IN THE HIGH COURT OF PUNJAB AND HARYANA, AT CHANDIGARH

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F.A.O No. 7981 of 2014 (O&M)
Decided on : January 16, 2015

ICICI Lombard General Insurance Co. Ltd. ... Appellant.

Versus

Akash Sharma & Ors. ... Respondents

CORAM : HON'BLE MR.JUSTICE MAHAVIR S. CHAUHAN

Present : Mr. Subhash Goyal, Advocate, for the appellant.

Mahavir S. Chauhan, J. (Oral)

Ajay Sharma, a 37 years old businessman while traveling in his own car bearing registration No. HR-21-D-0040 from Amritsar to Chandigarh, having died in a motor vehicle accident caused on 02.04.2008 at about 10:15 P.M, on account of rash and negligent driving of a truck bearing registration No. HR-11-GA-0434 ('offending vehicle' – for short), his legal representatives brought Claim Application No.531 of 10.08.2011 to claim compensation alleging loss of dependency. The application was contested by the respondents. Issues were framed. Evidence was taken. Parties were heard. Learned Motor Accident Claims Tribunal, Chandigarh ('the Tribunal' – for short), vide award dated 09.04.2014, awarded compensation amounting to Rs.21,91,080/- in favour of the applicants. To assail correctness of the findings so recorded by the learned Tribunal, the insurer of the offending vehicle has brought this appeal.

I have heard Mr. Subhash Goyal, Advocate, learned counsel for the appellant.

Learned counsel for the appellant assails the impugned award on two counts. Firstly, according to him the learned Tribunal has wrongly relied upon income tax return, Exhibit A-7, of the deceased by ignoring the admitted fact that this return was filed after the death of the deceased. The submission, in my view, is totally fallacious for the reason that when this income tax return, Exhibit A/7, was placed on record, the insurer-appellant felt it unncessary to confront the witness with a suggestion that either the income was inflated or exaggerated or figures were manipulated only with a view to get compensation on the higher side. Further, the insurer did not lead any evidence to rebut the evidence of the appellant, with regard to the income of the deceased, and as also to dislodge the correctness of income tax return, Exhibit A/7.

It is further contended by learned counsel for the appellant that the learned Tribunal has wrongly relied upon document, Exhibit R/3, to be insurance policy, whereas it is designated as quotation and the insurance in effect became effective on 04.04.2008 when premium by way of demand draft was paid by the insured. Even this submission of learned counsel for the appellant is found far from being convincing. No doubt it is true that the demand draft (Exhibit R/6) is shown to be issued on 03.04.2008, but perusal of Exhibit R/3 would show that the appellant insurer had indicated in this document, unilaterally issued by it, that the offending vehicle was insured on 02.04.2008 and the insurance was to continue till mid-night of 01.04.2009. In my considered view this is a case of differed consideration with the consent of the appellant-insurer and in view of the above assertion in Exhibit R/3 with regard to insurance of the offending vehicle effective from 02.04.2008 the insured changed his position as regards plying of the vehicle on road to his detriment. That being so, the appellant is estopped from taking the plea, which is now being taken by it.

Nothing more has been urged.

In view of the above, I regret my disinclination to entertain this appeal.

Dismissed.

No costs.

[Mahavir S. Chauhan]
Judge

January 16, 2015
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