IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO NO. 3902 OF 2015 (O&M)
DECIDED ON : 29.06.2015

United India Insurance Company

...Appellant

versus

Sushma Devi and others

...Respondents

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

Present : Mr. Vikas Mohan Gupta, Advocate,
for the appellant.

K. C. PURI, J. (ORAL)

CM NO. 12145-CII OF 2015

There is delay of 12 days in filing the appeal. The same stands condoned for the reasons mentioned in the application.

MAIN CASE (O&M)

This is an appeal directed by the Insurance Company against the Award dated 13.02.2015 passed by Shri Sandeep Kumar Duggal, Motor Accident Claims Tribunal, Rohtak.

Briefly stated, Sushma Devi-wife, Jyoti and Sheetal minor daughters, Anuj minor son of deceased Satyavir filed claim petition claiming compensation to the tune of Rs.30 lacs on account of death of Satyavir in a motor vehicular accident.

The case as set up by the claimants before the Tribunal is that on 16.03.2011, deceased Satyavir Singh was going from Gohana Sugar Mill to Nindana along with his friend Vikas on motorcycle bearing No. HR-15A-4278 which was being driven by Vikas at a moderate speed. At about 5.30 PM, when the deceased reached at village Nindana, respondent No.1 came from the wrong side on the offending vehicle bearing registration No. HR-06K-8973 in a rash and negligent manner and at a high speed and hit the motorcycle of the deceased from front side. Due to that, deceased and Vikas both fell down on the road and received grevious injuries all over the body. The deceased was shifted to PGIMS, Rohtak, where he died. FIR no.34/2011 was also recorded in this regard.

Respondent No.1-driver of the offending vehicle contested the claim petition by filing written statement taking preliminary objections. On merits, the factum of accident was denied. It was further submitted that false FIR has been registered. It was further submitted that respondent No.1 was having a valid driving license and the vehicle was insured with respondent No.3.

Respondent No.2-owner of the offending vehicle also filed written statement denying the factum of accident.

Respondent No.3-Insurance company filed separate written statement taking objection that the driver of the offending vehicle i.e respondent No.1 was not having a valid and effective driving license at the time of accident and he has violated the terms and conditions of the insurance policy.

Replication was not filed. From the pleadings of parties, following issues were framed :-

1) Whether the accident in question resulting into the death of Satyavir took place due to rash and negligent driving of motorcycle bearing registration No. HR-06K-8973 by respondent No.1 ? OPP

2) If Issue No.1 is proved in affirmative, to what amount of compensation, the petitioners are entitled to and from whom ? OPP

3) Whether respondents No.1 and 2 have violated the terms and conditions of the insurance policy, if so, to what effect ? OPR

4) Relief.

In order to prove their case, the claimants examined Bhupender Singh, Clerk as PW-1, Vikas as PW-2, Sushma as PW-3 and closed the evidence after tendering certain documents.

On the other hand, the respondents examined Parveen Jain, Criminal Ahlmad as RW-1 and closed the evidence after tendering certain documents.

After appreciation of the evidence available on record, the Tribunal accepted the claim petition and allowed a sum of ₹18,32,072/- as compensation along with interest @ 8% per annum.

The Insurance Company has directed the present appeal.

The only point urged, during the course of arguments, is that the accident had taken place in the middle of the road and as such, it be presumed that the accident is the result of contributory negligence. It is further submitted that the driver of the vehicle of which the deceased was a pillion rider, was not made a party.

I have carefully considered the said submissions but do not find any force in the same.

From the perusal of record, it is revealed that the insurance company has nowhere taken the stand that it is a case of contributory negligence. The owner and driver of the offending vehicle have also not pleaded that it is a case of contributory negligence. On the other hand, the claimants have proved on record the negligence of the driver of the offending vehicle, whereas the driver of the offending vehicle has not come to the court. The Tribunal has rightly held that in the absence of any evidence on behalf of the appellant-Insurance Company, it cannot be held that it is a case of contributory negligence.

No other point has been urged before me.

In view of the above discussion, the appeal is without any merit and the same stands dismissed.

JUNE 29, 2015 **(K. C. PURI)**
shalini **JUDGE**