IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) FAO No.6611 of 2014 (O&M)

Cholamandalam General Insurance Company Ltd.

......Appellant

Versus

Munesh Devi and others

......Respondents

2) FAO No.4223 of 2014 (O&M)

Munesh Devi and others

......Appellants

Versus

Satish Kumar and another

......Respondents

Date of Decision: 29.05.2015

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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?

Present:- Ms.Vandana Malhotra, Advocate,
for appellants.

Mr. Gurinder Singh, Advocate for
Mr. R.D.Yadav, Advocate,
for respondent No.2.

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SHEKHER DHAWAN, J

The above detailed two appeals i.e. FAO No.6611 of 2014 filed by the Insurance Company and FAO No.4223 of 2014 filed by claimants, against award dated 27.03.2014 passed by Motor Accident Claims Tribunal, Rewari (hereinafter referred as 'The Tribunal') whereby 'The Tribunal' awarded compensation of Rs.32,05,000/- on account of death of Satish Kumar in motor vehicle accident.

FAO No.6611 of 2014

2. Relevant facts for the purpose of decision of the appeals that on 19.02.2011 Satish Kumar (since deceased) was going on foot near village Malpura on National Highway No.8. When he reached near Kailash Dharam Kanta, a truck/trailer bearing registration No.HR-47-L-2551 came from the side of Dharuhera being driven by respondent No.1 in a rash and negligent manner and struck the deceased from behind and resultantly Satish Kumar fell down. Respondent No.1 applied brakes and in the process, iron structures loaded in the truck/trailer came in contact with electricity wire passing over the National Highway. When Satish Kumar tried to get up by taking support of the truck/trailer he was electrocuted due to the electric current flowing in the body of the truck/trailer. Thereafter respondent No.1 fled away from the spot. Satish Kumar was taken to H-Way Hospital, Dharuhera where he was declared dead. Matter was reported to the police on the same date. Claim petition was filed for compensation of Rs.2,00,00,000/- as he was earning Rs.70,000/- per month.

3. Respondent contested the claim petition. Respondent No.1 took the plea that accident had not taken place because of rash and negligent driving on his part rather the accident had taken place because of negligence on the part of deceased himself. Respondent-insurance company took the plea that truck/trailer bearing No.HR-47-L-2551 has been falsely impleaded in this case in connection with respondent No.1 and others. More so, respondent No.1 was not holding a valid and effective Driving Licence and insurance company is not liable to pay the amount of compensation. On

this fact 'The Tribunal' appreciated the evidence available on file and returned the findings that accident had taken place because of rash and negligent driving on the part of respondent No.1 and Satish Kumar had died because of electrocuted and has awarded the compensation. Both the appeals are challenging this award.

4. At the time of arguments Ms. Vandana Malhotra, learned counsel for appellant mainly took the plea that death of Satish Kumar taken place because of electrocuted and not because of any motor vehicle accident. This fact stands established because of the fact that the burnt injuries were on hand only and height of the lower wire of over-head wire of said high tension wires was 27 feet. More so , it is not clear what was being carried in the trailer. All the manipulated facts are because of the facts that resondent is also truck owner and this false case was made out to involve the truck. More so, Tej Pal was not examined in the case. So, it is a complete case of false implication of truck No.HR-47-L-2551 just to get the amount of compensation.

5. While arguing on this point Mr. Gurvinder Singh, learned counsel for claimants took the plea that accident had taken place at 4 a.m. and FIR was registered at 8 a.m. Learned counsel for claimants taken plea that insurance company can challenge the award on the point of rash and negligent driving only by respondent No.1 driver and owner which has not been done in this case. On this point reliance was placed upon judgment of Hon'ble Supreme Court in case **National Insurance Co. Ltd. Vs. Nicolletta Rohtagi and others 2002 AIR (SC) 3350** wherein Hon'ble Supreme Court laid down the law that it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regards

negligence or contributory negligence of the offending vehicle. The insurance company has no right of appeal to challenge the award on merits if there is a collusion between the claimants and the insured or the insured dies not contest the claim and tribunal does not implead the insurance company. On the same point reliance was placed in case **Punam Devi and another Vs. Divisional Manager, New India Assurance Co. Ltd. 2004(2) RCR (Civil) 236**.

