

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 3341 of 2012

Date of decision : September 27, 2016.

New India Assurance Company Ltd.

.... Appellant

Vs.

Shahnaz Khan and others

.... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present : Mr. Vinod Gupta, Advocate,
for the appellant.

Mr. Vikram Bali, Advocate,
for respondents No.1 and 2.

Mr. Bhupinder Ghai, Advocate,
for respondents No.3 and 4.

AMOL RATTAN SINGH, J.

This is an appeal by the insurance company, against whom, alongwith the driver and owner of the vehicle that the Company had insured, an Award was pronounced by the learned Motor Accident Claims Tribunal, Panchkula, with liability to pay compensation of Rs.5,01,000/- to the respondents-claimants, alongwith interest @ 7.5% per annum on the aforesaid amount, foisted on them.

2. The facts leading up to the filing of the claim petition out of which this appeal arises, are that Salman Khan, son of respondents No.1 and 2 herein (claimants), is stated to have been going to Sohana on a motorcycle

driven by his partner Hari Raj Singh, on 10.09.2010. When they reached near the Kumbra Chowk, a bus bearing registration No.PB-12-F-8552, driven by respondent No.3 herein, came from the side of the Phase-IX, Mohali, and struck against the motorcycle. The riders on the motorcycle both fell down and suffered injuries, with Hari Raj Singh having died on the spot.

The son of the claimants, Salman Khan, was stated to have been taken to the Government Hospital at Chandigarh, where he too, unfortunately, succumbed to his injuries on the same day.

3. Consequently, the claim petition was filed by the respondents No.1 and 2 herein, stating that the unfortunate death of their son took place due to the negligent driving of respondent No.3 herein and that at the time of accident, their son was aged 19 years and was earning Rs.14,550/- as salary from M/s Saini Builders, Baltana and also had income from his own business of catering.

A total compensation of Rs.15,00,000/- was claimed, alongwith interest @ 12 % per annum thereupon.

4. Upon notice of the petition having been given to the respondents, respondents No.3 and 4 herein (respondents No.1 and 2 before the MACT), i.e. the driver and owner respectively of the bus, filed a joint written statement taking the usual preliminary objections and on merits, denying the accident altogether. It was claimed that the FIR lodged against respondent No.3 was wholly false, only to “grab money”.

5. The present appellant, i.e. the New India Insurance Company Limited, also filed its separate written statement, again taking the preliminary objections with regard to maintainability, the drivers of both the

vehicles not having disclosed the particulars of their licences, the claim petition being bad for non-joinder of necessary parties etc.

On merits, again it was contended that the accident had actually not taken place and if at all it had, then it was due to the negligence of the driver of the motorcycle, i.e. the late Hari Raj Singh.

6. The Tribunal framed the usual issues of responsibility for negligence in driving, the amount of compensation the claimants would be entitled to, if any, and as to whether or not respondent No.3 herein was carrying a valid and effective driving licence on the date of accident.

7. The claimants examined themselves and one Naresh Kumar, other than leading documentary evidence.

The respondents examined two witnesses and also tendered two documents in evidence.

8. Upon appraising the evidence, the learned Tribunal found that PW3 Naresh Kumar had deposed that he was in the business of catering and that on the morning of 10.09.2010, he was going in an auto-rickshaw, following Hari Raj Singh and Salman Khan, who were going ahead of him at a distance of about 50 feet, on a motorcycle bearing registration No.CH-04-L-9502.

When they reached near the Khambra Chowk, the bus, driven in a rash and negligent manner by respondent Rakesh Kumar at a high speed, came from the direction of Phase-IX, Mohali, and caused the accident with the motorcycle of Hari Raj Singh. This witness further stated that the motorcycle and its riders fell down and the bus, in fact, dragged them for some distance, as a result of which Hari Singh died on the spot whereas Salman Khan was shifted to hospital, where he also died. Thus, this

witness deposed in terms of the claim petition.

He further stated that the police recorded his statement, on which an FIR was registered against respondent No.3 herein and that his statement had been recorded by one Havaladar Pavitar Singh, at the General Hospital, Sector 32, Chandigarh. He also disclosed the time of the accident to be 6:00 am.

9. Respondent No.3, Rakesh Kumar, also stepped into the witness box in support of his affidavit, Ex.RW1/A, reiterating that a false FIR had been registered against him, although no such accident had taken place.

In his cross-examination, he admitted that he was arrested by the police in connection with the accident, though a challan had not been presented in the Court.

Respondent No.4 herein, i.e. the owner of the bus in question, admitted in his cross-examination that his bus had been impounded by the police from Kalma Mod on the date of the accident and that he had received a call from his driver with regard to such impounding.

He admitted, however, that he had not filed any complaint before any senior officers, or any Court, to the effect that his vehicle had been wrongly involved in the accident.

10. On appraisal of the aforesaid evidence, the learned Tribunal found that the FIR had been registered against respondent No.3 herein, for the commission of offences punishable under Sections 279 and 304-A IPC, and that the bus had also been impounded on the same date.

Hence, taking the aforesaid circumstances as also the testimony of PW3 Naresh Kumar into account, it was concluded by the Tribunal that the accident had, in fact, taken place due to the negligence in driving of

respondent No.3 herein, Rakesh Kumar.

