IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

FAO-3416-2015 (O&M)

Date of Decision: May 14, 2015

Reliance General Insurance Company Limited

...Appellant

Versus

Ved Parkash and others

...Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Raj Kumar Bashamboo, Advocate,
for the appellant.

1. *Whether Reporters of local papers 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**

NARESH KUMAR SANGHI, J (Oral)

The present appeal has been filed by Reliance General Insurance Company Limited, challenging the award dated 5.2.2015, passed by learned Motor Accidents Claims Tribunal, Karnal (for brevity, 'learned Tribunal'), whereby the claimants, i.e. parents of Sumit (since deceased) were awarded a total compensation of Rs. 12,41,400/- (Rupees twelve lacs forty-one thousand and four hundred only) along with interest @ 9% per annum from the date of filing of the claim petition till realization of the whole amount.

Learned counsel for the appellant insurance company has raised the following two issues:-

(i) It was a case of contributory negligence; and

(ii) The driver of the tractor, bearing Registration No. HR-11-A-5466 (for brevity, 'the offending vehicle') was not holding a valid driving licence.

I have heard learned counsel for the appellant and with his able assistance gone through the material available on record.

In brief, the facts of the case are that on 1.2.2013, at about 4:00 a.m., Sumit (since deceased), while driving his motor-cycle, bearing Registration No. HR-05-AB-0968, was proceeding towards his house from Dominos Pizza India Ltd., Sector 12, Karnal, after completing his duty hours. He was being followed by Ved Parkash, son of Babu Ram, on a separate motor-cycle. When Sumit reached near Mayur Dhaba, G.T. Road, Karnal, in the meantime, the offending vehicle along with trolly loaded with sugarcane, being driven by Shishan, in a rash or negligent manner, without observing the traffic rules, was proceeding ahead of the motor-cycle being driven by Sumit (since deceased). The driver of the offending vehicle suddenly applied brakes, as a result thereof, the motor-cycle being driven by Sumit (since deceased) rammed into the rear portion of the trolly of the tractor being driven by Shishan, driver of the offending vehicle. Sumit sustained fatal injuries and was declared dead by the Medical Officers of the Civil Hospital, Karnal.

The parents of Sumit (since deceased), filed the claim petition alleging that Sumit was aged about 23 years, earning Rs.25,000/- (Rupees twenty-five thousand) per month and they (claimants) were wholly dependent upon the earnings of their son Sumit (since deceased). They claimed Rs. 50,00,000/- (Rupees fifty lacs) along with interest @ 18% per annum from the date of filing of the petition till realization.

Driver, owner and insurance company of the offending vehicle appeared before learned Tribunal and filed their replies. Driver and owner of the offending vehicle denied the factum of the accident and pleaded that Sumit (since deceased) had not sustained injuries in the alleged accident and hence, the claimants were not entitled to the compensation claimed by them.

The appellant insurance company pleaded that the tractor-trolly in question did not cause any accident and the same have been falsely involved by the claimants in connivance with the owner and the driver of the offending vehicle, just to get compensation from the insurance company. It was further averred that Sumit (since deceased) was not working with Dominos Pizza India Ltd., Sector 12, Karnal, and, as such, his income was also denied.

From the pleadings of the parties, following issues were framed:-

> *"1. Whether the accident in question took place on 1.2.2013 at about 4.00 a.m. near Mayur Dhaba, G.T. Road, Karnal on account of rash and negligent driving of Tractor-Trolley bearing registration No. HR-11A-5466 being driven by respondent no. 1 resulting into death of Sumit s/o Shri Ved Parkash as alleged? OPP.*
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> *2. If issue No. 1 is proved, whether the claimant is entitled to any compensation and if so, how much and from whom? OPP.*
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> *3. Whether the present petition is not maintainable? OPR.*
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> *4. Whether the present petition is not maintainable? OPR.*
>
> *5. Whether the petitioner has got no locus-standi and cause of action to file this petition? OPR.*
>
> *5-A Whether respondent No. 1 was not holding a valid and effective driving licence at the time of alleged*

accident, if so, its effect? OPR-3.

5-B Whether the vehicle in question was being plied in contravention of terms and conditions of the Insurance Policy, if so, its effect? OPR-3

6. Relief."

While deciding Issue No. 1, learned Tribunal took into consideration the deposition of Ved Parkash (PW-1), an eye-witness of the alleged accident, the charge-sheet (report under Section 173, Cr.P.C.) [Ex. P-1]; copy of FIR No. 84, dated 1.2.2013, under Sections 279 and 304-A, IPC (Ex. P-2); and copy of the post-mortem report (Ex. P-3), and held that Shishan (respondent No. 3), while driving offending vehicle rashly or negligently, had caused the death of Sumit.

