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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-2414-2011

Date of decision : 10.08.2017

ICICI Lombard General Insurance Company Ltd.

... Appellant(s)

Versus

Kavita Devi and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Subhash Goel, Advocate
for the appellant(s).

Mr. Sushil Sheoran, Advocate
for respondent No.6.

Mr. Vishal Chaudhri, Advocate for
Mr. Vinod Chaudhri, Advocate
for respondent No.10.

AMIT RAWAL, J. (ORAL)

The appellant-Insurance Company is aggrieved of the findings of the Motor Accident Claims Tribunal (in short 'the Tribunal'), exonerating respondent No.10/Insurance Company of the Tractor bearing Registration No.HR-20Q-1937, by fastening the liability upon the appellant(s)/Insurance Company of the Haryana Roadways Bus bearing Registration No.HR-56-2471.

Mr. Subhash Goyal, learned counsel appearing on behalf of the appellant-Insurance Company submits that the deceased along with pillion rider had parked motorcycle bearing Registration No.HR-16C-9332 on the side of the road. The tractor which was following a bus hit the motorcyclist,

namely, Karamvir Singh, who was 31 years of age, unfortunately, died. He was a skilled labourer and left behind widow, two minor sons and parents. The eye-witness PW2 Vijay Singh, attributed the negligence on the part of the bus driver, but the police in the investigation found the negligence of the tractor, resulting into, filing of a challan under Section 173 of the Criminal Procedure Code. Despite the aforementioned evidence on record, the Tribunal negated the plea of the appellant-Insurance Company, which is not a correct appreciation of the law and evidence, thus, there is illegality and perversity. Even the driver of the bus had not stepped into witness-box, preventing the appellant-Insurance Company, to ask the question in the cross-examination. If, all these factors had been taken into account, definitely would have absolved the Insurance Company for indemnifying the Haryana Roadways Bus.

Mr. Sushil Sheoran, learned counsel appearing on behalf of respondent No.6/Driver and Mr. Vinod Chaudhri, learned counsel representing respondent No.10/Insurance Company of the tractor, submit that it is the evidence brought on record in support of the claim petition to be appreciated and not the investigation conducted by the Police. The direct and cogent evidence brought on record i.e. testimony of the PW2 and RW-1 emanated leads to act of negligence of the driver of the bus and not of the tractor, rightly so, the Insurance Company i.e. indemnifier of the insured Haryana Roadways Bus, has been fastened with the liability, thus, urges this Court for upholding the award, under challenge.

I have heard the learned counsel fore the parties and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Subhash Goyal, for, the Tribunal had an occasion to

examine the evidence on record i.e. testimony of PW-2 Vijay Singh and RW-1 Om Parkash. Both of them had been consistent and coherent in attributing the negligence towards the driver of the bus. This fact has been noticed in paragraph 27 of the award under challenge. For the sake of brevity, statement of PW-2 Vijay Singh reads as under:-

"Stated that Karambir deceased was my cousin. He was a private medical practitioner in village Pabra. About one year ago, I along with Karambir was going towards Barwala from my village on motorcycle, being driven by Karambir at a moderate speed. At about 8.00 a.m. we reached near Deep brick-kiln where Karambir stopped his motorcycle and I alighted from the same while Karambir was sitting on the seat of the motorcycle. In the meantime,, a bus came from Jind side i.e. from back side being driven by Karam Singh, respondent No.1 at a very high speed and in rash and negligent manner and struck into the motorcycle of Karambir. Because of the struck, Karambir fell down and received injuries, which proved fatal as he died at the spot. The registration number of offending bus was HR 56/2471. No other vehicle came on the spot. I made a statement before the police and on the basis of the same, a criminal case was registered against Karam Singh, respondent No.1 with police of police station, Barwala. Police had not taken any action against the driver of the bus. I filed a criminal complaint in the Court of Illaqa Magistrate and the same is fixed for recording preliminary evidence, certified copy of the same is Ex.P1. This accident occurred due to rash and negligent driving of bus driver.

XXX by the counsel for respondent Nos.1 to 4.

The accident took place on Jind-Barwala Road. There is sufficient distance to cross two vehicles easily. At the time of accident, the motorcycle was standing on kacha porition of the road. The deceased Karambir was sitting on the motorcycle.

The motorcycle was standing with the support of legs of Karambir. I was standing near the motorcycle, as I have to go to brick-kiln. It is correct that some college boys were going towards Barwala in a bus and they were shouting loudly. Those boys were travelling in the offending bus. After hitting the motorcycle by bus, no tractor trolley was coming behind the offending bus. I did not notice whether tractor trolley over-run Karambir while he was lying in dead condition. It is incorrect that due to shouting of the students, the deceased lost control over the motorcycle and he fell down on the road and one tractor trolley bearing No.HR20Q/1937 came from behind side and ran over the deceased. It is in correct that there is no negligence on the part of the bus driver and that the accident was not took place with bus No.HR 56 2471. It is incorrect that I was not present there and that I am deposing falsely being cousin of the deceased. Police arrived at the spot and recorded my statement. I do not know who called the police. I had stated the registration number of the bus and tractor and names of both the drivers of the vehicles. I do not know the registration number of the tractor. One tractor was standing ahead of the offending bus. I cannot tell the name of tractor driver. Again said, I do not know his name. I also thumb marked my statement made before the police. None of the drivers ever met me after this accident. Today, I have come to the Court on the requests of the claimants. It is incorrect that I am deposing falsely.

XXX by the counsels for respondent Nos.5 and 6.

It is correct that the accident took place due to rash and negligent driving of respondent No.1."

Even eye-witness PW-2 Vijay Singh, had submitted a complaint under Sections 279 & 304-A IPC before the Illaqua Magistrate against the driver of the bus, which was stated to be pending. All these

factors lead to a conclusion that it was the bus, which was driven rashly and negligently, resulting into, death of the deceased.

For the foregoing reasons, I do not find any illegality and perversity in the findings rendered by the learned Tribunal, much less, no ground is made out for interference and accordingly, the same are upheld.

Resultantly, the appeal appeal is dismissed.

10.08.2017

Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned Yes/ No

✓

Whether Reportable Yes/ No