

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

FAO No. 3314 of 2016

Date of Decision: 07.10.2016

Reliance General Insurance Company Limited

.....Appellant

Vs.

Neetu and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Sanjeev Kodan, Advocate,
for the appellant.

AMOL RATTAN SINGH, J. (ORAL)

This appeal filed by the insurance company that had insured the vehicle involved in an accident, impugns the Award of the learned Motor Accidents Claims Tribunal, Rewari, dated 07.05.2016.

2. The facts giving rise to the claim petition filed by respondents no. 1 to 5 herein (herein referred to as the claimants), are that Pradeep Kumar, husband of the 1st claimant, father of the 2nd and 3rd claimants and son of the 4th and 5th claimants, is stated to have been travelling in a Xylo car, bearing registration no. HR-47-BT-2090, along with his colleague, to attend the '*Lagan*' ceremony of the son of another colleague, Ram Avtar Yadav, at village Aulant on 01.02.2014. While returning to Dharuhera from Aulant after attending the function, the aforesaid vehicle was allegedly being driven at a very high speed, in a rash and negligent manner, by Suresh Kumar, driver of respondent no. 6 herein, i.e. the owner of the aforesaid vehicle.

3. When the car reached the area of village Roliawas, the driver could not control the vehicle, which is stated to have turned turtle and tumbled three-four times, resulting in the death of the aforesaid driver as also of Pradeep Kumar, on the spot. Other occupants of the car are also stated to have sustained minor injuries.

The matter was report to the police by one Gulab Singh, on the basis of which an FIR was registered, for the alleged commission of offences punishable under Sections 279/304-A IPC, at Police Station Rampura.

4. The claim petition was thereafter filed, stating therein that Pradeep Kumar was aged about 40 years when he died and was working as an Operator with M/s Hero MotoCorp Ltd., Dharuhera and was getting a salary of Rs. 34,146/- per month.

Thus, seeking compensation from the respondents before the Tribunal, i.e. the owner and insurer of the aforesaid vehicle, the claim petition was filed.

5. Upon notice issued, the first respondent (respondent no. 6 herein), appeared and filed his written statement taking preliminary objections with regard to maintainability, cause of action etc. and on merit contending that no accident ever took place with his vehicle and that in fact a false FIR had been lodged in collusion with the police by the claimants.

6. The present appellant-insurance company, i.e. respondent no. 2 before the Tribunal, also filed its written statement, taking the usual preliminary objections of the driver of the car not holding a valid driving licence and that the car was being driven in violation of the terms and conditions of the insurance company, without a valid permit and that the

quantum of compensation sought, was also excessive.

On merits, the appellant also pleaded that no such accident took place at all and even the post mortem report was a result of forgery and fabrication by the claimants, in collusion with the hospital authorities.

7. On the aforesaid pleadings, the following issues were framed by the learned Tribunal:-

“1. Whether Pradeep Kumar, son of Pratap Singh had died in a vehicular accident that took place due to rash or negligent driving of offending vehicle bearing registration no. HR-47-BT-2090 by Suresh Kumar as alleged in the petition? OPP

2. If issue No. 1 is proved, whether the petitioners are entitled to compensation. If so to what amount and from whom? OPP

3. Whether respondent No. 2 proves the defences taken by it? OPR

4. Relief.”

8. To prove their case, the claimants examined six witnesses, i.e. Dr. Ranbeer Singh, EHC Virender Singh, Ram Kanwar, Deputy Manager, Gulab Singh, Neetu and Pratap Singh.

The owner of the vehicle tendered an uncertified copy of the driving licence of his late driver, an uncertified copy of the certificate of the registration, an uncertified copy of the insurance policy, an uncertified copy of a National Permit and uncertified copies of Tourist Taxi Permits.

The present appellant examined one Head Constable Sunil Kumar, who brought the DDR register in question and stated that one Ram

Kumar, son of Harpal Singh had got the DDR registered. He also proved the copy of the statement of Ram Kumar.

