

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice Anil Kshetarpal.

UNITED INDIA INSURANCE COMPANY LIMITED - Appellant,

Versus

RESHMA and others - Respondents.

XOBJC-93-2021 in/and FAO No.7053 of 2019 (O&M) and FAO No.6719 of 2019 (O&M)

Motor Vehicles Act, 1988 (59 of 1988) Section 166 - Insurance - Officer of the Insurance Company appeared in evidence and stated that no insurance policy has been purchased from the appellant company - That only a photocopy of the insurance policy was produced by the driver and the owner of tractor - But thereafter where the owner and driver of tractor failed to produce the original or certified copy of the insurance policy, the Tribunal should have drawn an adverse inference against them - Insurance Company not liable.

Cases referred to:-

1. (2019-1)193 PLR 213 (SC), *Magma General Insurance Co. Ltd. v. Nanu Ram @ Chuhru Ram.*
2. (2020-4)200 PLR 001 (SC), 2020 PLRonline 11306, *New India Assurance Co. Ltd. v. Somwati.*
3. (2017-4)188 PLR 693 (SC), *National Insurance Company Limited v. Pranay Sethi.*

Mr. Ashwani Talwar, with Mr. Varun Sharma, for the United India Insurance Co. Ltd. Mr. Sanjeev Kodan, for TATA AIG Gen. Ins. Co. Ltd. Mr. Rakesh K. Sharma, for respondent No.4 in FAO No.6719 of 2019. Mr. Pawan Attri, for respondent No.4-Surjit Singh in FAO No.7053 of 2019. Mr. Ashit Malik, for respondent No.3(i)/cross objectors (FAO No.7053 of 2019)

Anil Kshetarpal, J (Oral) - (7th December, 2021) - This order shall dispose of FAO No.7053 and 6719 of 2019 and cross objections No.93 of 2021.

2. Three vehicles were involved in the accident. There were two tractors one of them bearing a registration No.HR-41-F-9237 which was allegedly insured with United India Insurance Co. Ltd. and the other tractor bearing registration No.HR-41-G-1062 allegedly insured with TATA AIG Gen. Ins. Co. Ltd. The third vehicle involved in the accident was a car bearing registration No.PB-02-BU-0024. The deceased was driving the aforesaid car. The correctness of the finding with regard to rash and negligent driving and apportionment of the responsibilities to pay compensation, is not being questioned by learned counsel for the parties. Thus, the findings of the Tribunal on these aspects are affirmed.

3. Learned counsel for the United India Insurance Co. Ltd. in FAO No.7053 of 2019, contends that the tractor No.HR-41-F-9237 was never insured with the appellant company. He draws the attention of the Court to paras 14 and 17 of the written statement disputing that the aforesaid tractor was insured by the Insurance Company. He further draws the attention of the Court to the application filed before the Tribunal, for deleting the name of United India Insurance Co. Ltd. and to direct respondent No.3 and 4 (driver and owner of tractor No.HR-41-F-9237) to produce the original insurance policy/cover note. He further draws the attention of the Court to the order dated 27.08.2018 passed by the Tribunal which reads as under:-

"No PW is present or served. However, respondent No.4 filed an application for deleting his name or directing respondents No.1 to 3 to produce original insurance policy/cover note. Heard. In the light of application, respondent No.1 to 3 are directed to produce original insurance policy as earliest, failing which, an adverse inference may be drawn qua them at the time of adjudication of this claim petition. Accordingly, instant application stands disposed of. Adjourned to 21.09.2018 for entire claimant's evidence to be produced at own responsibility.

Sd/- (Dr. Sanjeev Arya)

MACT, Jind, 27.08.2018

4. He further submits that the officer of the Insurance Company appeared in evidence and stated that no insurance policy has been purchased from the appellant company. He further draws attention of the Court to the statement of Ishwar Singh the alleged driver of tractor No.HR-41-F-9237 to contend that no evidence to prove the insurance policy was produced.

