

131

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO No.7377 of 2015 (O&M)
Date of Decision: 30.10.2015**

RELIANCE GENERAL INSURANCE COMPANY LTD

.....Appellant

Vs

MAMTA DEVI & ORS

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

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

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?*

RAJ MOHAN SINGH, J.

C.M.No.23143-CII of 2015

There is delay of 65 days in re-filing the appeal.

In view of grounds mentioned in the application, delay of 65 days in re-filing the appeal is condoned.

CM No.23144-CII of 2015

Prayer in this application is for exemption from filing true typed copy of judgment dated 16.04.2015 passed by M.A.C.T., Bhiwani.

For the reasons mentioned in para No.2, application is allowed and appellant is exempted from filing true typed copy of judgment dated 16.04.2015 passed by M.A.C.T., Bhiwani.

Main case

[1]. Appellant-Reliance General Insurance Co. Limited has filed this appeal against the award dated 16.04.2015 passed by Motor Accident Claims Tribunal (for short 'the Tribunal'), Bhiwani whereby claim petition filed by the claimants/respondents was partly allowed with costs.

[2]. The claimants were awarded sum of Rs.6,14,240/- along with interest @ 6% per annum from the date of petition till actual payment in equal shares.

[3]. The accident took place on 05.11.2009, when one pick-up dalla bearing regn. no.HR-61-1549 hit the deceased who was standing on the road of bus stand. The deceased Bajrangi Chaudhary was waiting for some vehicle. Number of persons were also standing at the bus stand. In the meanwhile defaulting vehicle came in a rash and negligent manner with a very high speed and collided with Maruti car. After the impact the said pick-up dalla struck against the deceased.

[4]. Deceased Bajrangi Chaudhary suffered multiple injuries on his person. The driver of the defaulting vehicle fled away from the spot, leaving the offending vehicle at the site. The accident took place due to sole negligence of the driver of the offending vehicle who was identified as Virender @ Birender.

[5]. Criminal case under Section 304-A/279 IPC was

registered against the driver. The deceased was 30 years of age and was doing job of Mehendi Rangai as a hawker and his monthly income was about Rs.15,000/- per month. He died in the hospital. About Rs.50,000/- was spent on his treatment by the claimants towards medical expenses, transportation and funeral expenses. A claim to the tune of Rs.50,00,000/- along with interest was made.

[6]. The Tribunal after discussing the evidence brought on record, held issue No.1 in favour of the claimants thereby holding that the accident in question took place due to rash and negligent driving of respondent No.1. Under issue No.2, the Tribunal held that the deceased suffered multiple and grievous injuries on his person due to the accident in question which was the result of rash and negligent driving of respondent No.1.

[7]. Since there was no cogent and relevant evidence of income of the deceased, therefore, the Tribunal was only left with the option to take income of the skilled labourer as that of the deceased which was treated at par with the payment of Wages Act payable by the State Government. The payment of skilled daily wager as on that day was Rs.4126/- per month.

[8]. Keeping in view the family composition of the deceased, in view of judgment of Apex Court in **Sarla Verma and Ors. vs. Delhi Transport Corporation & Anr. 2009, ACJ**

1298 (SC) the deduction to the tune of 1/4th was made and the annual dependency of the claimants was assessed to be Rs.3095 x 12 = Rs.37,140/-. The age of the deceased was 35 years and multiplier of 16 was applied, thereby assessing total amount of Rs.5,94,240/-. On account of loss of love and affection, loss of estate and towards funeral expenses consolidated amount of Rs.20,000/- was fixed, thereby bringing the tally to the tune of Rs.6,14,240/-.

[9]. Under issue No.4, it was held that vehicle in question was duly insured with respondent No.4, who did not lead any oral evidence in respect of respondent No.1 having no valid driving licence. A photocopy of driving licence was placed on record of respondent No.1 as mark R-2 which revealed that respondent No.1 was having valid and effective driving licence. Respondent No.4 did not get the same verified to the contrary.

[10]. The act and conduct of respondent No.4 in not adducing evidence to the effect that respondent No.1 was not having any valid driving licence which was taken to be a fact that respondent No.1 was having a valid driving licence on the date of accident and issue No.4 was accordingly decided against the respondent No.4.

[11]. In the present appeal the quantum of compensation has been assailed on the ground that the deceased cannot be

treated to be a skilled labourer and the income of the unskilled labourer should have been treated to be Rs.3,000/- per month at the time of accident.

[12]. I have considered the arguments raised by learned counsel for the appellant and is not in agreement with the same.

[13]. At the time of leading evidence under issue No.2, the respondent/appellant did not lead any evidence in the present context of alleging that the deceased was an unskilled labourer. The claim of the claimants was narrowed down by treating the deceased to be a skilled labourer being involved in Mehandi Rangai. Since there was no rebuttal to the plea that the deceased was involved in Mehandi Rangai, therefore, he was rightly treated to be a skilled labourer as the skill involves specialised act, therefore, the Tribunal is justified in treating the deceased to be a skilled labourer.

[14]. The appellant cannot be permitted to challenge the award on quantum, when the factum of offending driver having valid driving licence and the vehicle being duly insured have come to fore. No violation of terms and conditions of Insurance have been pleaded or proved on record, therefore, appellant cannot be permitted to assail the award on quantum in the light of proved facts on record.

[15]. In view of above discussion, compensation awarded to

the claimants is just and proper and is fully in consonance with the evidence and legal proposition on record. Consequently this appeal is found totally bereft of merits and the same is accordingly dismissed.

October 30, 2015

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**(RAJ MOHAN SINGH)
JUDGE**