9. Upon appraising the evidence and considering the pleadings and arguments addressed before it, the learned Tribunal found that in the light of the evidence led, the time, place and the factum of the accident leading to the death of Pradeep Kumar, stood proved, and that the deceased was travelling with his co-employees, one of whom, Gulab Singh, testified as PW-4. As per the testimony of this witness, after he and the aforesaid persons and the deceased were returning from the function, the vehicle turned turtle two to three times, resulting in serious injuries to the driver and Pradeep Kumar, who died on the spot.

It was also found by the Tribunal, that the fact that the car was also badly damaged, showed that it was being driven at a very high speed when the driver lost control over the vehicle and as such, even though the person who lodged the DDR, i.e. Ram Kumar, co-traveller and an eye witness did not step into the witness box and in fact the FIR was eventually registered on 07.04.2014, i.e. slightly more than two months after the accident, did not detract from the testimony of PW-4, just because the police failed to investigate the matter further and closed the case. It was also observed by the Tribunal that it could be said that Ram Kumar who had lodged the DDR had done so just to protect the driver and owner from harassment, in view of the fact that the driver also died in the accident and thus, 'no purpose would have been served'.

It was also found from the testimony of PW-4, that the vehicle had fallen into the "side trenches of the road and got struck into trees" and was badly damaged.

On appraisal of the aforesaid evidence, it was held that the accident having taken place due to the rash and negligent driving of deceased Suresh Kumar stood proved, he having lost control over the car, leading to the accident in which he himself was also unfortunately killed.

10. As regards the compensation to be paid to the claimants, it was found from the testimony of PW3, Ram Kanwar, Deputy Manager (HR) in M/s Hero Motocorp Limited, Dharuhera, that the deceased was drawing a gross salary of Rs. 36,039/- as per his salary certificate and that after deductions such as dress maintenance, conveyance allowance etc., income tax of Rs. 5,300/- was payable on his annual income, or Rs. 450/- per month, thereby eventually allowing him a 'carry home salary' of Rs. 32,000/- per month.

Holding that the deceased was an employee receiving a regular salary, a 30% addition to the aforesaid monthly income needed to be made, the deceased being 40 years of age as per his post mortem report, his total monthly salary was worked out to Rs. 41,600/- per month (Rs.32,000 + Rs.9,600/-)

To the aforesaid income, a 1/3rd cut was applied towards the personal living expenses of the deceased, thereby coming to a loss of dependent income to the claimants of Rs.27,733/- per month or Rs.3,32,796/- per annum, which was rounded off to Rs. 3,32,800/-. A multiplier of 15 was applied to the aforesaid sum, thereby coming to a total loss of income of Rs. 49,92,000/- to the claimants.

11. Other than the above, Rs. 1,00,000/- was awarded by loss of consortium to the first claimant (respondent no. 1 herein) and Rs. 25,000/- towards the last rites and funeral expenses of the deceased.

Thus, a total compensation of Rs. 51,17,000/- was awarded to the claimants.

12. Issue No. 3, with regard to all the defences taken by the insurance company, i.e. an invalid driving licence and route permit etc., are shown to have been not pressed before the Tribunal and therefore they were decided against the appellant company.

Consequently, both the respondents were held jointly and severally liable to pay the aforesaid compensation amount, along with interest @ of 7.5% per annum, running from the date of the institution of the petition till the realization thereof, with the appellant herein held liable to indemnify the owner of the vehicle, i.e. the present respondent no. 6.

13. When this appeal had earlier come up for hearing on 26.09.2016, learned counsel for the appellant had submitted that the finding on negligence of the driver of the owner of the vehicle was erroneously arrived at by the Tribunal and, it being a claim petition filed under Section 166 of the Motor Vehicles Act, if negligence is held to be not proved, the owner would not be liable to pay any compensation, with obviously therefore no liability lying on the insurance company to indemnify him.

He had relied upon a judgment of the hon'ble Surpeme Court in **Oriental Insurance Company Limited** vs. **Premlata Shukla and others** (2007) 13 SCC 476, in support of his contention.

