

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 4554 of 2013 (O&M)
Date of Decision : 20.01.2016

Iffko Tokio General Insurance Company Ltd.Appellant

Versus

Smt. Villa and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Neeraj Khanna, Advocate
for Mr. R.S. Madan, Advocate
for the appellant.

Mr. Ashok Kaushik, Advocate
for respondent no. 9.

Surinder Gupta, J.

This is appeal by Iffko Tokio General Insurance Co. Ltd. against award dated 22.05.2013 passed by Motor Accident Claims Tribunal, Palwal (later referred to as 'the Tribunal') allowing compensation of ₹18,29,400/- for the death of Veer Singh, husband of claimant-respondent no. 1, father of claimants-respondents no. 2 to 7 and son of claimant-respondent no. 8, in a motor accident with three-wheeler bearing registration no. HR-55D-8804 (later referred to as 'the offending vehicle').

2. Case of claimants, in brief, is that on 16.01.2010, deceased alongwith his brother Dharambir was going from Palwal to Ballabgarh in the offending vehicle to attend their duties. Respondent no. 9-Dharambir was driver of the offending vehicle which he was driving in a rash and negligent manner at a fast speed. Near village Baghola a buffalo came on the road all of

a sudden. Respondent no. 9-driver of the offending vehicle applied brakes as a result of which it overturned resulting in death of Veer Singh at the spot.

3. In the written statement respondent no. 9 denied the accident and similar plea was taken by the appellant-Insurance Company. An alternate plea was taken that the accident was act of God or due to negligence of the deceased who was sitting in three-wheeler at his own risk.

4. Learned counsel for the appellant-Insurance Company has assailed the award on two grounds; firstly, that owner and driver of the offending vehicle were not having a valid route permit to ply three-wheeler in the area of district Palwal; and secondly, that it is not proved that the accident had taken place due to rash and negligent driving of the offending vehicle by its driver.

5. Learned counsel for the appellant-Insurance Company while referring to route permit (Ex. R-2) has argued that this permit was valid for plying the three-wheeler within the municipal limits of Gurgaon while driver of the offending vehicle was driving it in the area of Palwal in violation of the terms of route permit which ultimately amounts to violation of terms and conditions of the insurance policy.

6. The Tribunal considered this submission of learned counsel for the appellant-Insurance Company and while relying upon the observations of this Court in case of **National Insurance Company Ltd. vs. Rajender Giri and others, 2012**

(2) RCR (Civil) 183 has held that if the offending vehicle involved

in the accident was plied outside the permissible area as per the route permit, it does not amount to violation of terms and conditions of the policy under Section 149 (2) of the Motor Vehicles Act.

7. Learned counsel for the appellant-Insurance Company could not cite any law contrary to the observation in the above cited case, as such, this argument of learned counsel for the appellant has no merit and is discarded.

8. Learned counsel for the appellant-Insurance Company has further argued that in the FIR which was got recorded by Dharambir, brother of the deceased, number of three-wheeler was not mentioned. This three-wheeler was later on implicated in this case only to get compensation from the Insurance Company.

9. The above submission of learned counsel for the appellant carries no weight. In the FIR, complainant has specifically mentioned that he alongwith his brother and other passengers were coming in the offending vehicle from Palwal to Ballabgarh. Driver of the offending vehicle was driving it in a rash and negligent manner. At the turn of village Baghola, driver on seeing a buffalo applied the brakes as a result of which three-wheeler overturned on left side of the road. The deceased came under three-wheeler and died at the spot. While appearing as PW-1 Dharambir has reiterated his statement which could not be shattered in cross-examination. It is not disputed that driver of the offending vehicle was arrested by the police and challaned, but vide judgment dated 28.03.2012 (Ex. R-3) he was acquitted

giving him benefit of doubt. The Tribunal has not committed any error while relying on the testimony of eye-witness. The mere fact that driver of the offending vehicle was given benefit of doubt and acquitted in criminal trial, has been rightly ignored by the Tribunal while reaching the conclusion that the accident had taken place due to rash and negligent driving of the offending vehicle by respondent no. 9. In order to convict a person for an offence, the prosecution is required to prove its case beyond shadow of doubt, while in claim petition no such strict proof is required and the Tribunal while reaching the conclusion has to weigh and decide the question of liability for causing accident on probability based on preponderance of evidence. Reference in this regard can be made to observations of Apex Court in case of **Bimla Devi vs. Himachal Road Transport Corporation, 2009 (13) SCC 530**, wherein it was observed as follows:-

“15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

10. In view of settled legal proposition, I find no reason to interfere in the findings recorded by the Tribunal in this regard.

11. No other argument has been advanced by learned counsel for the appellant. This appeal has no merit and the same is dismissed.

January 20, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether to be referred to the Reporters or not? Yes/No