

In the High Court of Punjab and Haryana at Chandigarh

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F.A.O. No.3642 of 2015 (O&M)

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Date of decision:20.5.2015

Shri Ram General Insurance Company Ltd.

.....Appellant

v.

Smt. Saroj and others

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sanjeev Goyal, Advocate the appellant.

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Inderjit Singh, J.

This appeal has been filed by Shri Ram General Insurance Company Ltd. (hereinafter referred to as 'the Insurance Company') against Saroj, Ajay, Atul, Bedi Devi alias Bedpati and Ram Murti-claimants and Narender Kumar-Driver of Oil Tanker No.HR-56-1151 and Parmod Sagar Jain-Owner/respondents challenging the impugned award dated 8.1.2015 passed by the Motor Accident Claims Tribunal, Jind (hereinafter referred to as 'the Tribunal'), vide which the claim petition filed by the claimants has been accepted and compensation of ₹23,55,000/- has been awarded in favour of the claimants.

I have heard learned counsel for the appellant and have gone

through the record.

Learned counsel for the appellant argued that it is a case of contributory negligence of the vehicle driven by Rajesh (since deceased) as well as the offending vehicle as it was head on collision. Learned counsel for the appellant further argued that the income of the deceased on the basis of agriculture land at ₹10,000/- per month assessed by the Tribunal is also excessive.

After hearing learned counsel for the appellant and after going through the record, I find that Smt. Saroj widow of Rajesh, Ajay and Atul (minor sons), Bedi Devi alias Bedpati and Ram Murti parents of the deceased petitioners/claimants filed the claim petition against Narender Kumar-Driver of the Oil Tanker No.HR-56-1151 (hereinafter referred to as 'the offending tanker'), Parmod Sagar Jain-Owner of the offending tanker and Shri Ram General Insurance Company Ltd.-Insurer of the offending tanker under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'). It is the case of the claimants/petitioners that on 5.4.2013, Rajesh (since deceased) along with his cousin Surender was going to Jind from Village Bhairo Khera in Alto Car bearing registration No.HR-26AF-9711 in connection with some property dealing. When they reached in the area of Village Radhana on Jind-Gohana road, then an oil tanker bearing registration No.HR-56-1151 came from opposite direction and in a bid to overtake the other vehicles, said tanker came on wrong side of the road and hit the said Alto car as a result of which Rajesh received multiple grievous injuries on various parts of his body. The injured was taken to

General Hospital, Jind, from where he was referred to PGIMS, Rohtak. Thereafter, due to deteriorating condition of Rajesh, he was shifted to Sir Ganga Ram Hospital, Delhi, but he succumbed to his injuries. FIR No.95 dated 6.4.2013 was registered for the offences under Sections 279, 337 and 304-IPC. Rajesh was 40 years of age, he was a property dealer by profession and was also doing agriculture work as well as dairy farming and was earning ₹20,000/- per month and the claimants/petitioners claimed compensation of ₹50,00,000/-.

On the other hand, the case of respondents No.1 and 2 is that no accident involving the oil tanker No.HR-56-1151 ever took place. Rather, the said tanker had been falsely implicated in this case. Respondent No.3 in separate written statement resisted the petition that no accident took place as alleged in the claim petition.

The claimants examined as many as six witnesses. PW-1 is Pardeep Kumar, Additional Ahlmad, who produced the original criminal case file titled as "State vs. Narender". PW-2 is EASI Ramdhari, who brought the original FIR register and proved FIR Ex.P.1. PW-3 Smt. Bedi Devi alias Bedpati is one of the claimants, who appeared as a witness. PW-4 Dr. Ajay Singla, mainly deposed regarding the MLR of Rajesh. PW-5 Dr. S. Nundy, proved the treatment and death summary of Rajesh. PW-6 Surender is an eye witness, who deposed as per the version of the claimants.

On the other hand, the respondents only tendered into evidence some documents.

The learned Tribunal after appreciating the evidence awarded

an amount of ₹23,55,000/- along with interest @8% to the claimants.

A perusal of the record shows that there is no plea of any of the respondents that it is a case of contributory negligence. There is no witness from the respondents side who came into witness box to depose that it is a case of contributory negligence. Even the Driver has not come to the Tribunal to say that it is a case of contributory negligence and the deceased himself was negligent in driving the car or the accident occurred due to negligence of the car driver. The FIR has been registered against respondent No.1 Narender Kumar-Driver of the offending tanker. The Criminal Ahlmad had brought the file of the criminal case which shows the trial is going on against Narender Kumar-Driver. PW-6 Surender deposed as per claimants' version that this accident took place due to rash and negligent driving of respondent No.1 Narender Kumar-Driver of the offending tanker. There is not an iota of evidence on record to show that it is a case of contributory negligence nor there is any plea of any person taken in the written statement that it is a case of contributory negligence. Rather, the respondents have denied the accident.

Learned counsel for the appellant placed reliance on the judgment of the Hon'ble Supreme Court in Bijoy Kumar Dugar v. Bidyadhar Dutta and others, 2006 (2) R.C.R. (Civil) 590. I have gone through the law laid down in this judgment. This judgment having distinguished facts will not apply to the facts of the present case as in the facts and circumstances of that case and the evidence produced before the Tribunal, it reached to the conclusion that it was a case of contributory negligence. The Hon'ble

Supreme Court has nowhere held in this judgment that merely the collision was head on so both the drivers will be contributory negligent. Therefore, the law laid down in this judgment will not apply to the facts in the present case. The case of the claimants is that the Driver of the offending tanker while overtaking the other vehicle came in right hand side of the road and hit the car of the deceased and this evidence remained unrebutted on the file.

Therefore, from the above, I find that the Tribunal has correctly held respondent No.1-Driver causing the accident by his rash and negligent driving. Hence, the argument of the learned counsel for the appellant that it is a case of contributory negligence has no merit.

As regards the income of the deceased, I find that the 'Jamabandi' of the land has been produced. It is in the evidence that the deceased was having 8 acres of agricultural land and as per the evidence the annual lease money of an acre in their village is about ₹35,000 to ₹40,000/-. If one person is giving the 'Theka' for ₹35,000/- to ₹40,000/- per acre to the owner of the land, it means that a person is also earning a substantial amount by doing agriculture work. The deceased was doing the agriculture work. Therefore, his income as ₹10,000/- taken by the Tribunal in the facts and circumstances of the present case as well as the evidence produced by the claimants, in no way, can be held as excessive. Therefore, the Tribunal has correctly passed the award as per the evidence and law, which does not require any interference from this Court and the same is upheld.

Finding no merit in the appeal, the same is dismissed. The

amount of ₹25,000/- deposited by the appellant at the time of filing of this appeal be sent back to the Tribunal for disbursement to the claimants.

May 20, 2015.

(Inderjit Singh)
Judge

hsp