14. Today, Mr. Kodan further submits that in the Daily Diary report lodged on the date of the accident, i.e. on 02.02.2014, it was stated by the complainant, who had lodged the DDR, that when they had reached a particular village, upon a 'Nilgai' coming on to the road, in the process of trying to avoid hitting it, the driver of the vehicle (also deceased in the

accident), lost control over it, leading to the car turning turtle and causing injuries to the occupants, leading to the death of the driver as also of Pardeep Kumar, due to whose death the claim petition was filed.

Learned counsel submits that the DDR was later converted into an FIR only on 07.04.2014. He further submits that the FIR was lodged by a different person, i.e. other than the person who had lodged the DDR, and the version of the accident given was that when the car reached a particular point, the driver completely lost control over it, as a result of which it turned turtle and resulted in injuries leading to the unfortunate deaths.

Thus the '*Nilgai*' that was mentioned in the DDR, was not mentioned in the FIR.

15. Learned counsel has further relied upon a judgment of a Division Bench of the Madhya Pradesh High Court in **Ghanshyam** vs. **Laxmanswaroop and others** 1979 ACJ 476, in which case, when a boy aged about 10 years suddenly ran across the road, forcing the driver of the vehicle concerned to suddenly apply brakes to try and avoid hitting the boy, the accident occurred. It was held by their Lordships that in such circumstances, it cannot be held that there was any negligence on the part of the driver.

Learned counsel has yet further relied upon a judgment of a co-ordinate Bench of this Court in **Pritam Singh** vs. **Jaswant Singh and others** (FAO No. 1771 of 1992, decided on 12.01.2016), wherein a bus came and struck against the claimant, resulting in multiple injuries, with the number of the bus not given by the claimant for quite some time. It was held that the claimant being an ex-serviceman, it could not be believed that he would remain silent for a long period and not even try to find out as to

whether the police had taken any action on his complaint etc.

16. Having considered the above arguments, I do not see how the circumstances of the last case cited apply to the present case at all, even though the FIR is stated to have been lodged in April, the accident having taken place in February.

In the present case, the DDR was lodged the very next day and simply because subsequently, the '*Nilgai*' mentioned in the DDR was not mentioned in the FIR, the factum of the deceased-driver having lost control over the vehicle, cannot be changed.

Presuming that the first version was the correct version as that is normally the correct version and a '*Nilgai*' actually came on to the road, though in the opinion of this Court, correctly even the State/National Highway Authority of India, whosoever was responsible for the upkeep of the road, should have been impleaded as a party so as to foist liability on to the those authorities also, for not ensuring barricading of highways in a country where fast cars are now the norm; however, in a situation where drivers on Indian roads know that such thing do happen, it is obvious that the speed of the driver in this case was excessive, otherwise simply by trying to avoid an animal coming on to the road, the car would not have turned turtle, somersaulting into the side ditches, resulting in injuries and death to two people.

Hence, the contention that there was no negligence of the driver and the accident took place wholly as “an act of God”, is rejected.

17. Learned counsel has next submitted that even the quantum of compensation has been wrongly calculated, inasmuch as, the appellant being employed with a private company, he could not have been taken to be

a permanent employment and as such, 30% loss of future prospects of income could not have been added to his salary of Rs. 36,039 (less deduction of income tax taken into consideration by the Tribunal).

I find that argument also wholly untenable, in view of the fact that the deceased, Pardeep Kumar, is shown to have been working as an Operator in the Hero Motocorp Limited, Dharuhera, a public limited company, and thus, if employment with Government can be termed to be permanent, I see no reason why employment of an educated man with a public limited company cannot be termed to be permanent. If that logic is to be extended, there is no guarantee that employment with Government would always continue till the age of superannuation, in the event of any abolition of posts, disciplinary proceedings against the employee etc.

Hence, the contention in that regard is also rejected.

18. Consequently, finding no merit in the appeal, it is dismissed in *limine*, though with no orders as to costs, with no prejudice cast on the rights of the respondents-claimants, in any appeal they may have filed for enhancement of compensation, which naturally, if filed, would be considered on its own merits.

(AMOL RATTAN SINGH)
JUDGE

October 07, 2016
nitin/dinesh

Whether speaking/reasoned	Yes
Whether Reportable	Yes