IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1448 of 2014 (O&M)
Date of decision: 18.07.2017

Oriental Insurance Company Limited
....Appellant

Versus

Urmila Rani and others
....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Abhinandan Pandhi, Advocate,
for Ms. Manjari Nehru Kaul, Advocate,
for the appellant.

Mr. Vivek Suri, Advocate,
for respondent Nos.1 to 3.

Mr. Vikram Bali, Advocate,
for respondent No.4.

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RITU BAHRI J. (Oral)

National Insurance Company Limited-appellant has come up in appeal against the award dated 06.01.2014 passed by the Motor Accident Claims Tribunal, Panchkula (hereinafter referred to as 'the Tribunal'), whereby compensation of Rs.11,55,850/- has been awarded in favour of claimant No.1-Urmila Rani (mother) on account of death of Anil Kumar Sharma in a motor vehicular accident which took place on 28.09.2011. Respondent No. 1 is mother, whereas respondent Nos.2 and 3 are father and brother respectively of deceased Anil Kumar Sharma.

Brief facts of the case are that on 28.09.2011, Anil Kumar Sharma (since deceased) had gone to drop his colleague-Saruchi Sharma at

Amrawati Main Bazar, Baddi, on a motorcycle bearing registration No.HP-12-B-6912. On return journey, at about 9.00 P.M., when he reached in front of Amartax on Sai Road, village Kaduana, a Trax jeep bearing registration No. HP-12-D-8883 being driven by Ravi Kumar (respondent No.1 in claim petition) in a rash and negligent manner, came from the opposite side at a high speed and struck against the motorcycle of Anil Kumar. Anil Kumar Sharma along with his motorcycle was dragged by the offending jeep upto 100 yards. With regard to the accident, FIR No.236 dated 28.09.2011, under Sections 279/304-A IPC was registered at Police Station, Baddi. Consequently, the claimants (respondent Nos. 1 to 3 herein) filed a claim petition before the Tribunal.

Upon notice, driver and owner i.e. respondents Nos.1 and 2 (in claim petition) filed a joint written statement, whereby they denied any accident having been taken place as alleged. It was further stated that the deceased himself had struck his motorcycle with the jeep in question. A false FIR was registered by the police just to help the claimants in getting compensation.

Insurance Company-appellant (respondent No.3 in claim petition) contested the claim of the claimants and pleaded that the petition is not maintainable. It was further stated that no accident had taken place, as alleged by the claimants and a false and frivolous FIR had been lodged against respondent No.1. Rest of the averments have been denied and a prayer for dismissal of petition was made.

From the pleadings of the parties, following issues were framed:-

1. Whether Anil Kumar Sharma has died on account of injuries sustained in the accident in question which took place due to

rash and negligent driving of Trax bearing registration No. HP-12-D-8883 by respondent No.1? OPP.

2. If issue No.1 is proved, whether the claimants are entitled to any compensation, if so to what amount and from whom? OPP.
3. Whether the respondent No.1 was not holding a valid and effective driving licence at the date of accident in question, if so, to what effect? OPR-3.
4. Relief.

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident in question had taken place due to rash and negligent driving of offending vehicle by its driver-Ravi Kumar and thus, returned the finding on issue No.1 in favour of the claimants. This finding is rightly based on the deposition of Amit Kumar (PW-2), who was an eye witness of the accident and on whose statement, FIR, Ex.P18, was registered. ASI Raghubir Singh (PW-3) deposed that after getting information regarding the accident, he reached at the spot and recorded the statement of complainant-Amit Kumar, on the basis of which, FIR, Ex.P18, was registered. He proved copy of challan as Ex.P19. Umesh Verma (PW-4), who was posted as Criminal Ahlmad in the Court of Judicial Magistrate, Nalagarh, produced the criminal file relating to the case titled as 'State Vs. Ravi Kumar' and deposed that charge against the accused (driver) was framed on 06.10.2012 for commission of offences punishable under Sections 279 & 304-A IPC.

Mr. C.L. Sharma, Assistant Examiner, SFCL, Himachal Pradesh was examined as RW-1, who produced the summoned record relating to FIR in question and deposed that he had received a sealed parcel (vial) bearing four seals bearing impression 'E', which was stated to be containing blood of Ravi Kumar. On examination, the contents were found containing ethyl alcohol and the quantity of the same was 168.59% mg. He proved his report as Ex.R1 in this regard. He has further stated that presence of quantity of ethyl alcohol was moderate, but he could not say as to what extent this quantity of alcohol could effect the senses and driving skills of a person. Ramesh Kumar, Naib Nazir, Office of Civil Judge (Junior Division), Nalagarh (RW-2) had produced the record of criminal case file relating to the accident in question and deposed that the driving licence of Ravi Kumar (driver) was not on the same.

Deceased-Anil Kumar Sharma was working as Assistant-HR with the Time Technoplast, village Dharampur, District Solan. As per salary certificate, Ex.P21, he was getting getting salary of Rs.1,01,887/- per annum. In this income, 30% has been added on account of future prospects, which came to be Rs.1,32,453/- per annum. Out of this, 50% has been deducted towards personal expenses of the deceased. Accordingly, total dependency came to Rs.66226/- per annum. After applying the multiplier of 17, loss of dependency came to be Rs.11,25,850/-. Apart from this, Rs.25,000/- were awarded to claimant No.1 (mother) towards funeral expenses and Rs.5000/- towards loss of estate. Ultimately, the claim petition was accepted and a sum of Rs.11,55,850/- was awarded as compensation in favour of claimant No.1-mother. Feeling dissatisfied with the impugned award, the appellant-Insurance Company has preferred the present appeal.

