

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 5029 of 2015 (O/M)
Date of decision : 5.8.2015

Reliance General Insurance Company Limited Appellant

Versus

Smt. Sonia Garg and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Raj Kumar Bashamboo, Advocate, for the appellant.

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

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KULDIP SINGH, J. (ORAL)

The insurance company has filed this appeal against the award dated 1.5.2015, passed by the Motor Accident Claims Tribunal, Jind (in short 'the Tribunal'), vide which compensation to the tune of Rs. 43,65,000/- alongwith interest @ 8% per annum from the date of filing the claim petition till its realization was awarded in favour of the claimants.

The brief facts of the case are that on 16.2.2013, Krishan Kumar (since deceased) alongwith one Suresh Kumar, owner of the Alto car bearing registration No. DL-3CAY-4899 and his son Satish Kumar Rathor was returning from Sainik Hospital, Danapur, to Air Force Station Bihta in the said car. When the car reached opposite

Bihta Phynex Chad Factory, District Patna (Bihar), then a truck bearing registration No. HR-55G-3634 came from the opposite side, being driven by respondent-driver in a rash and negligent manner and directly hit the same with the car, as a result of which, Satish Kumar Rathor died at the spot, whereas Krishan Kumar and Suresh Kumar received multiple injuries. They were removed to Military Hospital, Danapur, but later on, they also succumbed to the injuries. FIR No. 71 dated 18.2.2013 under Sections 279, 304-A and 427 IPC was registered against the respondent-driver of the offending truck at Police Station Bihta, Senior Division Danapur, District Patna, on the statement of Ramesh Kumar. It was further stated that Krishan Kumar was aged about 39 years of age and was posted as Sergeant bearing No. 711692 in Air Force Station Bihta at Patna and was getting salary of Rs. 30,151/- per month.

In the reply, respondent No. 1 pleaded that the accident took place due to rash and negligent driving of car driver, who did not care about the traffic rules and struck the same against the truck. Respondent No. 3 and 4 also denied the accident. The insurance company denied its liability. The Tribunal came to the conclusion that the offending truck was driven in a rash and negligent manner and after considering the income of the deceased, passed the award to the tune of Rs. 43,65,000/- in favour of the claimants.

I have heard learned counsel for the appellant and have

also carefully gone through the file.

The learned counsel for the insurance company has argued that in this case, the negligence of the offending truck is not proved. It is contended that it is not alleged that the truck came from wrong side of the road and hit the car. Ramesh Kumar, who had lodged the FIR, was not examined, rather one Dinesh Parshad was examined as PW2. Therefore, it is argued that negligence of the truck is not proved. It is case of head on collision and the insurance company is not liable to pay the compensation. It has been further argued that the mere fact that FIR was registered against truck driver and he has been challaned, is no ground to conclude that he was driving the truck in rash and negligent manner.

I have considered the submissions of the learned counsel for the insurance company and have also gone through the award.

The statement of Dinesh Parshad has also been read in the Court. The proceedings under the Motor Vehicle Act are summary and in nature of inquiry. Therefore, strict procedure of Code of Civil Procedure is not to be followed in the present case. The standard of proof is also not same. Here, Dinesh Parshad has clearly stated before the Court that he was taking tea in a shop and he had witnessed the occurrence. The deceased was working in Air Force Station, situated nearby and the possibility of Dinesh Parshad being present at tea stall is there. Therefore, the statement of

Dinesh Parshad was rightly believed. If it was pleaded that it was head on collision and the truck driver did not go on the wrong side, then the best evidence was available with the respondent to rebut the claim of the claimants, but the same was not produced. The best evidence was in the form of site plan prepared at the spot, the photographs, if any, taken at the spot and some recoveries to show the place of accident and position of both the vehicles. The report of mechanic was there, which is prepared by the police to see the extent of damage caused to both the vehicles. This could also prove or at least point out as to whether it is a case of head on collision or not. No such evidence was adduced by the respondent before the Tribunal. It being so, the Tribunal rightly believed the statement of Dinesh Parshad, eye-witness. Moreover, there is supporting evidence in the form of investigation carried out by the police as a result of which, the driver of offending truck was challaned by the police. Therefore, I do not find any illegality or infirmity in the impugned award. The same is accordingly upheld.

Consequently, the present appeal is dismissed.

(KULDIP SINGH)
JUDGE

5.8.2015
sjks