IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5256 of 2015(O&M)

Date of Decision: September 18 , 2015.

United India Insurance Company Ltd. ...... APPELLANT (s)

Versus

Baljinder Singh and others

...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Gopal Mittal, 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 preferred by United India Insurance Company Limited challenging award dated 04.05.2015 passed by learned Motor Accident Claims Tribunal, Jalandhar (hereinafter referred to as, the 'Tribunal') whereby compensation has been afforded to claimant/respondent No.1 – Baljinder Singh on account of death of his father, Gurbachan Singh.

Brief facts as revealed in the claim petition are that, Gurbachan Singh alongwith Rakesh Kumar, Ram Parkash, Sunita, Alka, Jyoti, Vikas, Navin Kumar, Rohit, Ashok Kumar @ Goldy, Peeju etc. had gone on 05.12.2012 to

Ludhiana to attend a marriage. They were returning to Jalandhar in Tempo Traveler No. PB-01-9946 driven by Ashok Kumar @ Goldy after midnight. He was driving the Tempo Traveler at a moderate speed. At about 1.30 a.m. at night when their Tempo Traveler reached near Police Station Goraya, it struck against Eicher truck No. PB-10-CW-7991. Said Eicher truck was parked in the middle of metaled road without any parking lights, indicator, reflector or back-lights. There were no warning lights neither was there any indication of the truck being parked on the road. Due to negligent parking of the truck, accident took place in which occupants of the Tempo Traveler suffered serious injuries. Claimant/ respondent No.1 Baljinder Singh's father Gurbachan Singh died alongwith Rakesh Kumar and Ashok Kumar @ Goldy. FIR No. 172 dated 06.12.2012 was registered under Sections 304A/279/337/338/427 IPC against the driver of Eicher truck.

Claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') was preferred by respondent No.1 Baljinder Singh claiming compensation to the tune of ₹50 lacs on account of his father Gurbachan Singh's death. Claim was contested by the respondents – owner and driver of the offending truck. Factum of the accident itself was denied. Story mentioned in the FIR as well as in the claim petition was stated to be concocted and baseless. Appellant – Insurance company also contested the claim petition. Apart from denying factum of accident with the truck, it was pleaded that the driver of the offending truck was not holding a valid and effective driving licence at the time of accident. It was being plied without route permit, fitness certificate and in violation of the provisions of the Motor Vehicles Act. Owner of the Tempo Traveler has also denied the factum of the accident.

Learned Tribunal framed the following issues:-

1. Whether Gurbachan Singh died in a motor vehicle accident which took place on 6.12.2012 at about 1.30 a.m. in the area of Police Station Goraya, on account of rash and negligent driving of Balwinder Singh respondent No.1, being driver of truck bearing registration No.PB-10-CW-7991?OPP
2. Whether the claimant being legal representative of Gurbachan Singh is entitled to compensation, if so, how much and from whom?OPP
3. Whether the respondent no.1 Balwinder Kumar being driver of truck bearing registration No.PB-10-CW-7991 was not holding a valid and effective driving license at the time of alleged accident?OPR No.3.
4. Whether truck bearing registration no.PB-10-CW-7991 was being plied without valid route permit and fitness certificate at the time of accident if so its effect?OPR No.3.

4-A. Whether the driver of tempo traveler No.PB-01-9946 was not holding a valid and effective driving licence at the time of accident?OPR No.5.

4-B. Whether the above said tempo traveler was being plied without valid fitness certificate and route permit, if so its effect?OPR No.5.

5. Relief.

On consideration of facts, circumstances and evidence on record, learned Tribunal concluded that the accident in question had occurred due to sheer negligence of the driver of the offending truck. He parked the truck in the middle of the road at midnight without parking lights/indicators on the rear side in the month of December knowing fully well that it was foggy. It is explained that FIR was lodged by AW3 Pinku son of Ramesh Kumar, wrongly mentioned as Peeju son of Ramesh Kumar. AW3 Pinku himself was travelling in the Tempo Traveler. He has specifically deposed that the truck in question was parked without any rear lights, indicators or reflector.