While deciding issue No. 2, learned Tribunal held that the monthly salary of Sumit (since deceased) was Rs. 8,100/- (Rupees eight thousand and one hundred only). 1/3rd amount was deducted as personal expenses from the monthly income of the deceased. While placing reliance on **M. Mansoor and another v. United India Insurance Company Ltd., 2013 (4) RCR 729 (SC)**, multiplier of 18 was applied and the total dependency was assessed to the tune of Rs. 11,66,400/- (Rupees eleven lacs, sixty-six thousand and four hundred). Rs. 25,000/- (Rupees twenty-five thousand) were awarded for funeral expenses and a sum of

Rs.50,000/- (Rupees fifty thousand) for love and affection, deprivation of protection and social security etc. for the death of young son of the claimants. A total sum of Rs. 12,41,400/- (Rupees twelve lacs, forty-one thousand and four hundred) along with interest @ 9% per annum from the date of filing of the claim petition till realization of the amount was granted to the claimants.

While dealing with the issue relating to holding of the valid driving licence, learned Tribunal held that Shishan (respondent No. 3), had produced on record copy of his driving licence (Ex. R-2), issued by the Licensing Authority, Samalkha, whereby he was authorized to drive motor-cycle, tractor, car and jeep and the same was effective from 25.2.2009 to 24.2.2014. Learned Tribunal further held that the appellant insurance company had failed to show as to how Shishan (respondent No. 3), driver of the offending vehicle was not holding a valid driving licence.

So far as the first contention of learned counsel for the appellant insurance company with regard to contributory negligence on the part of Sumit (since deceased) is concerned, the same is devoid of any merit. Concededly, in the reply filed before learned Tribunal, the driver, the owner and the insurance company of the offending vehicle had not raised the issue that it was a case of contributory negligence. In fact, the consistent case of the driver, the owner and the insurance company of the offending vehicle was that the accident in question had never taken place. Ved Parkash (PW-1) while reporting the matter to the police had specifically averred that the accident in question had taken place due to sudden applying of brakes by the driver of the offending vehicle. The matter was thoroughly investigated by the police and the charge-sheet (report under Section 173, Cr.P.C.) was presented before Criminal Court for the prosecution of the driver of the offending vehicle. A bare perusal of the discussion of Issue No. 1 by learned Tribunal, would clearly reveal that the accident in question had occurred due to sole rash or negligent driving on the part of the driver of the offending vehicle. This Court is also of the considered opinion that Issue No. 1 was rightly decided in favour of the claimants and against the driver, the owner and the insurance company of the offending vehicle.

So far as the second argument of learned counsel for the appellant that the driver of the offending vehicle was not holding a valid driving licence, has no legs to stand. The copy of the driving licence (Ex. R-2) issued by the Licensing Authority, Samalkha, has been placed on record. The driver of the offending vehicle was authorized to drive motor-cycle, tractor, car and jeep. The said licence was effective from 25.2.2009 to 24.2.2014. The accident in question had taken place on 1.2.2013, therefore, the said licence was effective on the date of the accident.

To be more clear, learned counsel for the appellant insurance company attempted to develop his argument that trolly was attached with the tractor, therefore, the same had become a 'Goods Carrier'/transport vehicle and the driver of the said tractor was not authorized to drive the same since he (driver) was not holding the licence to drive a 'Goods Carrier'/transport vehicle. The said contention is also not tenable. There is no second view that onus to prove that the driver of the offending vehicle was not holding a valid driving licence at the time of the accident, was on the appellant insurance company. No evidence in that regard has been led by the appellant. Even if it is assumed that the trolly attached with the tractor was filled with sugarcane, then the said commodity was agricultural produce. If someone is carrying the agricultural produce for his own use and not for commercial purpose, then it cannot be said that the tractor attached with the trolly would become a 'Goods Carrier' or a 'transport vehicle'. There is no doubt that if it is substantiated on record that the goods being carried in the trolly attached with the tractor were for commercial purposes, then of course scenario would be different.

In the case in hand, the appellant insurance company has miserably failed to discharge the onus and, hence, this Court also concurs its view with the one delivered by learned Tribunal that the driver of the offending vehicle was holding a valid driving licence on the date of the accident.

No other issue has been raised before this Court.

As a sequel to the above discussion, there is no merit in the present appeal and the same is hereby dismissed.

(NARESH KUMAR SANGHI)
JUDGE

May 14, 2015
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