IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1543 of 2015 (O&M)
Date of Decision: March 09, 2015

New India Assurance Company Limited
...Appellant

Versus

Saroj Devi and others
...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Vandana Malhotra, Advocate
for the appellant.

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INDERJIT SINGH, J.

Appellant New India Assurance Company Limited has filed this appeal against Smt.Saroj Devi, Ajay, Neeraj, Ram Singh, Phooldeen and Saleem Khan respondents challenging the award dated 16.10.2014 passed by learned Motor Accident Claims Tribunal, Karnal (hereinafter referred to as 'Tribunal'), vide which the claim of ₹25,52,000/- along with interest @ 9% per annum from the date of petition till the actual realization has been awarded.

The brief facts of the case are that claimants Smt.Saroj Devi, Ajay, Neeraj and Ram Singh filed claim petition against Phooldeen, driver, Saleem Khan, owner and The New India Assurance Company, insurer of offending TATA Ace bearing registration No.HR-56-9465 under Sections 166 and 140 of the Motor Vehicles Act. It is stated in the claim petition that on 24.06.2011, Ombir was going towards the side of Police Post Ranjitpur on motorcycle No.HR-02M-6840 of Police Department after completion of his VIP duty. He was driving his motorcycle at a normal speed and on his correct left hand side of the road. At about 9.00 P.M., when he reached near Morya petrol pump, the offending vehicle Tata Ace No.HR-56-9465 being driven by Phooldeen rashly and negligently and at a very fast speed, came from behind side. One mule cart was also going ahead of the offending vehicle. Due to the glare lights of oncoming vehicles, the driver of offending vehicle turned his vehicle towards left side to save the mule and struck against the motorcycle of Ombir from behind. As a result, Ombir fell down along with his motorcycle and received multiple and grievous injuries and died at the spot. A criminal case was registered at Police Station Sadar Jagadhri. Post mortem examination on the dead body was conducted in Civil Hospital, Jagadhri. It is further stated in the petition that deceased Ombir was 40 years of age at that time and posted as Head Contable in Haryana Police and his monthly income was ₹25,000/-. He was only bread earner of his family and the claimants are the legal heirs of the deceased.

In reply to the claim petition, respondent No.1 and 2, i.e. driver and owner pleaded that accident did not take place due to negligence of respondent No.1 as he was driving his vehicle at a moderate speed and on his correct left side of the road but it was deceased Ombir who was driving his motorcycle No.HR-02M-6840 in rash and negligent manner and dashed with the vehicle of respondent No.1 driver. It was further pleaded that the police registered a false case against respondent No.1 in collusion with claimants.

The Insurance company in the reply mainly stated that driver of alleged insured vehicle was not holding a valid and effective driving licence and the vehicle was being plied in violation of terms and conditions of insurance policy and further stated that claim petition is bad for mis-joinder of owner and insure of vehicle.

Following issues were framed:-

(1) Whether the deceased Ombir son of Shri Ram Singh died in a road side accident which took place on 24.6.2011 at about 9.30 P.M. in the area of PS Sadar, Jagadhri, District Karnal, because of rash and negligent driving of the respondent No.1 being driver of the offending TATA ACE bearing No.HR-56-9465?OPP.

(2) If issue No.1 is proved in affirmative, whether the claimants are entitled for compensation, if so to what amount and on what terms and conditions and from whom?OPP.

(3) Whether the respondent No.1 was not having a valid and effective diving licence at the time of this accident and the vehicle in question was being plied, if so to what effect?OPR2.

(4) Whether the vehicle in question was being plied without a valid policy and in contravention of terms and conditions of the policy, if so to what effect?OPR

(5) Relief.

Learned Tribunal after going through the evidence on record decided issues No.1 and 2 in favour of claimants and issue No.3 and 4 against respondent No.3-insurance company and compensation to the tune of ₹25,52,000/- was awarded along with interest @ 9% per annum from the date of filing of the claim petition till realization of the amount.

At the time of arguments, learned counsel for the appellant argued that eye witnesses have been planted. The vehicle and driver have been substituted later and the negligence has not been proved. He further argued that respondents driver and owner have not proved the fitness certificate and route permit.

I have heard learned counsel for the appellant and have gone through the record.

From the perusal of the record, I find that PW-1 Om Parkash has been examined as eye witness of the accident. Nothing has been pointed as to how this witness has been falsely planted. This witness deposed regarding rash and negligent driving of offending vehicle by respondent-driver Phooldeen. The mere fact that eye witness has not gone to the police station to register FIR, is no ground to doubt his presence on the spot. The mere fact that in the FIR, the vehicle numbers and name of driver have not been mentioned, also will not prove itself that vehicle and driver were substituted later on. There is no cogent evidence on record to prove this fact that vehicle and driver have been substituted. During the investigation, the vehicle as well as name of the driver has come on record and challan has been presented against Phooldeen. Otherwise also, driver and owner of the vehicle have not denied the accident. There is nothing to show that they have connived with the claimants .

From the record, I find that the findings of learned Tribunal regarding causing of accident by rash and negligent driving of driver

Phooldeen are correct and as per law. As regarding compensation, learned counsel for the appellant has not argued anything. As regarding fitness certificate and route permit, I find that no specific plea has been taken regarding fitness certificate and route permit. No specific issue has been framed in this regard. It was for the Insurance Company to take the specific plea regarding these facts and to show that there was violation of the terms and conditions of the insurance policy on these grounds.

The Tribunal has also relied upon the certificate produced by owner of the vehicle showing the fitness certificate valid w.e.f. 28.04.2011 to 27.04.2012 and the Court held that owner was having a valid fitness certificate to ply the offending vehicle on road. The Tribunal also held that there is no requirement of law, to possess a route permit and Section 2(51) of the Motor Vehicles Act talks about 'Permit' only and the Court relied upon the law laid down in ***Gurmeet Singh and another vs. National Insurance Company and others, 2014(3) RCR 1013 (P&H)***.

In view of the above discussion, I find that the findings given by learned Tribunal in the impugned award dated 16.10.2014 are correct, as per law and do not require any interference from this Court.

Therefore, finding no merit in the present appeal, the same is dismissed.

March 09, 2015 **(INDERJIT SINGH)**
Vgulati **JUDGE**