

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 5783 of 2015 (O&M)

Date of decision : September 09, 2015

Magma HDI General Insurance Company Ltd.Appellant

Versus

Geeta and othersRespondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Vishal Aggarwal, Advocate
for the appellant.

LISA GILL, J

Instant appeal has been preferred by Magma HDI General Insurance Company Ltd. impugning the award dated 28.04.2015 passed by learned Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'Tribunal')

Impugned award is subject to challenge primarily on the ground that the accident in question took place on the factory premises which cannot be termed to be public premises, therefore, the insurance company cannot be held liable.

Brief facts as revealed are that Ravi Goyal (deceased) was standing in the Recycling Factory premises at village Bagwala, Tehsil Raipur Rani, Panchkula on 02.02.2014. Offending crane bearing registration No. HR99-PKT-7535 was unloading the

recycling machine from trolly. When the said machine was being taken off from the trolly with the help of hooks of the crane at about 7.40 p.m. and it was being lowered down on the floor, boom of the offending crane became imbalanced due to which the recycling machine fell down and the hook of the crane struck against the head, stomach and left hand of Ravi Goyal who was standing there. Injuries were caused on vital organs of Ravi Goyal, who succumbed to his injuries. Accident took place due to rash and negligent driving of crane No. HR99-PKT-7535 by respondent No. 1 - Jaswinder Kumar. DDR No. 10 dated 03.02.2014 was registered at police post Mauli, Police station Raipur Rani, District Panchkula.

Claim petition under Section 166 of Motor Vehicles Act and was preferred by the legal heirs of deceased Ravi Goyal, which was resisted by the respondents.

Following issues were framed by the learned Tribunal :-

1. Whether Ravi Goyal has died in a road side accident due to rash and negligent driving of respondent No. 1 while driving crane No. HR99-PKT-7535? OPP
2. Whether the claimants are entitled to compensation as prayed for? OPP.
3. Whether respondent No. 1 was not having a valid and effective driving licence at the time of accident? OPR-3.
4. Relief.

Learned Tribunal on appreciation of evidence on record concluded that Ravi Goyal lost his life in the accident caused due to rash and negligent driving of the crane No. HR99-PKT-7535 by respondent – Jaswinder Kumar. Compensation to the tune of

₹34,26,920/- was awarded to the claimants.

Deceased was 24 years old at the time of accident. Income of the deceased was assessed as ₹2,44,586/- after deduction of income tax on the basis of his income tax return, Ex. P3 for the year 2013-14, which was duly proved by PW3 Rajiv Kaushar, Inspector, Income Tax department. Income tax return for the year 2011-12 Ex. P9, 2012-13 Ex. P10 was also proved on record. 50% increase was afforded on account of loss of future prospects keeping in view the judgment the Hon'ble Supreme Court in **Rajesh and others versus Rajbir Singh and others** 2013 (3) RCR (Civil) 170. 50% deduction was made from the income assessed. Multiplier of 18 was applied keeping in view the age of the deceased. Compensation as detailed below was awarded:-

Loss of dependency	₹33,01,920/-
Expenses incurred on Transportation, funeral and last rites	₹ 25,000/-
On account of loss of love and affection to the claimants	₹ 1,00,000/-
Total	₹34,26,920/-

Learned counsel for the appellant vehemently argues that the accident has admittedly taken place in the factory premisses, therefore, the Tribunal has grossly erred in holding that it is a road side accident in which the deceased suffered injuries which ultimately led to his death. Insurance company cannot be held liable in such situation. Learned counsel for the appellant has also raised a challenge to the quantum of compensation awarded primarily on account of compensation awarded on account of loss of future

prospects as the deceased was a self employed person.

I have heard learned counsel for the appellant and gone through the file as well as the photocopy of the record, which has been produced in Court.

A perusal of the pleadings reveals that the plea of the accident not occurring at a public place has not even been raised by the appellant. Its specific stand is that of denial of the accident itself. Claim petition is alleged to be filed as a result of collusion between the claimants and owner of the crane. In the absence of specific pleadings to this effect, appellant cannot be permitted to raise this plea for the first time in appeal.

In similar circumstances, this Court in **National Insurance Company Limited versus Smt. Surti Devi and others** 2011 (5) RCR (Civil) 490 held that:

“ In appeal it is contended that the accident had taken place not in a public place and therefore, there could be no claim for compensation against the Insurance Company. I have gone through the entire pleadings given by the appellant for the third respondent and it is nowhere stated that the accident had not occurred at a public place. On the other hand, the contention was one of general denial of the accident itself. Consequently, there was not even a point for consideration whether the accident have taken place in a public place or not. In the absence of pleading I refuse the appellant to urge for such a contention in appeal for the first time. Learned counsel refers to certain decisions which I think are not necessary traverse. I may only to say that 'public place' is

any place where any member of a public has a right of access whether it is a thoroughfare or not. There are any number of cases that govern the situation where various courts have held that factory premises are public places. The liability of the Insurance Company is safely and surely secured for the claimants. The appeal by the Insurance Company is consequently, dismissed.”

Therefore, there is no merit in this plea raised on behalf of the appellant.

Similarly, learned counsel is unable to point out any infirmity or illegality in the quantum of compensation awarded by the Tribunal. Hon'ble Supreme Court in ***Rajesh's*** case (supra) has specifically held that an addition in the income on account of loss of future prospects has to be afforded according to the age of the deceased even when he is self employed/private employed. Though the question of award on account of loss of future prospects in respect to self employed/private employed persons has been referred to a larger Bench vide order dated 02.07.2014 in **SLP CC No. 1673 of 2015** titled **National Insurance Company versus Pushpa and others**, it is not disputed by learned counsel for the appellant that operation of decision in ***Rajesh's*** case (supra) has not been stayed. In a subsequent judgment of **Munna Lal Jain and others versus Vipin Kumar Sharma and others** 2015 (6) SCC 347, Hon'ble Supreme Court has granted benefit on account of loss of future prospects to a self employed persons.

No other arguments has been raised. Learned counsel is

unable to point out any infirmity or perversity which warrants interference by this Court in the appellant's favour.

Consequently, finding no merit, this appeal is dismissed.

September 09, 2015
rts

(Lisa Gill)
Judge