IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 4778 of 2015(O&M)

Date of Decision: August 24 , 2015.

Reliance General Insurance Co. Ltd.

...... APPELLANT (s)

Versus

Rumi and others

...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Subhash Goyal, Advocate
for the appellant.

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1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

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LISA GILL, J.

Present appeal has been filed by the Insurance Company impugning award dated 02.03.2015 passed by the Motor Accident Claims Tribunal, Sonipat (hereinafter referred to as, the 'Tribunal') on two counts. Firstly, it is contended that deceased was guilty of contributory negligence and secondly, the learned Tribunal has grossly erred in relying solely on the Income Tax Returns of the deceased to assess his income.

Brief facts of the case are that, Kuldeep (deceased) alongwith Aman Kumar (injured) were proceeding from HSIIDC, Beri No.25 on motorcycle bearing registration No. DL-9SZ-7799 on 26.04.2014 at about 2.00 p.m. Kuldeep was driving the motorcycle whereas, Aman Kumar was the pillion rider. When they reached near Ganesh Dhabha, a tractor make Eicher 242 being driven in a rash and negligent manner by respondent No.5 – Ram Avtar came from the wrong side and struck against the said motorcycle. As a result thereof, Kuldeep and Aman Kumar sustained injuries on various parts of their bodies. Motorcycle was also damaged. Both of them were shifted to the Civil Hospital, Sonipat from where they were referred to PGIMS, Rohtak. However, both injured – Aman Kumar and Kuldeep were admitted in Cygnus Hospital, Sonipat from where Kuldeep was further referred to Jai Parkash Narain Apex Trauma Centre, AIIMS, Rajinder Nagar, New Delhi for treatment. He was declared dead on 28.04.2014 by the doctors at Delhi.

FIR No.122 dated 26.04.2014 (Ex.P3) was registered under Sections 279/337/338/304A IPC at Police Station Murthal, Sonipat against respondent No.5 – Ram Avtar on the statement of Mukesh son of Surender. Claimants being widow, minor son and parents of the deceased – Kuldeep filed petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation on account of the death of Kuldeep in the abovementioned vehicular accident.

Learned Tribunal on appreciation of the evidence on record and keeping in view the entire facts and circumstances of the case, concluded that the accident had taken place due to the rash and negligent driving of tractor No. HR-42C-1523 by its driver, respondent No.5 – Ram Avtar. Learned Tribunal relied upon the Income Tax Returns of the deceased pertaining to Assessment

Years 2013-2014 (Ex.P6) and 2014-2015 (Ex.P5). As per Ex.P5 i.e., the Income Tax Return for Assessment Year 2014-2015, annual income of Kuldeep (deceased) was reflected as ₹2,52,575/-. Income tax to the tune of ₹3,300/- had been paid therefore, after deducting the said amount, annual income of the deceased was assessed at ₹2,49,275/-. Age of the deceased was 28 years at the time of occurrence therefore, multiplier of 17 was rightly applied. Deduction of 1/4th was effected towards personal and living expenses of the deceased. Annual dependancy of the claimants was assessed at ₹1,86,957/-. Loss of dependancy was assessed at ₹31,78,269/-. A sum of ₹1,00,000/- was awarded on account of loss of consortium, ₹25,000/- towards funeral expenses and ₹25,500/- on account of medical expenses, total amount of compensation being ₹33,23,769/-.

Learned counsel has made a valiant yet futile effort to project contributory negligence on the part of the deceased. It is averred that a false FIR had been registered against respondent No.5 by the claimants in collusion with the police with an ulterior motive to extract compensation. There is not an iota of evidence to point to such a claim.

It is to be noted that appellant – Insurance Company had, at the outset, denied the accident having occurred as well as the involvement of tractor bearing registration No. HR-42C-1523 in the said accident. It is in the alternate pleaded that accident had taken place due to the rash and negligent driving of motorcycle by the deceased.

PW3 Mukesh son of Surender, who was following the deceased, Kuldeep and Aman on his own motorcycle has specifically deposed that on the fateful day, the tractor in question being driven in a rash and negligent manner by the tractor driver Ram Avtar had struck against the motorcycle being driven by the deceased due to which Kuldeep had finally succumbed to his injuries. It is on his statement that FIR No.122 dated 26.04.2014 (Ex.P3) under Sections 279/337/338/304A IPC was registered against the tractor driver.

PW2 Aman Kumar who was injured in the said accident has fully supported the version that the accident took place due to rash and negligent driving of the offending vehicle. Report under Section 173 Cr.P.C. filed in the abovementioned FIR after completion of the investigation was duly produced on record. It has been rightly held by the learned Tribunal that factum and manner of the accident having taken place as mentioned in the report under Section 173 Cr.P.C. FIR has been duly substantiated by the eye-witnesses of occurrence, namely, Mukesh son of Surender as well as injured claimant – Aman Kumar. Despite a thorough and searching examination, nothing could be elicited in favour of the appellant – Insurance Company. Respondent No.5, driver Ram Avtar has not stepped into the witness box to rebut the same.

Learned counsel for the appellant is unable to refer to any evidence available on record which points to contributory negligence on the part of the deceased. In the absence of any such evidence, it cannot be concluded that the deceased was guilty of contributory negligence.

For assessing the income of the deceased – Kuldeep, learned Tribunal has rightly relied upon his Income Tax Returns. In view of the fact that these Returns are not disputed, there is no requirement for the other attending or supporting evidence to be available for proving the income of the deceased as is sought to be argued by learned counsel for the appellant.

No other argument has been raised.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in the said findings which would warrant interference by this Court.

Consequently, this appeal is dismissed.

Statutory amount of ₹25,000/- be remitted to the Tribunal.

(LISA GILL)
JUDGE

August 24 , 2015.
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