IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.7856 of 2015 (O&M)
Date of Decision.26.11.2015

The New India Assurance Company Limited ......Appellant

Versus

Rajat son of Mam Chand and others ......Respondents

Present: Mr. S.S. Sidhu, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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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K. KANNAN J. (ORAL)

1. Delay of 11 days in filing the appeal is condoned.

2. The insurance company is on appeal on the aspects of negligence and the quantum. It was a case of death of a woman aged 52 years who was a pedestrian and got killed by the insurer's bus running over her. The plea in defence was that the deceased herself had contributed to the accident by carelessly crossing the road without minding the oncoming traffic and the place of impact was at the middle of the road that showed that if she had exercised caution, the accident could not have taken. It is also further contention that the Court has taken the notional income at ₹8,000/- per month which was high and the assessment at ₹11,91,000/- for death of a person who was 52 years was grossly exaggerated.

3. As regards the claim of contributory negligence, I will find

particularly no reason for insurance company to make such a plea and where road did not have foot bridge and if a pedestrian crosses the road, it is of utmost importance that the driver of vehicle exercises caution in allowing for pedestrian to cross. In a situation where the road accident involved is a pedestrian, I will always look for greater circumspection from the driver of the motor vehicle and not a pedestrian. I will, therefore, not make any intervention with regard to the negligence as pleaded by the counsel appearing on behalf of the insurance company.

4. Even as regards the assessment of notional income, it was really a situation of claim by a minor who was required to be taken care of and assessment of ₹11,91,000/- cannot be taken to be very high. The argument that the income must have been taken as ₹5,000/- is just as arbitrary as an assessment made but the overall compensation cannot be said to be high for the insurance company to seek for an interference.

5. The second appeal is without merit and it is dismissed. The amount of ₹25,000/- deposited by the appellant is directed to be despatched to the Tribunal for part payment of the award to the claimants.

(K. KANNAN)
JUDGE

November 26, 2015
Pankaj*