6. Having considered the rival contentions raised by learned counsel for the parties, this Court is of the considered view that the matter regarding filing of appeal by insurance company against the award passed by 'The Tribunal' on the point of rash and negligence showing the part of driver is matter which was referred to the Hon'ble Larger Bench as per judgment of Hon'ble Supreme Court in case **United India Insurance Co. Ltd. Vs. Shila Datta and others 2012(AIR(SC) 86** wherein such law was laid down.

7. It was held that insurance company can prefer appeal on the point of challenging the award of 'The Tribunal' on the point of rash and negligence on the part of driver and on account of collussion between claimant as well as driver owner and the police. Hence the present appeal filed by appellant Insurance company is maintainable. Now coming to the merit of the case. Appellant Insurance company has not been able to make out a case that death of Satish Kumar had not taken place because of rash and negligent driving of respondent No.1 while driving truck/trailer bearing registration No.HR-47-L-2551. 'The Tribunal' has returned specific findings on the basis of positive evidence available on file that accident had taken place because of rash and negligent driving of respondent No.1 as

trailer had hit the deceased and thereafter the driver of the truck/trailer applied the brakes. The driver of trailer applied brakes and in that process the trailer touched high tension electric wires and got electrocuted as Satish Kumar tried to catch hold the truck so as to get up. The matter was immediately reported to the police. There is absolutely no contrary evidence available on the file to reverse the findings. The report (Exhibit R-6) was rightly disbelieved by 'The Tribunal'. 'The Tribunal' had rightly observed that report (Exhibit R-6) rather goes against the insurance company because the trailer bearing No.HR-47-L-2551 was having iron frame structure loaded in the same and the same came in contact with 33 KV wire when the deceased shouted at the driver to stop the truck he had come in contact with the truck as a result of which he got electrocuted. Thereafter, the accident had taken place on 19.02.2011 at 4.10 p.m. and FIR was registered at 8.p.m. On the same date. The time gap between time of accident and registration of FIR itself establish that it was not a case of false implication of trailer bearing No.HR-47-L-2551. The findings recorded by 'The Tribunal' on this ground do not call for any interference.

FAO No.4223 of 2014

8. Learned counsel for appellant Mr. Gurvinder Singh, took the plea that 'The Tribunal' has not awarded 'Just Compensation' because the income on the basis of income tax return has also not been taken into consideration. More so, no enhancement has been ordered on account of earnings. Minimum amount being taken under conventional head has not been paid.

9. While arguing on this point Ms. Vandana Malhotra, learned counsel for the respondent-insurance company took the plea that 'The

Tribunal' has already awarded more than 'Just compensation' and income has already been taken on higher side so appeal filed by claimants is not maintainable and the same be dismissed.

10. In the present case 'The Tribunal' has returned the findings while dealing with income tax return and loss of income on account of death of Satish Kumar. 'The Tribunal' had also taken into consideration that as per registration certificate Exhibit PX the deceased was having only one truck bearing registration No.HR-47J-2551 which was financed by Indusind Bank and remaining vehicles were purchased after the year ending 31.03.2010 or say 20/25 days before the year ending 31.03.2010. The income reflected in the income tax return particularly in Exhibit PG appears to have been exaggerated. In these circumstances 'The Tribunal' rightly came to the conclusion that in such like cases while determining the amount of compensation in fact 'The Tribunal' seen the loss of income to the deceased and compensation awarded on that purpose and rightly quantified the loss of income to the claimant @ Rs.1,80,000/- per annum. Keeping in view the age of the deceased correct multiplier was applied and a sum of Rs.1,00,000/- was ordered on account of loss of consortium and another sum of Rs.25,000/- towards funeral expenses. However, a sum of Rs.20,000/- only was awarded on account of loss of care and guidence of minor children. 'The Tribunal' has not assessed adequate amount under this head and the awarded amount of compensation enhanced by Rs.1,80,000/- as two minor sons of Satish Kumar are entitled to receive a sum of Rs.1,80,000/- on account of loss of love and affection on account of death of Satish Kumar whereas 'The Tribunal had awarded only a sum of Rs.20,000/- under that head. Accordingly enhanced compensation amount

Rs.1,80,000/- shall be payable from the date of claim petition. Appellants shall be entitled to the interest @ 7.5% per annum on the enhanced amount from the date of filing of the claim petition till its realization. However, remaining conditions regarding apportionment and disbursal of amount shall remain unaltered.

11. Resultantly RSA No.6611 of 2014 filed by insurance company stands dismissed and RSA No.4223 of 2014 filed by claimants partly allowed.

(SHEKHER DHAWAN)
JUDGE

May 29, 2015
msd