

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 5592 of 2011 (O&M)
Date of decision 23.07. 2015.

ICICI Lombard General Ins. Co. Limited

..... Appellant.

versus

Asha Devi & Ors

..... Respondents.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? yes
2. To be referred to the Reporters or not? yes
3. Whether the judgment should be reported in the Digest? yes

Present : Shri Sandeep Goyat, Advocate for
Shri Ravinder Dhull, Advocate for the appellant.
Shri R.P.Verma, Advocate for respondent No.7.
Shri Vikrant Rana, Advocate for respondent No.8.

K.C.PURI, J.

C.M. No20627 -CII of 2011.

For the reasons mentioned in the application, delay of 57 days in filing the appeal stands condoned. CM stands disposed of accordingly.

Main appeal.

This is an appeal directed by appellant-ICICI Lombard General Insurance Company Limited against the Award dated 30.3.2011 passed by Shri J.R.Chauhan, learned Motor Accident Claims Tribunal, Rewari vide which the claim petition preferred by the widow, minor children and parents of deceased Satbir Singh were partly accepted and

claimants were held entitled to claim Rs.6, 43, 600/- was held along with interest at the rate of 6% per annum from the date of filing the petition till its realization which shall be paid by the respondents No.1 to 3 jointly and severally.

2. The brief resume of the case as gathered from the record is that on 19.9.2009 at about 7.p.m. Satbir (now deceased) was standing with one Satyawar by the side of the road at Rohrai turn in the area of village Rohrai. In the meantime, offending canter bearing registration No.HR-46B/9510, which was being driven by respondent No.1 in a rash and negligent manner and that too at a high speed, came from the side of Rewari and struck against Satbir. Due to impact the deceased fell on the road and as a result of which he received fatal injuries. He was taken to hospital and the doctor declared him brought dead. FIR was registered in the police station under Sections 279, 337, and 304-A of the IPC against accused-respondent-Jaivir Singh.

3. Respondent Nos.1 and 2 owner and driver were proceeded ex-parte before the Tribunal.

4. Respondent No.3, Insurance Company has contested the claim petition and filed a written statement pleading therein that accident has taken place with an unknown vehicle which ran away from the spot after causing the accident and the vehicle in question has been falsely involved in collusion with its owner-driver. It is further pleaded that respondent No.1 was not having valid driving licence.

5. No replication was filed. From the pleadings of the parties, the following issues were framed-

1. Whether the deceased Satbir Singh died in a motor vehicular accident which took place on 19.9.2010 due to rash and negligent driving of respondent no.1 by driving canter no. HR-46B-9510 ? OPP
- 2 If issue no.1 is proved, whether the petitioners are entitled to get compensation from whom or what amount ? OPP
3. Whether the respondent no.1 was not holding a valid and effective driving licence on the date of accident, if so what effect ? OPR
- 4 Relief.

6. The claimants in order to prove their case examined EHC Durga Parshad as PW-1, Dr. J.S.Mehra PW-2, Asha Devi (one of the claimants) as PW-3, Mahabir as PW-4, Joginder as PW-5 and closed the evidence.

7. In rebuttal, Insurance Company examined Anil Kumar as RW-1.

8. The learned Tribunal returned findings on issue Nos.1 and 2 in favour of the claimants. Issue No.3 was decided against the Insurance Company and consequently the claim petition was partly accepted and a sum of Rs.6,43,600/- was allowed to the claimants along with interest at the rate of 6% per annum vide Award dated 30.3.2011.

9. Feeling dissatisfied with the above said Award dated 30.03.2011, the Insurance Company-appellant has directed the present appeal.

10. I have heard learned counsel for the parties and have gone through the records of the case.

11. The only challenge made by the Insurance Company is in

respect of issue No.3 to the effect that respondent-Jaivir Singh driver of the offending vehicle was not holding a valid driving licence at the time of accident. Learned counsel for the appellant has further submitted that Insurance Company has examined Anil Kumar as RW-1 and he has stated that the driving licence of respondent-Jaivir Singh driver of the offending vehicle was not renewed. The accident took place on 19.9.2009 and on that date driver of the offending vehicle was not holding a valid driving licence. However, that contentions are meritless. Anil Kumar as RW-1 in the cross-examination has stated that licence Ex.P-2 was issued in the name of driver of offending vehicle, which was valid from 23.7.2009 to 4.12.2012. The learned Tribunal has taken into account the licence Ex.P-2. The onus lies solely upon the Insurance Company to prove that at the time of accident the driver of the offending vehicle was not holding a valid licence. The counsel for the appellant could not assail the validity of licence Ex.P-2 vide which the driver of the offending vehicle was allowed to drive the vehicle.

12. So, in view of the above discussion, the appeal is without any merit and the same stands dismissed with costs, which is assessed as Rs.10,000/- which shall be shared by the claimants.

13. A copy of this judgment be sent to the trial Court for strict compliance.

(K.C.PURI)
JUDGE

July 23 , 2015

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