

In the High Court of Punjab and Haryana at Chandigarh

FAO No.3899 of 2016 (O&M)

Date of Decision: 22.07.2016

New India Assurance Company Ltd.

--- Appellant

versus

Inder Kala Devi and Others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. R.C. Kapoor, Advocate for the appellant.

Rekha Mittal, J.

The present appeal has been directed against the award passed by the Motor Accident Claims Tribunal, SAS Nagar, Mohali (for short 'Tribunal') whereby compensation has been awarded in favour of Inder Kala Devi and others in regard to death of Ravindra Sahni @ Rajinder Kumar in a motor vehicular accident on 06.02.2014 due to rash and negligent driving of truck bearing No.PB-12-C-1333 by Sudhir Kumar Tyagi-respondent No.5.

Counsel for the New India Assurance Company Ltd. (hereinafter referred to as 'the Company') has assailed the award primarily on three counts. The first submission made by counsel is that the present is a case of contributory negligence attributable to the deceased, therefore, the learned Tribunal has committed an error in fastening the entire liability upon the driver, owner and insurer of the alleged offending vehicle.

The next submission made by counsel is that the Tribunal has

wrongly assessed income of the deceased at Rs.10,000/- per month for calculating loss of dependency. Further, the benefit of increase in income for future prospects is not admissible as the said question is pending consideration before a Larger Bench of Hon'ble the Supreme Court in view of reference made in National Insurance Company Ltd. Vs. Pushpa, SLP (C) No.16735 of 2014, decided on 02.07.2014.

I have heard counsel for the appellant, perused the paper book and the documents appended with the appeal particularly the statement of Upinder Kumar, an eye witness to the occurrence, made available during the course of hearing.

The plea raised by the Company with regard to any negligence in the occurrence being attributable to Ravindra Sahni (since deceased) driver of Tata-407 bearing No. HR-37-C-4539 is misconceived and merits rejection when examined in the light of facts deposed by Upinder Kumar in his examination-in-chief by way of affidavit Ex. PW2/A, cross-examined at length, at the behest of counsel representing the respondents therein. Upinder Kumar in his affidavit has deposed that “at about 11:45 p.m, when our Tata 407 reached near Gate of Luxmi Rice Mills, Khamano Distt. Fatehgarh Sahib on Chandigarh to Samrala Road, a Truck/Tanker No. PB-12-C-1333 was parked on the left side of the road with its all the wheels on the metalled road covering more than half portion of metalled road without any indicator, light, top light or any light on any corner of the said Truck/Tanker without burning fire, placing of branches of trees, bricks or stones or taking any such precaution, which may suggest the road users

about parking of the said truck/tanker on the metalled road at dark night. The said road is a busy road and many vehicles were coming from both sides. Due to this Act of negligent parking of the above said truck/tanker by its driver on the metalled road, in the dazzling lights of the vehicles coming from opposite side we all the three occupants of our vehicle including my brother Ravindra Sahni @ Rajinder Kumar could not notice the said parked truck/tanker on the road and when we could notice the said parked truck/tanker, distance in between the offending truck/tanker and our Tata 407 was about 7-8 feet. My brother tried his best to avoid this accident by taking his Tata 407 on the further left side in katcha portion of the road and also applied breaks but the rear portion of the stationery truck/tanker struck against the driver side of our Tata 407.”

As has been noticed hereinbefore, Upinder Kumar was cross-examined in detail at the hands of an astute lawyer representing the respondents. Nothing tangible, material and fruitful has been elicited in his cross-examination to impeach his credibility or create any dent in his testimony that either he was not present at the spot or his testimony is not truthful or worthy of reliance. He has categorically and emphatically denied the suggestion that the parking light of the offending vehicle was blinking which was parked on left side of the road after its tyre was punctured. He has further denied that there was sufficient light of Luxmi Rice Mills on the road and the accident took place due to rash and negligent driving of the deceased driver.

Counsel for the appellant has not disputed that the occurrence

led to registration of an FIR against Sudhir Kumar for causing accident due to his rash and negligent driving. It has further not been denied that Sudhir Kumar has been put to trial on the basis of charge sheet filed on conclusion of investigation. Under these circumstances, testimony of Sudhir Kumar (RW-1) is no rebuttal to the statement of Upinder Kumar as Sudhir Kumar has every reason to depose against the respondents/claimants to wriggle out of his liability to pay compensation as well as to escape from his criminality. In this view of the matter, I find myself unable to accept the submissions made by counsel that the present case demonstrates any negligence on the part of deceased in order to say that it is a case of contributory negligence. As a result, contention raised by counsel for the Company in this regard devoids of merit and is accordingly rejected.

So far as the plea with regard to income of the deceased having been assessed at the rate of Rs.10,000/- per month, there is no dispute that the deceased was working as a driver on Tata 407 bearing No. HR-37-C-4539. Sh. Sunil Kumar owner of Tata 407 appeared in the witness box and stated on oath that Ravindra Sahni was employed by him at a monthly salary of Rs. 8,000/- per month but on 01.11.2013, his salary was increased to Rs.12,000/- per month. It is an undisputed position of the case that Sunil Kumar did not produce any documentary evidence to corroborate his oral version with regard to income of the deceased. At the same time, there is nothing on record suggestive of the fact that Sunil Kumar had been maintaining any accounts or has withheld any documents from the Court to draw an adverse inference. In view of testimony of Sunil Kumar coupled

with the factum that the deceased was a skilled worker i.e. driver of a heavy vehicle, no error much less illegality can be noticed in the conclusions drawn by the Tribunal holding that the deceased was earning Rs.10,000/- per month. That being so, no interference with regard to assessment of income of the deceased is warranted in the present scenario.

The plea of the company that the claimants are not entitled to benefit of increase for future prospects cannot be allowed merely because the matter is pending before a Larger Bench till the judgment in Rajesh and others Vs. Rajbir Singh and others, 2013 (3) RCR (Civil) 170 is varied or set aside.

For the foregoing reasons, the appeal fails and is accordingly dismissed in *limine*. No order as to costs.

(Rekha Mittal)
Judge

July 22, 2016
"D.Gulati"

Whether Speaking/Reasoned : Yes/No

Whether Reportable : Yes/No