The Insurance Company has challenge the impugned Award on the ground that driver of the offending vehicle was under the influence of liquor at the time of accident. As per FSL report, higher percentage of alcohol was present in his blood. Another ground for challenge of the

Award is that the multiplier has been applied in view of the age of deceased, whereas it should have been applied as per the age of parents of deceased.

While issuing notice of motion on 01.05.2014, reference was made to a judgment passed by Hon'ble the Supreme Court in ***M. Mansoor Vs. United India Insurance Co. Ltd.,*** 213 (12) Scale 324, wherein it was held that in a case where there are several claimants having different ages, it would be difficult to choose the relevant multiplier to depend on the age of the multiple claimants. In view of the aforesaid judgment, appeal against the claimants was dismissed and notice of motion was issued only to respondent Nos.4 and 5 i.e. driver and owner of the offending vehicle.

At the time of assessing the liability to make payment of compensation, the Tribunal came to a conclusion that there was no evidence that liquor consumed by driver (respondent No.1 in claim petition) had affected his driving skills. Therefore, there was no violation of the terms and conditions of the insurance policy by the driver. Hence, the driver, owner and insurance company were held jointly and severally liable to pay the compensation to claimant No.1.

Learned counsel for the Insurance Company has referred to clause 2 (c) of the Insurance Policy, as per which, if any accidental loss or damage suffered whilst the insured or any person driving with the knowledge and consent of the insured is under the influence of intoxicating liquor or drugs, the company shall not be liable to make any payment. While referring to the report of Forensic Science Laboratory, he contends that contents of liquor in the blood of Ravi Kumar (driver) were higher than the prescribed limit. Hence, the owner of the offending vehicle is liable to make payment of compensation. Learned counsel has referred to the judgment passed by the Andhra Pradesh High Court in ***Bajaj Allianz General Insurance Co. Ltd., rep. by its Deputy Manager (Legal) Vs. Smt. Manju Devi and others,*** 2014 (56) RCR (Civil) 599, to contend that if, it was established by the Insurance Company that driver of the offending vehicle was in drunken state at the relevant time, then the company after making payment of compensation to the claimant, can recover the same from owner/driver.

Learned counsel for the respondents (owner and driver) has referred to the judgment passed by the Rajasthan High Court in ***Oriental Insurance Co. Ltd. Vs. Smt. Sarwani Devi,*** 2006 (4) RCR (Civil) 519, to contend that in an accident, when the driver was found to be in drunkard condition, Insurance Company was held liable to make the payment of compensation. The owner of the car was not held liable as he was not aware that the driver drove the said car in a drunkard condition. The owner would be liable to pay compensation, only if he himself had given his car to a person, who was drunk. Further reference has been made to a judgment passed in ***Jiju Kuruvila and others Vs. Kunjujamma Mohan and others,*** 2013 (3) SCC (Crl.) 849, whereby Hon'ble the Supreme Court was examining a case, in which a collision had taken place between the car and a bus, resulting into the death of car driver. As per the postmortem report, car driver was in intoxicated condition. In the absence of any definite finding that the deceased was driving the car rashly and negligently at the time of accident, the insurance company could not be absolved of its liability to make payment of compensation.

Heard, counsel for the parties.

Reference, at this stage, can be made to Section 185 of the Motor Vehicle Act, which reads as under:-

> "185. **Driving by a drunken person or by a person under the influence of drugs**.—Whoever, while driving, or attempting to drive, a motor vehicle-,
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> [(a) has, in his blood, alcohol exceeding 30 mg. per 100 ml. of blood detected in a test by a breath analyser, or]
>
> (b) is under this influence of a drug to such an extent as to be incapable of exercising proper control over the vehicle,
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> shall be punishable for the first offence with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both; and for a second or subsequent offence, if committed within three years of the commission of the previous similar offence, with imprisonment for a term which may extend to two years, or with fine which may extend to three thousand rupees, or with both. Explanation.—For the purposes of this section, the drug or drugs specified by the Central Government in this behalf, by notification in the Official Gazette, shall be deemed to render a person incapable of exercising proper control over a motor vehicle."

As per the aforesaid section, if a driver is found to be in a drunkard condition and as per the test conducted by breath analyser, quantity of alcohol in his body is higher than the prescribed standards, he shall be punished for imprisonment, which may extend to six months.

In the facts of the present case, as per FSL report, blood sample of Ravi Kumar (driver) contained 168.59 mg ethyl alcohol, which does not meet the standard set out under Section 185 of the Act and as per the judgment passed in ***Bajaj Alianz General Insurance Company's*** case (supra), it amounts to violation of the insurance policy. The insured cannot take the benefit that he was not aware that the driver was in a drunkard condition or not. Moreover, he is bound by the terms of the insurance policy. Before the Tribunal, no evidence was led by the owner of offending vehicle to show that the driver had driven the said vehicle in a drunkard condition without his knowledge.

Keeping in view the FSL report and the judgment passed by the Division Bench of Andhra Pradesh High Court in ***Bajaj Alianz General Insurance Company's*** case (supra), the impugned Award is modified to the extent that after making payment of compensation, the Insurance Company-appellant can recover the same from the owner and driver. The amount of compensation shall be released in favour of the claimant on furnishing of adequate surety bonds to the satisfaction of the Tribunal/Execution Court

Allowed in the above terms.

(RITU BAHRI)
JUDGE

18.07.2017
ajp

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No