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

FAO No.4183 of 2007
Date of Decision.14.12.2017

Vijay Laxmi and others ....Appellants

Vs

Deen Dayal Aggarwal and others ....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. K.K. Chaudhary, Advocate for
Mr. Sanjiv Gupta, Advocate
for the appellants.

Mr. Ram Avtar, Advocate
for the insurance company.

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AMIT RAWAL J.(ORAL)

This is an appeal preferred by the claimants seeking setting aside of the award rendered by the Tribunal whereby the deceased Chhotu Ram travelling in bus bearing registration No.HR-57/0916 insured with the National Insurance Company met with an accident with Tanker bearing registration No.HR-38K-1249 also insured with the National Insurance Company.

Mr. Kamal Chaudhary, learned counsel appearing for the appellants submitted that the Tribunal has committed illegality and perversity in dismissing the claim petition on the premise that the FIR Ex.P6 was registered against the driver of the tanker but unfortunately, the challan could not be filed owing to the demise of the driver of the tanker. In other words, he submitted that the drivers of the bus as well as the tanker involved in the accident had unfortunately expired. The factum of accident had not been denied. On this aspect, there was no occasion for the Tribunal to deny compensation. At the best, it should have been a case of contributory negligence to the extent of 50:50.

The factum of ownership of the tanker has also not been denied. The deceased at the time of accident was working in BSNL as a Telephone Mechanic and drawing a salary of ₹8942/- per month. He left behind widow and two children, therefore, compensation is liable to be granted.

Per contra, Mr. Ram Avtar, learned counsel appearing on behalf of the insurance company submits that neither eye-witness nor any other person has been examined to prove the factum of negligence of either of the vehicles, therefore, it cannot be said to be a contributory or composite negligence, thus, the finding given by the Tribunal cannot be tinkered and faulted with. The report under Section 173 Cr.P.C. was in the negative, in essence, the challan was not filed against the driver of the tanker, who unfortunately died in the aforementioned accident, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that the findings rendered by the Tribunal is not correct appreciation of facts and law, for the reason is not one but many.

The aspect of accident between two vehicles has not been denied. It is also conceded position on record that drivers of both vehicles have died. The deceased was travelling as passenger in the bus. Therefore, the question which was to be decided by the Tribunal was as to what extent of liability either of the vehicle would be liable to discharge. In my view, it was a case of simple and plain case of contributory negligence apportioning liability to the extent of 50:50. The factum of the deceased having working in the department of BSNL as Telephone Mechanic is also not denied. In my view, the finding rendered by the Tribunal dismissing the claim petition is not sustainable and hereby set aside.

Now coming to the extent of compensation, the deceased was 49 years of age at the time of accident and left behind three legal heirs. Therefore, I will take the income of the deceased as ₹8942/- per month, provide 30% increase on the same as future prospects, make a deduction of 1/3rd for personal expenses and adopt a multiplier of 13 to assess the loss of dependency as ₹12,09,000/-. I will further add to it ₹40,000/- for loss of consortium, ₹15,000/- for loss of estate and ₹15,000/- for funeral expenses.

In all, the compensation payable shall be ₹12,79,999/-. This amount shall also attract interest @6% per annum from the date of filing of the claim petition till realization within a period of three months, failing which it shall entail interest @12% per annum. The aforementioned amount shall be distributed equally between the claimants.

It is a co-incidence that both the vehicle are insured with the National Insurance Company. Therefore, the insurer of the both the vehicles involved in the accident i.e. National Insurance Company shall be liable to satisfy the compensation in the ratio referred to above.

The award passed by the Tribunal is set aside and the appeal is allowed.

(AMIT RAWAL)
JUDGE

December 14, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable Yes