In the High Court of Punjab and Haryana at Chandigarh

FAO No. 2975 of 2016(O&M)
Date of Decision: 8.9.2016

Reliance General Insurance Company Limited

---Appellant

versus

Nishant Verma and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Sanjeev Kodan, Advocate
for the appellant

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Rekha Mittal, J.

The present appeal has been directed against award dated 18.3.2016 passed by the Motor Accident Claims Tribunal, Rupnagar (in short “the Tribunal”) whereby compensation has been awarded in favour of Nishant Verma and others in regard to death of Parvinder Kumar in a motor vehicular accident.

Counsel for the appellant has challenged the award primarily on two counts. The first submission made is that the present is a case of contributory negligence, therefore, liability to pay entire compensation cannot be fastened upon the owner, driver and insurer of the alleged offending vehicle. For this purpose, he has invited attention of the Court to the deposition of Pawan Kumar PW1, an alleged eye witness to the occurrence who has deposed that accident was head on collision.

Another submission made by counsel is that the learned Tribunal has assessed income of the deceased at Rs. 2,14,744/- on the basis of income tax return but liability to pay income tax being statutory has not been deducted from the income in the light of judgment of Hon'ble the Apex Court ***Manasi Jain vs. Delhi Transport Corporation 2014(3) RCR (Civil) 313.***

I have heard counsel for the appellant, perused the records particularly the statement of Pawan Kumar PW1 and the award.

Pawan Kumar, author of the FIR and an alleged eye witness to the occurrence appeared in the witness box and tendered into evidence affidavit Ex. PW1/E. A relevant extract from his testimony with regard to the manner of accident, attributing rashness and negligence to driver of the offending vehicle reads as follows:-

> "When the car of Parvinder Kumar crossed the 'T' point of village Gag on the Nangal-Anandpur Sahib Road, in the meantime, one truck bearing No. HP-64-3382 came from the opposite direction i.e. from Anandpur Sahib side and the said truck was being driven by its driver/respondent No. 1, in a rash and negligent manner and without using dipper and blowing any horn, struck his truck against the car of Parvinder Kumar, No. PB-16-D-3330 by taking his truck on wrong side of the road after leaving his own side. Due to impact of truck, car of Parvinder Kumar caught fire so suddenly that it was difficult for the deponent and his cousin Pankaj Kumar to extinguish the fire or help the injured in any manner. Then the deponent and Pankaj Kumar raised alarm on the road and with the help of passers-by the injured Sharda Rani, Heena and Babita Rani were pulled out, but despite best efforts of all who were present there, we could not pull out Parvinder Kumar from the burning car as a result of which body of Parvinder Kumar was badly burnt and the Alto car turned into ashes after burning."

In his cross examination, he has admitted that the accident was head on collision. Nothing tangible and material has been elicited in his cross examination to doubt correctness of his version as reproduced hereinbefore that driver of the offending vehicle struck his truck against car of Parvinder Kumar by taking his truck on the wrong side of the road after leaving his own side. The matter would have been different had the accident by way of head on collision taken place in the middle of the road because in that eventuality, contention of the appellant would have been worth consideration. There is nothing on record suggestive of the fact that either the insurer or the driver or owner of the offending vehicle adduced any evidence to counter case of the claimants particularly statement of Pawan Kumar PW1. In this view of the matter, I do not find any merit in contention of the appellant that the present is a case of contributory negligence or the claimants are not entitled to compensation assessed by the Tribunal.

This brings the Court to the second submission with regard to non-deduction of income tax from the income reflected in the income tax return of the deceased. On asking of the court, a copy of the said income tax return was produced. A perusal of the document makes it evident that as per the income tax return, the deceased had no liability to pay income tax. In this view of the matter, contention of the appellant with regard to non-deduction of income tax is untenable and thus, it cannot derive any advantage to its contention from what has been held in Manasi Jain's case (supra).

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed.

The amount of Rs. 25,000/- deposited in this Court be remitted to the Tribunal for payment to the claimants.

(Rekha Mittal)
Judge

8.9.2016
PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No