IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.4362 of 2016 (O&M)
Date of Decision: 01.08.2016

Reliance General Insurance Company Ltd.
......Appellant

Vs

Smt. Mukesh and others
.....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Nitin Mittal, Advocate for
Mr. Paras Money Goyal, Advocate
for the appellant.

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RAJ MOHAN SINGH, J.

[1]. This is an appeal filed by Reliance General Insurance Company Limited against the award dated 26.05.2016 passed by Motor Accidents Claims Tribunal, Jhajjar (for short 'Tribunal') whereby the claim petition of the claimants under Section 166 of Motor Vehicles Act, 1988 (for short 'Act') was allowed on account of death of Surender Singh in a vehicular accident.

[2]. The claimants filed petition under Section 166 of the Act claiming compensation on account of death of Surender Singh alleging therein that on 23.03.2012 at about 9.30 P.M, Surender Singh was on his way from Rohtak to his village Dighal on his motorcycle. At about 10.00 P.M, when he crossed

Maina bye-pass and was going towards Jhajjar, the offending truck which was being driven in a rash and negligent manner by its driver with high speed came from opposite side and hit the motor cycle. Surender Singh fell down and received multiple grievous injuries on his person. His brother Bijender Singh was following him on his motor cycle and he witnessed the occurrence. The driver fled away from the spot. After the occurrence, Bijender Singh Singh shifted Surender Singh to PGIMS, Rohtak where he succumbed to his injuries. Bijender Singh lodged FIR No.99 dated 24.03.2012 under Sections 279, 304-A IPC in police Station Sadar, Rohtak. The deceased was 35 years of age and was working as a driver with Jai Delhi, Kandla Roadways, Bus Stand Dujana. Deceased was earning Rs.20,000/- per month. The claimants were dependent upon the income of the deceased. The Tribunal ultimately found that the accident took place on account of rash and negligent driving of the driver/respondent No.6-herein of the offending vehicle i.e. Truck bearing No.HR-46B-6883.

[3]. The Tribunal assessed the income of the deceased to be Rs.6,000/- per month. The deceased was found to be 38 years of age. The Tribunal on the strength of ***Rajesh Vs. Rajbir Singh, 2013 ACJ 1403*** and ***Munna Lal Jain and anr. Vs. Vipin Kumar Sharma and ors, 2015 ACJ 1985*** held that the

claimants were entitled to 50% of the monthly income of the deceased towards loss of future prospects. The monthly income was assessed to be Rs.6,000/- and therefore, the amount came out to be Rs.9,000/- per month. Since there were five legal heirs of the deceased, therefore, 1/4th of the monthly income of the deceased was deducted towards his self expenses and the total monthly dependency was held to be Rs.6750/- and Rs.81,000/- per annum i.e. (6750 x 12). Keeping in view the age of the deceased and while applying the table given in ***Smt. Sarla Verma and ors Vs. Delhi Corporation And anr, 2009(3) RCR (Civil) 77,*** multiplier of 15 was applied to the annual dependency of Rs.81,000/- and total amount was calculated to be Rs.12,15,000/-. An amount of Rs.1,00,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses were added toward conventional heads. In this way, total amount of compensation was calculated to be Rs.13,40,000/-.

[4]. Though no amount was awarded towards loss of love and affection and since the appeal has been filed on behalf of Insurance Company, therefore in the absence of any appeal filed by the Claimants, no such appreciation can be made at this stage. The vehicle was found to be duly insured in terms of registration certificate and national permit. Driving licence was duly brought on record. The vehicle was found to be insured on

the date of accident. No evidence was led by the Insurance Company/appellant to prove that the vehicle was not insured at the time of accident or the same was being driven by its driver in violation of terms and conditions of the Insurance policy. The issue was decided against the Insurance Company and award was accordingly passed with further recital regarding apportionment of compensation as given in the award.

[5]. Learned counsel for the appellant has argued that the future prospects as awarded by the Tribunal is the subject matter of reference in SLP No.16735 of 2014 in view of apparent conflict in the case of National Insurance Co. Ltd. Vs. Pushpa and others. Learned counsel for the appellant also contended that the accident was the result of head on collusion between the vehicles, therefore, motorcyclist was also negligent and it should have been held to be a case of contributory negligent.

[6]. The award towards loss of future prospects is being awarded in view of law laid down in ***Rajesh Vs. Rajbir Singh's case (supra)***. The said judgment has not been stayed by Hon'ble Apex Court. Even in ***Munna Lal Jain's case (supra)***, one of the consideration was in respect of award under loss of future prospects.

[7]. In the light of aforesaid facts, the award passed by the

Tribunal cannot be faulted with, even, if accident took place with the result of head on collusion, still it cannot be held to be a case of contributory negligent for want of evidence adduced by the driver or owner of the offending vehicle. Grant of compensation is based on concept of welfare legislation where strict proof in terms of Evidence Act is not required nor the standard to prove the facts beyond reasonable doubt is to be applied. Only preponderance of evidence is to be seen. The lodging of FIR would be a relevant criteria for presumption that the driver of the offending vehicle was at fault in causing the accident. The investigation was set into motion and during investigation, it was proved that the driver of the offending vehicle had caused the accident who thereafter fled away from the spot. Even if, untrace report was filed by police in the Court and the same was accepted by the Court that itself does not disentitle claimants under the Motor Vehicles Act. The Tribunal was not required to hold an inquiry like a criminal Court, nor the claimants were required to prove the occurrence beyond all shadow of doubts. Only a prima facie evidence in respect of occurrence was to be seen and there was no material on record to disbelieve such an evidence. The registration of FIR and trial of the accused in criminal case were sufficient evidence to show that the accident had taken place. There was no material produced by the respondent to rebut such an evidence. The other evidence of the claimants was sufficient to hold that the driver of the offending vehicle was rash and negligent in causing the accident in question.

[8]. In the light of calculations made by the Tribunal under different heads, no interference is called for at the hands of this Court. The appeal is totally bereft of merits and the same is accordingly dismissed.

01.08.2016 **(RAJ MOHAN SINGH)**
Prince **JUDGE**

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No