IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5028 of 2015 (O&M)
Date of Decision: August 04, 2015

United India Insurance Company Ltd.

...Appellant

Versus

Surjit Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.D.R.Bansal, Advocate
for the appellant-Insurance Company.

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INDERJIT SINGH, J.

Appellant United India Insurance Company Ltd. has filed this appeal against claimants-respondents Surjit Kaur, Sukhjinder Singh, Sandeep Kaur and respondents Tarlok Singh, owner and Jaswinder Singh, driver of car bearing registration No.PB-46L-8861 (offending vehicle), challenging the impugned Award dated 08.04.2015 passed by learned Motor Accident Claims Tribunal, Amritsar, (hereinafter referred to as 'Tribunal'), vide which compensation of ₹16,31,000/- was awarded to the claimants along with interest @ 8% per annum from the date of institution of the petition till realization.

The brief facts of the case are that claimants Surjit Kaur, Sukhjinder Singh and Sandeep Kaur filed claim petition against respondents Tarlok Singh, owner, Jaswinder Singh, driver and United

India Insurance Company Ltd., Insurer of offending vehicle, under Section 166 of the Motor Vehicles Act on account of death of Harbhajan Singh. As per the case of the claimants, on 12.10.2013, Kulwinder Singh along with his father Sucha Singh was going to village Daleka and Harbhajan Singh, uncle of Kulwinder Singh, met them on his motorcycle. When they reached near Shahbajpur Road, suddenly one Tata Safari bearing registration No.PB-46L-8861 (offending vehicle) came from opposite direction being driven by respondent-driver in a rash and negligent manner and struck against the motorcycle of Harbhajan Singh and ran away from the spot. Harbhajan Singh received multiple and grievous injuries and he was taken to Sukhman Hospital, Tarn Taran, from there he was referred to Sri Guru Ram Dass Hospital, Amritsar, where he ultimately died on 17.10.2013 due to the injuries sustained in the said accident. It is the case of the claimants that accident took place due to rash and negligent driving of offending vehicle by respondent-driver Jaswinder Singh. FIR was also got registered on 17.10.2013 on the statement of Kulwinder Singh and post mortem was got conducted.

On the other hand, respondent-owner initially appeared but later on absented from the proceedings and even did not file written statement. Respondent-driver did not appear despite service and he was proceeded ex parte. Respondent-Insurance Company (present appellant) filed written statement stating therein that no accident was ever caused by respondent-driver while driving the offending vehicle. It is alleged that respondent-driver was not holding a valid and effective driving licence.

After framing the issues, claimants examined one of the claimant Surjit Kaur as PW-1, Kulwinder Singh as PW-2 and closed the evidence. On the other hand, respondent-Insurance Company examined RW-1 Head Constable Harjinder Singh and tendered into evidence copy of insurance policy Ex.R1.

Learned Tribunal, gave the finding that the accident has occurred due to rash and negligent driving of offending vehicle by Jaswinder Singh driver, which caused the death of Harbhajan Singh. The claimants produced on record documents to show that deceased was agriculturist owning land measuring 24 kanals 9 marlas and was also doing the work of dairy farming and was Secretary of Cooperative Society of Daleke. He was also having experience of veterinary doctor and the certificates are issued by Milkfed. It was claimed that deceased was earning ₹80,000/- per month.

The Tribunal on the basis of the evidence on record, assessed the income of the deceased as ₹10,000/- per month. After making 1/3rd deduction, annual dependency comes to ₹80,000/- per annum. As the age of the deceased was 45 years, therefore, multiplier of 14 was applied. ₹25,000/- was granted as funeral expenses, ₹1 lac as loss of consortium to widow and further ₹50,000/- as loss of love and affection to children vide impugned Award dated 08.04.2015.

Aggrieved from the above-said Award, the appellant-Insurance Company has filed the present appeal.

At the time of arguments, learned counsel for the appellant argued on two points; firstly that the rash and negligent driving of Jaswinder Singh and accident have not been proved by bringing cogent evidence on record. He further argued that as per RW-1, the Senior Superintendent Police had agreed to cancel the FIR. There is also delay of five days in recording the FIR. Therefore, he argued that this issue has been wrongly decided by the Tribunal. Next, he argued that owner and driver have colluded with the claimants. Learned counsel for the appellant further contented that compensation has already been given in excess and in the voter list, the age of the deceased is much more than assessed by the Tribunal.

I have heard learned counsel for the appellant and have gone through the record.

From the record, I find that in the claim petition as well as in post mortem examination report, the age of the deceased has been shown as 45 years. If in the voter list, age is mentioned somewhat higher, the deceased cannot be held of that age. The Tribunal after appreciating the evidence on record, assessed the age of the deceased as 45 years. Therefore, in no way, it can be held that deceased was of much more age than 45 years. Furthermore, the respondents have not produced any cogent evidence to rebut the evidence of the claimants. The income of the deceased has been assessed by the Tribunal as ₹10,000/- per month in view of the documents and oral evidence. From the evidence on record, in no way, it can be held that compensation has been given on higher side.

Rather, on the ground of loss of love and affection, only ₹50,000/- has been given to the minor children. So, I do not find merit in this argument of learned counsel for the appellant that compensation has been computed on higher side.

As regarding the argument that no accident has been caused by the offending vehicle, I find that owner of the vehicle has absented from the proceedings after initially appearing before the Tribunal and even has not filed written statement to deny the accident. Respondent-driver also did not appear despite service. Neither owner nor driver appeared in the witness box to deny the accident. The statement of eye witness Kulwinder Singh, who is author of the FIR, remained un-rebutted on the file. There is nothing in the cross-examination to disbelieve this witness. This witness has clearly stated that he reported the matter to the police on that date but police has recorded the FIR on 17.10.2013. Otherwise also, mere delay in recording the FIR, cannot be held fatal to the case of the claimants. The mere fact that cancellation of FIR has been recommended and Senior Superintendent of Police agreed to it, is also no ground to disbelieve the eye witness. The statement of eye witness is substantial piece of evidence. Neither the cancellation report has been submitted to the Court nor it has been accepted by the Court. As per Ex.R4, rather enquiry was conducted on the application of the eye witness and as per Ex.R4, during enquiry, the presence of respondent-driver and offending vehicle on the spot, is proved.

Further, I find that, no evidence has been produced by the

Insurance Company to show connivance of driver and owner with the claimants. They are not related to the claimants nor there is any evidence to show any collusion of owner and driver with the claimants.

In view of the above, I find that the findings given by the Tribunal are correct, as per law and do not require any interference from this Court and the same are upheld.

Therefore, finding no merit in the present appeal, the same is dismissed.

August 04, 2015 **(INDERJIT SINGH)**
Vgulati **JUDGE**