

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1731 of 2016 (O&M)
Date of Decision : 17.11.2016

HDFC ERGO General Insurance Co. Ltd.

....Appellant

Versus

Manti Devi and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rajbir Singh, Advocate
for Mr. Sanjeev Goyal, Advocate
for the appellant.

Surinder Gupta, J.

This is appeal filed by HDFC ERGO General Insurance Co. Ltd. against award dated 17.11.2015 whereby claimants were awarded compensation of ₹23,56,088/- rounded off to ₹23,56,000/- by Motor Accident Claims Tribunal, Yamunanagar (later referred to as 'the Tribunal') for death of Jai Pal (later referred to as 'the deceased'), husband of claimant no. 1 and father of claimants no. 2 and 3, in a motor vehicle accident on 01.10.2013 with tractor bearing registration no. HR-41-F-7697, insured with the appellant.

2. Learned counsel for the appellant has assailed the award on four counts:-

- (i) It is not proved that the accident was caused due to rash and negligent driving of driver of the offending vehicle, namely, Gurpreet Singh-respondent no. 4. The prosecution wrongly relied on the testimony of PW-5 Jony, the alleged eye-witness, who was at a distance of 200 yards from the place of accident, when it took place.

Though, PW-5 Jony has stated that he noted number of the offending vehicle and reported the matter to police, the FIR was registered after 10 days of the incident, which reflect plantation of the offending vehicle;

- (ii) It was a head on collision, as such, there was contributory negligence of the deceased, who at the time of accident was on motorcycle bearing registration no. HR-02-N-8214. The Tribunal has not assessed contributory negligence;
- (iii) The Tribunal while allowing the compensation has not looked into the fact that son of the deceased got appointment on compassionate basis after death of his father;
- (iv) Driver of the offending vehicle was not possessing any licence to drive the transport/goods vehicle. At the time of accident wood was loaded in the tractor trolley which shows that it was being used for commercial purposes in violation of terms of the insurance policy and on this score the insurer is entitled to be awarded recovery rights against the insured.

3. Admittedly, FIR with regard to the accident was recorded on 10th day of the incident. The question which arises for consideration is as to whether this fact has any adverse impact on the claim and the plea of claimant that the accident took place due to rash and negligent driving of the offending vehicle. PW-5 Jony, who appeared and deposed as eye-witness of the accident, has stated that he witnessed the accident from a

distance of about 200 meters and by the time he reached the spot, driver of the tractor-trolley had already fled from the spot. He described the manner of accident by stating that Gurpreet Singh driver of the offending vehicle was driving the tractor-trolley in a very rash and negligent manner and hit motorcycle which the deceased was driving on left side of the road in a prudent manner. He has further stated that he noted registration number of the offending vehicle, which was written on the bumper of the tractor in blue shade on white surface. He disclosed relatives of the injured about the accident, tractor and its registration number and also gave the information to police which came to Gaba Hospital on the same day and recorded his statement wherein he narrated facts regarding the accident and about the vehicle with which the accident had taken place. The statement of PW-5 Jony to above extent is unrebutted and prove that the accident had taken place due to rash and negligent driving of the offending vehicle by respondent no. 4.

4. *Ruqa* (Ex. P-18) was sent to the police immediately after the accident. PW-5 has stated that police came to Gaba Hospital and his statement was recorded by the police. In his statement he had disclosed details of the accident as well as of the offending vehicle. Ravinder Kumar son of the deceased, who appeared as PW-6, has also stated that after the accident they enquired about registration number of the offending vehicle and then intimated the police about this accident and got recorded his statement disclosing registration number of the offending vehicle. The above evidence shows that lapse, if any, was on the part of the police, which did not act with all promptness on receiving information regarding the accident. Duty of the complainant was to intimate the police about the

accident and further action of recording of FIR was to be taken by the police of its own. However, no adverse inference can be drawn against claimants for any lapse on the part of police. The testimony of PW-5 Jony and PW-6 Ravinder Kumar that the matter was immediately reported to the police is credible and has been rightly relied by the Tribunal.

5. Submission of learned counsel for the appellant that PW-5 was not an eye-witness as he had seen the accident from a distance of 200 meters has no merits. When a person is moving, it takes a little time to cover the distance of 200 meters. He had taken the victim to Civil Hospital, Yamunanagar and also gave intimation to his family members, who got the deceased admitted in Gaba Hospital. PW-6 Ravinder Kumar son of the deceased has also stated that he was informed about the accident by Jony, who had taken the deceased to Civil Hospital, Yamunanagar. In the absence of any rebuttal, testimony of this witness is credible and has been rightly relied by the Tribunal while reaching the conclusion that the accident is proved to have been caused due to rash and negligent driving of the offending vehicle by its driver.

6. Here, learned counsel for the appellant has raised the issue of contributory negligence of the deceased in causing the accident. Admittedly, there is no pleading of the appellant that the deceased was also liable for causing the accident. This plea, which is beyond pleadings and evidence on record, has been raised for the first time in this appeal and is without any merits. Statement of PW-5 Jony is unrebutted that the accident took place when the deceased was going on his motorcycle on left side of the road and was driving the same prudently. Neither driver of the offending vehicle was examined to rebut the statement of PW-5 nor any

evidence was produced by the appellant to discredit the statement of this witness.

7. The deceased was 55 years of age at the time of his death. He was doing job in Southern Railways and was getting net salary of ₹25,573/-. The Tribunal took his salary after deduction of income tax as ₹23,000/- per month and after making deduction of 1/3rd towards his personal expenses and applying the multiplier of 11 as per observations of Apex Court in case of **Sarla Verma and ors. vs. Delhi Transport Corporation and another, (2009) 6 SCC 121**, calculated the amount of dependency as ₹20,24,088/- to which compensation of ₹1 lac was added towards loss of consortium for wife, ₹75,000/- towards loss of love and affection for children of the deceased and ₹25,000/- as funeral, last rites and transport expenses and ₹1,31,855/- rounded off to ₹1,32,000/- towards medical bills. Firstly, there is no evidence that son of the deceased got appointment on compassionate basis. Learned counsel for the appellant has not cited any law on the point that any deduction can be made from the amount of compensation on this score. Amount of compensation allowed by the Tribunal is just and reasonable and does not call for any interference.

8. There was no evidence that the offending vehicle was being used for the commercial purposes. Learned counsel for the appellant has submitted that wood was loaded in the trolley at the time of accident which shows that it was being used for commercial purposes. The mere fact that there was some wood in the trolley does not convert its user for commercial purposes. Wood is an agricultural produce and if owner was taking the woods from his fields to some other place, user of the offending vehicle falls within the definition of agricultural use. In the absence of any specific

evidence of user of the offending vehicle for commercial purposes, the argument of learned counsel for the appellant to this effect cannot be accepted. Consequently, the driving licence of driver of the offending vehicle was valid.

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

November 17, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No