063
In the High Court Of Himachal Pradesh
Case No : FAO (MVA) No. 335 of 2012

Oriental Insurance Company	Vs	APPELLANT
Smt. Santosh W/o Late Sh. Lekh Ram		RESPONDENT

Date of Decision : 11-11-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 170

Citation : (2017) 1 ACC 364

Hon'ble Judges : Mansoor Ahmad Mir, CJ.

Bench : Single Bench

Advocate : Mr. Pritam Singh Chandel, Advocate, for the appellant; Mr. Anirudh Sharma, Advocate, for the Respondent No. 1 to 3; Mr. P.S. Goverdhan, Advocate, for the Respondent No. 4; Mr. Deepak Bhasin, Advocate, for the Respondent No. 5; Mr. Arti Sharma, Advocate, f

Final Decision : Disposed Off

Judgement

Mansoor Ahmad Mir, C.J.(Oral)—This appeal is directed against the judgment and award dated 7.4.2012, passed by the Motor Accident Claims Tribunal-II, Solan, H.P. hereinafter referred to as "the Tribunal", for short, in MACT Petition No. 1-S/2 of 2012/07, titled Smt. Santosh and others v. Sh. Satpal and others, whereby 1 Whether the reporters of Local Papers may be allowed to see the judgment compensation to the tune of Rs. 4,73,800/- along with interest @ 9% per annum came to be awarded in favour of the claimants and insurer was saddled with the liability, for short "the impugned award", on the grounds taken in the memo of appeal.

2. Claimants, owners, drivers and insurer of Motor Cycle No. CH-03C-1451, have not questioned the impugned award on any ground, thus it has attained the finality, so far as it relates to them.

3. The insurer of Bus No. HP-14-5098, has questioned the impugned award on the grounds taken in the memo of appeal.

4. Learned counsel for the appellant argued that the vehicle was being driven by driver Satpal rashly and negligently and not by Maha Singh.

5. Thus, the only question to be determined in this appeal is-whether the insurer can question the said findings? The answer is in negative for the following reasons.

6. Neither driver nor owner has questioned the same. However, I have gone through the record. Claimants have examined Dr. N.K. Gupta as PW1, Sh. Rishi Ram as PW3, Sunil Verma as PW4 and Smt. Santosh claimant No. 1 appeared in the witness-box as PW2.

7. Respondents examined HHC Krishan Dutt RW1 and drivers Maha Singh and Sat Pal stepped into the witness-box as RW2 and RW3 respectively.

8. Vijay Kumar PW5 is an independent witness. He has specifically deposed that he was present on the spot and witnessed the occurrence. Further stated that respondent No. 4 Maha Singh (respondent No. 7 herein) has driven the vehicle rashly and negligently and hit the motor cycle which was being driven by Sat Pal, in which deceased sustained the injuries and succumbed to the same. His statement is of great importance and stands relied upon by the learned Tribunal while determining issue No.1. RW3 Sat Pal has deposed that the accident was outcome of rash and negligent driving of Maha Singh. The Tribunal has rightly made the discussion in paras 14 and 15, of the impugned award, needs no interference.

9. Having said so, the Tribunal has rightly held that the accident was outcome of rash and negligent driving of Maha Singh while driving Bus No. HP-14-5098. Accordingly, the findings recorded on issue No. 1 by the Tribunal are upheld.

10. The insurer has not sought permission under Section 170 of the Motor Vehicles Act, for short "the Act"for contesting the claim on all grounds thus, is precluded to question the adequacy of compensation.

11. The 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.

12. 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."

13. I have gone through the impugned award. The Tribunal has rightly made discussion in paras 17 to 20 of the impugned award needs no interference. The amount awarded is adequate, cannot be said to be meager, is upheld

14. The Tribunal has awarded interest @ 9% per annum. However, interest was to be awarded at the rate of 7.5% per annum, for the following reasons.

15. It is a 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; Satosh 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.

16. Accordingly, interest @7.5% per annum is awarded from the date of claim petition till realization of the amount.

17. The insurer-appellant is directed to deposit the amount along with interest @ 7.5% per annum, within eight weeks from today in the Registry. The Registry, on deposit, is directed to release the amount in favour of the claimants, strictly in terms of the conditions contained in the impugned award, through payees' cheque account, or by depositing the same in their bank accounts, after proper verification and excess amount, if any, be refunded to the insurer/appellant through payees' cheque account.

18. Viewed thus, the impugned award is modified as indicated herein above and appeal is disposed of along with pending applications.

CMP No. 583/2012.

19. Learned counsel for the appellant has not pressed this application. Hence the application is dismissed as not pressed.

20. Send down the record forthwith, after placing a copy of this judgment.