IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1756 of 2012 (O&M)
Date of Decision : 11.08.2016

HDFC ERGO General Insurance Co. Ltd. ....Appellant

Versus

Anupama Midha and others ....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

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

Mr. Chandandeep Singh, Advocate
for respondents no. 1 to 3.

Surinder Gupta, J.

This is appeal by HDFC ERGO General Insurance Co. Ltd. challenging award dated 01.11.2011 passed by Motor Accident Claims Tribunal, Ludhiana (later referred to as 'the Tribunal') awarding compensation of ₹3,29,000/- to claimants for death of their mother Satya Devi (later referred to as 'the deceased') in a motor vehicle accident with truck bearing registration no. HR-46-B-0029 (later referred to as 'the offending vehicle').

2. Learned counsel for the appellant has assailed the award on two counts. Firstly, claimants are three married daughters of the deceased, who were not monetarily dependant on their mother, as such, they can be allowed compensation of ₹50,000/- only under Section 140 of the Motor Vehicles Act (later referred to as 'the Act'). Secondly, the Insurance Company is entitled to recover amount of compensation from owner of the offending vehicle as he has not produced on record route permit, fitness

certificate and driving licence of driver of the offending vehicle despite application to this effect filed by the appellant.

3. Learned counsel for the appellant has relied on the observation in case of ***Manjuri Bera*** ***vs.*** ***Oriental Insurance Co. Ltd. and another*****, *2007 ACJ 1279,*** wherein Apex Court has observed that a legal representative, who is not dependant on the deceased, is entitled to compensation, quantum of which cannot be less than the liability referable to Section 140 of the Act.

4. Learned counsel for respondents no. 1 to 3 has relied on observations of Apex Court in case ***Hafizun Begum*** ***vs.*** ***Md. Ikram Heque*****, *III (2007) ACC 591***, wherein Apex Court has observed that all the legal representatives of the deceased are entitled to claim compensation.

5. In case of ***Gujarat State Road Transport Corporation*** ***vs.*** ***Ramanbhai Prabhatbhai*****, *1987 ACJ 561 (SC),*** it was observed that a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child. In this case, claimants are daughters of the deceased. To say that they have not suffered because of death of their mother, as such, are not entitled to any compensation except under Section 140 of the Act, will be a fallacy. Children remain dependant on parents throughout their life. The dependency may not be financial but of services, care and guidance rendered by the parents. Usually the married daughters are suitably awarded by the parents on different occasions like festivals or as and when they visit them. They have also lost the love and affection, care and guidance they were receiving from 'the deceased'. Even if they are individually allowed compensation of ₹1 lac each towards love and

affection care and guidance and for the services the deceased was rendering to them, amount of compensation of ₹3,29,000/-, which include expenses for funeral and last rites, as awarded by the Tribunal is not excessive or calls for any reduction. Consequently, the award by Tribunal calls for no interference on this score.

6. The second submission of learned counsel for the appellant that the Tribunal has not allowed recovery right against owner of the offending vehicle for breach of terms and conditions of insurance policy, is also without merit. The appellant moved an application before the Tribunal on 27.10.2009 seeking direction to respondents no. 1 and 2 to place on record driving licence of respondent no.1, registration certificate of the offending vehicle, insurance policy, fitness certificate and route permit. This application was disposed of by the Tribunal vide order dated 19.01.2010, which reads as follows:-

> *"Present:- Sh. R.K. Bhatia, Adv. for claimants.*
> *Sh. Tejinder Kundu, Adv. for respondents no. 1 & 2.*
> *Sh. A.C. Gupta, Adv. for respondent no. 3.*
>
> *Documents have already been produced by respondent no. 2 on dated 21.12.2009. In this view of the matter application for production of documents stands disposed of. Now for filing written statement on behalf of respondent no. 3, to come up on 12.02.2010."*

7. No objection was ever raised against this order passed by the Tribunal.

8. Learned counsel for the appellant has argued that owner of the offending vehicle had not produced the route permit of the offending vehicle and driving licence of its driver. Onus was on the insurance

company to prove issue no. 4 framed in this case as "Whether respondent no. 1 was not holding the effective valid driving licence on the date of accident?" Respondent no. 1 had appeared in this case and had also filed written statement. If all the documents had not been filed by respondents no. 1 and 2, as per order dated 19.01.2010, whereby application of insurer seeking production of documents was disposed of, insurer could draw the attention of the Tribunal or call the driver and owner of the offending vehicle as witness to produce these documents. Before the Tribunal, issue no. 4 was not pressed or a plea was raised at the time of final disposal of claim petition to the effect that owner of the offending vehicle had violated any terms and conditions of the insurance policy. Consequently, the insurer had failed to prove the plea raised by it and no fault can be found with the award passed by the Tribunal on this score.

9. As a sequel of my discussion above, this appeal has no merit and the same is dismissed.

August 11, 2016 **(SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No