IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1878 of 2016(O&M)
Date of Decision: May 17, 2016

The Oriental Insurance Co. Ltd. ...Appellant

Versus

Kulwinder Kaur and others ...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.R.N.Singal, Advocate for the appellant – Insurance Company.

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HARINDER SINGH SIDHU, J.

This is an appeal by the Insurance Company (Reliance General Insurance Company Limited) against the Award dated 2.12.2015 passed by the Motor Accident Claims Tribunal, Hoshiarpur (for short `the Tribunal') arising out of the death of Amarjit Singh in a vehicular accident.

Brief facts of the case are that on 29.11.2014 at about 8.00 P.M., Amarjit Singh (deceased) was going on his motorcycle bearing No.BP-07AQ-9757 from his village Jiyan to village Possi to meet his sister-in-law. When he reached near DS Dhaba, Saila Khurd and while he was overtaking one truck, his motorcycle struck against the car bearing No.PB-07R-1731 coming from opposite side. The car was being driven by Shashi Kant – respondent No.3. As a result of the collision, Amarjit Singh suffered multiple injuries on his head and other parts of the body. He was shifted to Raja Hospital, Nawanshaher, where, the doctors declared him `brought dead'. DDR NO.15 dated 30.11.2014 was recorded in Police Station Mahilpur, District Hoshiarpur on the statement of Kulwinder Kaur – respondent No.1, wife of the deceased.

The wife and son of the deceased filed claim petition under Section 163-A of the Motor Vehicles Act, 1988, claiming compensation to the tune of Rs.10,00,000/- for the death of Amarjit Singh in the accident.

On notice, the owner and driver of the offending car – respondent No.3 appeared and filed written statement taking the plea that no accident was caused by his car and in fact, the deceased himself struck his motorcycle against the truck, as a result of which, he fell down on the road and received injuries. Respondent No.3 was passing from the road at that time and he provided help to the injured on humanitarian ground. The appellant – insurer filed separate written statement pleading collusion between the claimants and respondent No.3.

The Tribunal framed the following issues for adjudication in the claim petition:-

> "*1. Whether the deceased Amarjit Singh had died in Motor Vehicular Accident, which took place on 29.11.2014 due to rash and negligent driving of respondent No.1 while driving the offending vehicle i.e. Car bearing no.PB-07R-1731? OPA*
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> *2. Whether the claimants being legal heirs of deceased are entitled to receive compensation. If so, to what extent and from which of the respondents? OPA*
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> *3. Whether respondent No.1 was not having valid driving licence at the time of accident? OPR-2*
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> *4. Whether the petition is bad for non-joinder and misjoinder of necessary parties? OPR-2*
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> *5. Whether the claim petition has been filed in collusion with respondent No.1? OPR-2*
>
> *6. Relief.*"

Considering that the petition was filed under Section 163-A of the Motor Vehicles Act, 1988, the Tribunal did not give issue-wise finding and only concluded that the offending car was involved in the accident and the death of Amarjit Singh was caused in a vehicular accident involving the offending car. The Tribunal assessed the income of the deceased at Rs.40,000/- per annum in view of the statement of his widow – claimant No.1 and awarded compensation applying the structured formula as per the IInd Schedule. Compensation of Rs.4,39,172/- along with interest was awarded.

Ld. Counsel for the appellant – insurer has challenged the Award on the following two grounds:-

(i) That the accident had taken place due to rash and negligent driving of the motorcycle by the deceased, hence, the insurer of the offending car is not liable to pay any compensation; and

(ii) that the deceased was earning more than Rs.40,000/- per annum, therefore, the petition under Section 163-A was not maintainable, and

To deal with the above arguments, it is first necessary to refer to Section 163A of the Act, which reads:

> *"**163-A. Special provisions as to payment of compensation on structured formula basis**.—(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.*
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> *(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person."*

The language of the above Section makes it clear that to claim compensation under the Section, only involvement of the vehicle in causing the accident is required to be proved.

Kulwinder Kaur and Rashpinder Singh, AW1 and AW2 respectively, have specifically deposed through affidavits that the motorcycle of the deceased struck against the car bearing No.PB-07R-1731 being driven by respondent No.3. Amarjit Singh, husband of Kulwinder Kaur suffered multiple injuries in the accident and was shifted to Raja Hospital, Nawanshaher, but the doctors declared him brought dead. Both the witnesses have also stated that Amarjit Singh died due to injuries sustained in the accident and the postmortem examination on his body was conducted at Civil Hospital, Garhshankar. The number of the offending vehicle was also mentioned in the DDR No.15 dated 30.11.2014 recorded at Police Station Mahilpur, District Hoshiarpur.

In the decision relied upon by Ld. Counsel i.e. **National Insurance Co. Ltd. vs. Sinitha and others, 2012 ACJ 1**, it was held that it is open to the owner or insurance company, as the case may be, to defeat a claim under Section 163-A of the Act by pleading and establishing through cogent evidence a `fault' ground (`wrongful act' or `neglect' or `default'). This decision is of no help to the appellant because no evidence, was led by the appellant – Insurance Company, to prove that accident was the result of `fault' on the part of the deceased Amarjit Singh.

So far as the issue of income is concerned, a perusal of the statements of two witnesses examined by the claimants, photocopies of which have been provided by Ld. Counsel for the appellant, show that both have asserted that the deceased was earning Rs.40,000/- per annum.

The argument of the Ld. Counsel that the claimant widow in her cross-examination stated that the deceased used to pay Rs.2000/- per month as instalment and save Rs.2000-2500 per month and accordingly, the income of the family was more than Rs.40,000/- per annum, also cannot be accepted. She has specifically stated in her affidavit that the deceased was earning Rs.40,000/- per annum, which fact is corroborated by another witness Rashpinder Singh (AW2). The evidence is to be read as a whole and not in part.

The object and purpose of the Act is to provide just compensation to victims of vehicular accidents and in the present case, the claimants are widow and son of deceased Amarjit Singh, who died in a motor vehicular accident. No strict rules of pleadings or evidence are applicable in such cases. The Tribunal is enjoined to hold an enquiry into the claim and make an award determining the amount of compensation, which appears to it as just and further specify the person or persons, to whom compensation shall be paid.

In view of above discussion, there is no ground to interfere in the impugned award.

Appeal dismissed.

May 17, 2016 **(HARINDER SINGH SIDHU)**
gian **JUDGE**