IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1566 of 2002
Date of Decision.08.11.2017

Bimla Devi and others ....Appellants

Vs

Harbans Lal and others ....Respondents

2. **FAO No.2162 of 2002**

United India Insurance Co. Ltd. ....Appellant

Vs

Bimla Devi and others ....Respondents

Present: Mr. K.S. Dhanora, Advocate
for the appellant in FAO No.1566 of 2002 and
for respondent Nos.1 to 7 in FAO No.2162 of 2002.

Mr. V. Choudhri, Advocate
for the appellant in FAO No.2162 of 2002 and
for respondent No.4 in FAO No.1566 of 2002.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

This order of mine shall dispose of two appeals. FAO No.1566 of 2002 filed at the instance of the legal representatives of the deceased-Barkha Ram seeking enhancement of compensation and other one FAO No.2162 of 2002 at the instance of the insurance company challenging the liability fastened upon it, being insurer of the offending tractor bearing registration No.HR-41-8534.

Mr. V. Choudhri, learned counsel appearing on behalf of the appellant-insurance company in FAO No.2162 of 2002 submits that the aforementioned vehicle did not cause any accident with the motor cycle of the deceased bearing registration No.HR-07C-1801. In fact, Barkha Ram as per inquest report Ex.R3 and challan Ex.P1, hit against the pillars of the Sarswati bridge as he could not control the vehicle being in inebriated condition and owing to the injuries received he succumbed to death. The DDR was lodged by the son of the deceased. Even the inquest report, Ex.R3 was recorded in the presence of Gian Chand and Hari Ram, who had also endorsed the fact that Barkha Ram had died owing to the hitting of the pillars of the bridge and not due to accident with the aforementioned offending tractor. Harbans Lal, driver of the tractor denied the accident and also the date on which the alleged accident had taken place. He stated in evidence that he was picked up by the police on way to his fields at later stage and foisted upon the FIR bearing no.159 dated 3.4.1999, though he was not driving the offending tractor at the relevant point of time. The aforementioned FIR was lodged after pondering upon the matter to give it a tangent colour of accident involving third party rights. All these factors have not been appreciated in a correct perspective and therefore, the finding of the Tribunal is liable to be set aside.

Per contra, Mr. K.S. Dhanora, learned counsel appearing on behalf of the claimants submits that registration of the FIR and filing of the challan Ex.P1 are sufficient proof for proving the involvement of the vehicle. The Tribunal did not believe the testimony of Hari Ram and Gian Chand subsequently recorded under Section 161 Cr.P.C as they did not appear in the witness box. The insurance company failed to prove the non-involvement of the vehicle i.e. the tractor insured with it on the ill-fated day, thus, no fault could be found with finding rendered by the Tribunal in this regard.

As regards the enhancement of compensation, he submits that the Tribunal had awarded a compensation of ₹2,45,400/- with interest @9% from the date of filing of the claim petition till its realization, out of which 50% amount has been given to the Bimla Devi-claimant No.1 and remaining 50% to other claimants in equal shares. The deceased was 50 years of age, therefore, the multiplier of 13 should have been adopted instead of 12. The amounts of ₹10,000/- towards loss of consortium, and ₹5000/- for transportation, medical treatment and last rites are too paltry, much less, nothing has been provided for loss of love and affection and loss of estate. The income of the deceased taken as ₹2400/- per month and deduction of 1/3rd towards personal expenses is not correct appreciation of law, thus, there is scope for further enhancement.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Choudhri, for, the factum of challan Ex.P1 has not been controverted. Ex.R3, inquest report which was recorded in the presence of Hari Ram and Gian Chand, much less, the DDR leads to irresistible conclusion that the deceased while driving the motor cycle, who according to the doctor RW2 was in inebriated condition as there was smell of alcohol in his breath, hit against the pillars of the bridge and in order to give it a shape of accident involving the third party, the aforementioned offending vehicle was planted. It is not a case where the driver of the tractor admitted the accident. No other independent evidence had been brought on record by the claimants i.e. any eye witness to prove the involvement of the offending tractor in the accident nor any mechanical report been obtained to corroborate the same, like colour of the tractor engraved on the portion of the motor cycle which had allegedly been damaged, resulting into causing of injuries to the deceased, who ultimately died. Having full sympathy with the claimants but the fact remains that the insurance company collects money by insuring the owner of the vehicle against third party rights and it is public money which cannot be distributed as largesse simply on the ground that the FIR had been registered against the driver, this Court vide order dated 19.07.2017 had called upon the counsel for the claimants to apprise as to what had been the outcome of the FIR registered against Harbans Lal, driver of the Tractor and he feigned his inability to the Court despite he informed his clients.

As an upshot of my finding, the Tribunal did not appreciate the facts and law in a correct perspective *viz-a-viz* fastening the liability on the insurance company, therefore, the finding of the Tribunal on the issue of liability is hereby set aside. Since the offending vehicle was not involved in the accident and the deceased was himself a tort feasor, the legal representatives of the deceased shall not be entitled to any compensation. Consequently, the award passed by the Tribunal is set aside. Resultantly, the appeal filed by the insurance company is allowed and the appeal filed by the claimants is dismissed. The insurance company shall be at liberty to recover the amount of compensation as awarded by the Tribunal along with interest, if paid to the claimants, in accordance with law.

(AMIT RAWAL)
JUDGE

November 08, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No