11. With regard to the compensation to be paid, the Tribunal found that though the claimants had contended that the deceased was earning Rs.14,550/- by way of salary from a private firm and was also earning income from his business of catering, no documentary evidence had been led in that regard. Consequently, taking the income of the deceased to be that of a daily wager, it was assessed to be Rs.4500/- per month.

Holding that the 2nd claimant, i.e. the father of the deceased, could not be held to be dependent upon him, a deduction of 50% of the income of the deceased was applied by the Tribunal towards his personal living expenses and consequently, the annual dependency on the income of her son, in the case of the 1st claimant, (present respondent no.1), was held to be Rs.4,86,000/-.

To the annual dependency of Rs.4,86,000/-, a multiplier of 18 was applied by the Tribunal.

Rs.5000/- was awarded towards the funeral expenses and last rites and Rs.10,000/- "towards loss of consortium".

Thus, the claimants were held entitled to a total compensation of Rs.5,01,000/-, alongwith interest @ 7.5% per annum thereupon, as already noticed, running from the date of the filing of the claim petition till the realization thereof.

12. Before this Court, Mr. Vinod Gupta, learned counsel for the appellant, submitted that, firstly, the Tribunal erred in holding respondent No.3 guilty of negligence in driving the bus in question, when the specific stand of the respondents before the Tribunal was to the effect that no such accident had taken place. Hence, he contended that the accident not having

been specifically proved by the claimants, the Tribunal wholly erred in awarding the compensation that it did, which in any case, as per learned counsel, was on the higher side.

13. On the other hand, Mr. Vikram Bali, learned counsel for respondents No.1 and 2, i.e. the claimants, submitted that as regards the issue of negligence, the Tribunal had appraised the evidence of the eye witness, PW3 Naresh Kumar, as also the fact that the bus was impounded on the same date and an FIR was also registered against respondent No.3, all of which the respondents before the Tribunal, including the present appellant insurance company, could not disprove.

As regards the compensation awarded, learned counsel submitted that it was a case where the compensation should actually be enhanced, with wholly inadequate sums having been awarded to the claimants, towards loss of love and affection of their 19 to 20 year old son, as also an inadequate amount awarded towards his funeral expenses.

He, therefore, prayed for dismissal of the appeal and in fact, enhancement of the compensation awarded.

14. Mr. Bhupinder Ghai, learned counsel appearing for the respondents No.3 and 4, i.e. the driver and owner respectively of the bus in question, essentially reiterated the arguments raised by counsel for the appellant.

15. Having considered the aforesaid arguments, as also the Award of the learned Tribunal, I find myself unable to agree with the contentions raised by learned counsel for the appellant.

It is not denied that on the date of the accident itself, an FIR was registered against respondent No.3 herein, under Sections 279 and 304-

A IPC, alleging that he had been guilty of negligent driving, leading to the death of two riders of the motorcycle.

It also could not be denied that the bus in question was impounded on the same day by the police and that no complaint whatsoever was lodged by the respondents No.3 and 4 herein, with regard to a false FIR registered or with regard to the wrong impoundment of the bus belonging to respondent No.4.

On the other hand, Naresh Kumar, PW3, having testified to the effect that he actually saw the accident taking place, due to the rash and negligent driving of respondent No.3 herein, and that testimony not having been impeached in any manner by the present appellant or respondents No.3 and 4, I see no reason to interfere with the finding of the Tribunal, to the effect that it was actually the rash and negligent driving of respondent No.3 herein, that led to the accident in which two persons lost their lives.

In fact, a perusal of the affidavit filed by respondent No.3 (Ex.RW1/A) reveals that he just denied everything, in terms of his written statement, without any further explanation given with regard to the accident or stating anything, so as to lead to this Court to disbelieve the testimony of PW3.

16. Having held as above, though learned counsel for the respondents-claimants has urged that the compensation awarded by the Tribunal needs to be enhanced, the amount of Rs.10,000/- awarded towards the loss of love and affection (wrongly termed as loss of consortium by the Tribunal), being wholly inadequate in respect of parents of a youth of 19 to 20 years, and the funeral expenses also being inadequate, I find myself unable to do so in view of the fact that this is not an appeal of the claimants

and in fact, even no cross-objections have been filed by them.

Though otherwise I agree that at least a sum of Rs.1,00,000/-, if not more, should have been awarded to the claimants for loss of their young son, and Rs.25,000/- in any case should be awarded towards his funeral expenses, however, this being an appeal of the insurance company, with no cross-objections filed, that part of the Award of the Tribunal is not being interfered in the present appeal at least.

17. That having been said, naturally, this Court finds absolutely no ground to reduce the compensation of Rs.5,01,000/- awarded by the Tribunal, which is in fact inadequate compensation.

18. It needs to be noticed here that nothing has been stated with regard to the liability of the insurance company to indemnify respondent No.4 herein, on account of any fault in the driving licence of respondent No.3 or on any other count. Further, though in the grounds of appeal it has been stated that the bus in question was not carrying a valid route permit, no evidence in that regard is seen to have been led before the Tribunal, nor anything brought to the notice of this Court either, on that issue.

19. Consequently, finding no merit in this appeal, it is dismissed with costs of Rs.10,000/-, to be paid to respondents no.1 and 2 herein.

September 27, 2016
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(AMOL RATTAN SINGH)
JUDGE