IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

399

FAO No.5792 of 2009
Decided on : 24.10.2017

United India Insurance Co. Ltd.

... Appellant

Versus

Bimla Devi and others

.. Respondents

CORAM : HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present : Mr.R.K.Bashamboo, Advocate
for the appellant-Insurance Company.

Mr.Gurbachan Singh, Advocate
for respondent No.6-Saravjit Singh
(owner of the offending vehicle).

Mr.Amit Rana, Advocate for respondents No.1 to 5.

Avneesh Jhingan , J. (Oral)

The present appeal has been filed by Insurance Company against the award dated 30.9.2009 passed by Motor Accidents Claims Tribunal, Fatehabad (for short 'the Tribunal).

2 On 23.1.2006, there was a accident between two motorcycles. As a result of the accident, Jasbir Singh lost his life and Saravjit Singh suffered injuries. It may be mentioned that Jasbir Singh along with Subhash were going on their Hero Honda bearing Chasis No.05L-29F-24774. The other motorcycle involved in the accident is Bajaj Discover, Chasis No.MD-2DSD822MCJ. Hero Honda motorcycle was insured with United India Ins. Co.Ltd.

3. The LRs of the deceased filed a claim petition under Section 163 -A of the Motor Vehicles Act, 1988 (for short 'the Act') and the claim petition filed by LRs of the deceased was numbered as Claim petition

No.11 of 2006 before the Tribunal.

4. Saravjit Singh (injured) filed a cross claim petition under Section 166 of the Act against LRs of the deceased. The Tribunal awarded a sum of Rs.3,17,000/- to the LRs of the deceased. Claim petition of Saravjit Singh i.e. MACT 12/2006 was dismissed by the Tribunal. The Tribunal while awarding the compensation to the LRs of the deceased ordered that the respondent Saravjit Singh and United India Assurance Co.Ltd with which the Hero Honda motorcycle was insured would jointly and severely liable to pay the compensation.

5 The insurance Company has filed the appeal being aggrieved of the award that they were not insurer of Bajaj Discover motorcycle with whom the accident had occurred. Therefore, they were not liable to pay compensation amount.

6. I have heard learned counsel for the parties and perused the paper book.

7. Learned counsel for the Insurance Company has argued that Hero Honda (offending vehicle) being driven by the deceased has not been held to be negligent and therefore, no liability could be fastened upon the Insurance Company. He further contended that the Insurance company was not even a party in the claim petition No.11 before the Tribunal, the Tribunal erred in holding United India Assurance Co.Ltd. Liable to pay the compensation severely and jointly to the LRs of the deceased.

8. Learned counsel for the claimants and learned counsel for Saravjit Singh could not raise any objection to the contention raised by

learned counsel for the Insurance company. However, learned counsel for Saravjit Singh raised an objection that the rash and negligent driving of Saravjit Singh was not proved by the claimants before the Tribunal and hence, the Insurance Company is liable to pay.

9. Learned counsel for Saravjit Singh has argued that the accident was never occurred because of the negligence of Saravjit Singh and therefore, the LRs of the deceased are not entitled to any compensation.

10. The plea raised by the learned counsel for the Insurance company deserves to be accepted. The insurer of the motorcycle of the deceased was neither party before the Tribunal nor could have been held to be liable to pay compensation to the LRs of the deceased. The motorcycle of Saravjit Singh was not insured, in such circumstances, it is only the owner of the motorcycle i.e. Saravjit Singh who is liable to pay the compensation awarded to the LRs of the claimants.

11. The contention raised by learned counsel for Sarvjit Singh has no substance as the claim petition was moved by the LRs of the deceased under Section 163-A of the Act. In petition under Section 163-A of the Act, rash and negligent driving is not required to be proved. Hence, the issue whether Sarvjit Singh was negligent or the deceased was negligent will have no effect on the compensation awarded to the LRs of the deceased.

12 The appeal of the Insurance company is allowed.

13 The award of the tribunal is modified to the extent that instead of joint and severely, liability of Insurance Company and Saravjit

Singh, only Saravjit Singh would be liable to pay compensation to the LRs of the deceased.

[Avneesh Jhingan]
Judge

24.10.2017
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No