5. It may be noted here that only a photocopy of the insurance policy was produced by the driver and the owner of tractor No.HR-41-F-9237 but thereafter they did not make any attempt to prove the same.

6. In fact, at the time of arguments, the contention of learned counsel representing the United India Insurance Co. Ltd. were not disputed by the learned counsel for the respondents.

7. In view of the aforesaid position, the Tribunal has erred in ordering recovery of 50% of the compensation from the United India Insurance Co. Ltd. The Tribunal has overlooked the order passed on 04.08.2018. In a case where the owner and driver of tractor No.HR-41-F-9237 failed to produce the original or certified copy of the insurance policy, the Tribunal should have drawn an adverse inference against them.

8. Consequently, the appeal filed by the United India Insurance Co. Ltd. is allowed. The finding of the Tribunal against them is set aside.

9. FAO No.6719 of 2019 has been filed by TATA AIG Gen. Ins. Co. Ltd., the insurance company of tractor No.HR-41-G-1062. Learned counsel for the appellant contends that the Tribunal has erred in assessing the income of the deceased @ Rs.10,200/- per month on the

basis of minimum wages fixed by the Deputy Commissioner of the District. He submits that the Tribunal is required to assess the income on the basis of minimum wages notified under the Minimum Wages Act. In the considered opinion of this Court, there is no hard and fast rule in that matter. The Tribunal has assessed the minimum income on the basis of minimum wages notified by the Deputy Commissioner of the District. The accident took place on 25.11.2015. A young man aged about 27 years, 10 months, 24 days lost his precious life. He was a resident of District Kurukshetra. Therefore, the Tribunal has not committed any error in relying upon the order passed by the Deputy Commissioner, notifying about the minimum wages.

10. Hence, there is no substance in the appeal (FAO No.6719 of 2019) filed by TATA AIG Gen. Ins. Co. Ltd. and is dismissed.

11. The cross objections have been filed by the claimants with a prayer to modify the award passed by the Tribunal. Learned counsel submits that there are three claimants namely widow of the deceased and his aged parents. The learned counsel while relying upon the judgment passed in *Magma General Insurance Co. Ltd. v. Nanu Ram @ Chuhru Ram and others*,¹ (2019-1)193 PLR 213 (SC), which has been reiterated by a Larger Bench in *New India Assurance Co. Ltd. v. Somwati and others*,² (2020-4)200 PLR 001 (SC), 2020 SCeJ 1602, 2020 PLRonline 11306, submits that the parents are also entitled to the filial consortium @ Rs.40,000/- each.

12. On the other hand, learned counsel for the Insurance Company contends that in view of the judgment passed by 5 Judge Bench in *National Insurance Company Limited v. Pranay Sethi and Ors.*,³ (2017-4)188 PLR 693 (SC), the maximum amount under the head of consortium can only be Rs.40,000/-.

13. On careful reading of the judgments passed in *Magma General Insurance Co. Ltd.* (supra) and *Somwati and others* (supra), it is evident that the judgment passed in *Pranay Sethi and Ors.* (supra) has been discussed.

14. Hence, the parents are also held entitled to a filial consortium @ Rs.40,000/- each. Thus, there is an increase of Rs.80,000/- in the compensation awarded by the Tribunal.

15. Accordingly, the cross objections are allowed.

16. Learned counsel for the claimants contends that the Insurance Company should be made liable to pay the amount and thereafter recover the amount from the other tortfeasors. It may be noted here that neither the United India Insurance Co. Ltd. nor the TATA AIG Gen. Ins. Co. Ltd. has any privity of contract with the owner and driver of tractor No.HR-41-F-9237. As a result, TATA AIG Gen. Ins. Co. Ltd. cannot be made liable to pay the amount and then recover from the owner/driver. As a result, 50% of the compensation shall be payable by jointly and severally by Ishwar Singh and Jaswinder Singh whereas the remaining 50% shall be payable by TATA AIG Gen. Ins. Co. Ltd.

17. All the pending miscellaneous application(s), if any, are also disposed of.

R.M.S.

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Appeal disposed of.