Keeping in view the age of the deceased i.e., 65 years and his income as reflected in the Income Tax Return for the year 2012-13 to be ₹11,02,564/-, his net income is assessed as ₹9,38,466/- per annum by the learned Tribunal. By effecting 1/3rd deduction, dependancy is assessed as ₹6,25,644/-. As per the guidelines laid down by the Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**, ***2009(3) RCR (Civil)*** *77*, multiplier of 4 was applied by the Tribunal. Loss of dependancy is thus calculated as ₹25,02,576/-. Sum of ₹25,000/- was awarded on account of funeral expenses. Compensation was not granted under any other head. Total compensation of ₹25,27,576/- was awarded to claimant/respondent No.1.

Learned counsel for appellant – Insurance Company vehemently argues that present is a case of composite negligence. Reference is made to affidavit of AW3 Pinku son of Ramesh Kumar to suggest that Tempo Traveler was also driven at a high speed by its driver Ashok Kumar @ Goldy who also lost his life in this accident. It is further urged by learned counsel for the appellant that claimant Baljinder Singh was not dependant upon deceased Gurbachan Singh. He was jointly running the jewellery business of his father. Reliance on the Income Tax Return by the learned Tribunal is clearly misplaced. At best claimant would be entitled to loss of managerial capacity of his father. Claimant has inherited the business and has not suffered any monetary loss. It is submitted that as per Income Tax Return for the assessment year 2010-11, income of the deceased is mentioned as ₹3,02,578/-, for the assessment year 2011-12 it is mentioned as ₹3,56,823/- and for the assessment year 2012-13 which was submitted on income of the deceased, it is mentioned as ₹11,02,560/-. There is no basis for the quantum jump. AW2 Joginder Lal, Tax Assistant from the Income Tax Office could not explain the same. Therefore, loss of dependancy has been wrongly calculated by the learned Tribunal. It is prayed that impugned award dated 04.05.2015 should be set aside.

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

Reference to cross-examination of AW3 Pinku son of Ramesh Kumar wherein he states that two vehicles can pass from the side of the truck as reflected from the photographs, can be of no avail to the appellant. It is proved on record that the truck in question was indeed parked on the metaled road without any parking lights, reflector or any sign to display its presence. In the month of December to have parked the truck in the middle of the road in itself is a clear indication of gross negligence on the part of the driver of the offending truck. It is common knowledge that in the month of December weather conditions are foggy. Perusal of the FIR does not reveal any such averment regarding the Tempo Traveler being driven in a rash and negligent manner. FIR contains narration of the facts at the first instance. It is not denied that the driver of the offending truck is facing criminal proceedings. In this situation it has been rightly held by the Tribunal that the present is not a case of composite negligence but a case of sole negligence on the part of the truck driver. There is no infirmity or illegality in the said finding.

In respect to the deceased's income, it is to be noted that the Income Tax Return for the assessment year 2012-13 was submitted on 25.09.2012 i.e., two and half months prior to the death of the deceased. It is further a matter of record that the claimant's father Gurbachan Singh was filing his individual Income Tax Return. In this view of the matter, learned Tribunal has not erred in assessing the deceased's income on the basis of last Income Tax Return filed by him. Contention of the learned counsel for the appellant that claimant having inherited the business is not entitled to any compensation, is not acceptable. There is no dispute that claimant is a legal heir of the deceased being his son. Under the Act he is entitled to claim compensation being his legal representative. It is noted that the only other dispensation is a sum of ₹25,000/- towards funeral expenses and none other. There is no ground whatsoever for reduction in the quantum of compensation awarded by the learned Tribunal.

No other argument has been raised.

Learned counsel is unable to point out any illegality, infirmity or perversity in the impugned award dated 04.05.2015 passed by learned Motor Accident Claims Tribunal, Jalandhar which would warrant interference by this Court.

Consequently, this appeal is dismissed.

(LISA GILL)
JUDGE

September 18 , 2015.
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