

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 5370 of 2016 (O&M)
Date of Decision : 27.09.2016

Bharti AXA General Insurance Company Ltd.Appellant

Versus

Daljeet Kaur and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rajbir Singh, Advocate
for Mr. Sanjeev Goyal, Advocate
for the appellant-Insurance Company.

Surinder Gupta, J.

This is appeal by Bharti AXA General Insurance Co. Ltd. against award dated 25.04.2016, passed by Motor Accident Claims Tribunal, Ambala (later referred to as 'the Tribunal') whereby compensation of ₹13,63,000/- was allowed to claimants for death of Sukhjinder Singh @ Sukha (later referred to as 'the deceased') in a motor vehicle accident with tractor bearing registration No. HR-01-AH-5316 (later referred to as the offending vehicle').

2. Case of claimants, in brief, is that on 27.03.2015, the deceased was coming on his motorcycle from Ambala side at a moderate speed on his left side of Ambala-Hissar road, when he was hit by the offending vehicle, which was being driven by respondent no. 4 in a rash and negligent manner at a high speed, by coming on wrong side of the road, as a result of which the deceased sustained grievous injuries on his head and died at the spot. The deceased was working as Bus Conductor/Helper with the Hind Transport Cooperative Society, Ambala

and was earning ₹8100/- per month. In addition to his salary, he was getting ₹200/- per day from his employer to meet his daily expenses for meal and other needs during travelling. The deceased was also carrying on business of dairy farming thereby earning ₹5000/- per month. In this way, total monthly income of the deceased was ₹21,000/-.

3. Learned counsel for the appellant has argued that the Tribunal while reaching the conclusion that accident had taken place due to rash and negligent driving of the offending vehicle by respondent no. 4-Dharmender Singh has relied on statements of PW-2 Narender Singh and PW-3 Balkar Singh. PW-2 Narender Singh has stated that driver of the offending vehicle was not apprehended in his presence and he came to know about him later on while he was lodging the FIR. PW-3 Balkar Singh has stated that he had neither accompanied the deceased to the hospital nor he went to police station for lodging the FIR, as such, his presence at the spot at the time of accident is doubtful. Learned counsel for the appellant has further argued that the Tribunal has taken notional income of the deceased as ₹8000/- per month, which is on higher side. No record was produced to show that he was doing any business or job.

4. Firstly, I take argument raised by learned counsel for the appellant regarding involvement of the offending vehicle in accident. Case of claimants is that the deceased was going on his motorcycle when the offending vehicle, which was being driven by respondent no. 4 in a rash and negligent manner at a very high speed, hit motorcycle of the deceased after coming on wrong side of the road. PW-2 Narender Singh is the eye-witness and author of FIR while PW-3 Balkar Singh appeared

as eye-witness. The offending vehicle was taken into possession from the spot, as such, involvement of the offending vehicle in accident is proved. Respondent no. 4 was also arrested on the same day. The offending vehicle was not bearing any number plate having its registration number but the police recorded engine and chassis number while taking it into possession which tallied with the engine and chassis number of the offending vehicle. The Tribunal found testimonies of PW-2 and PW-3 as credible and observed that owner and driver of the offending vehicle including the appellant have not been able to controvert the same. Even if driver of the offending vehicle was not arrested in the presence of PW-2, it does not create any shadow of doubt about his testimony. He has reported the incident to police immediately after the accident. If PW-3 had not accompanied the deceased to hospital and police has not recorded his statement, these facts create no shadow of doubt about his statement. He had informed family of the deceased about the accident and brother and father of the deceased reached the spot within half an hour from where they were sent to hospital. On arrival of brother and father of the deceased to the spot there was no reason for PW-3 to go to the hospital.

5. The argument advanced by learned counsel for the appellant that testimonies of PW-2 and PW-3 are not credible has no basis. In the facts and circumstances of the case, the Tribunal has committed no error by relying on testimonies of these two witnesses.

6. The deceased was 29 years of age. Daljeet Kaur, wife of the deceased, while appearing as PW-1 has stated that the deceased was working as bus-conductor/helper with Hind Transport Cooperative

Society, Ambala and drawing salary of ₹8100/- per month plus daily allowance of ₹200/-. She has also stated regarding his income from dairy business. No official from Hind Transport Cooperative Society was examined to prove salary of the deceased. The deceased was matriculate and the Tribunal keeping in view his age and qualification assessed notional income of the deceased as ₹8000/- per month, which is not on higher side. In the year 2015, even a daily wager could earn ₹300/- per day. In these circumstances, I find no reason to interfere with the observation of the Tribunal assessing notional income of the deceased.

7. No other argument has been advanced by learned counsel for the appellant.

8. On perusal of the award, I find no legal or factual infirmity therein calling for any interference. This appeal has no merit.

September 27, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No