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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4574 of 2016 (O&M).
Decided on:-February 28, 2017.

Future Generali India Insurance Company Limited.

.........Appellant.

Versus

Naresh and others

.........Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Rajesh K. Sharma, Advocate for the appellant.

Mr. S.K. Tripathi, Advocate for respondents No.1 to 3.

HARI PAL VERMA, J.

Appellant-insurance company has filed the present appeal challenging the award dated 12.05.2016 passed by learned Motor Accidents Claims Tribunal, Gurgaon (hereinafter referred to as the Tribunal), whereby the claim petition filed by the respondents No.1 to 3-claimants was allowed and the respondent No.2-claimant was held entitled for a sum of Rs.15,47,466/- as compensation on account of death of her son Vikram in the vehicular accident which took place on 20.09.2015.

Briefly stated, on 20.09.2015 when deceased Vikram was coming from Noida to his village on his motorcycle No.HR-19B-9204 and at about 5.30 p.m. had crossed the IFFCO Chowk flyover, the offending vehicle bearing registration No.HR-82-8206 driven by its driver in a very rash and negligent manner, came from the back side. The offending vehicle hit the motorcycle of the deceased and due to this impact, the deceased fell on the road and sustained injuries all over his body including head. A person, namely, Ved Parkash @ Bablu was also coming from Delhi side by his car. He got the deceased admitted in the Medicity Hospital, Gurgaon. After that, the deceased was admitted in Aditya Hospital, Rewari where he expired on 23.09.2015 due to the injuries sustained by him in the accident.

Regarding the said accident, the FIR was registered at Police Station Sector-29, DLF, Gurgaon on the statement of Chander Shekhar son of Jaswant against respondent No.4 Deepak, i.e. the driver of the offending car.

The insurance company has argued before the Tribunal that it was a hit and run case and the insured vehicle was actually not involved in the accident and, rather, has falsely been planted by the claimants in collusion with the respondents-driver and owner of the car as well as the police officials to grab compensation from the insurance company. The place of accident is stated to be Mahipalpur flyover, Delhi, whereas the FIR was registered at Gurgaon stating therein that the accident took place at IFFCO Chowk, flyover, Gurgaon.

Since the offending car was insured with the appellant-insurance company, the Tribunal vide award dated 12.05.2016 held that all the respondents, namely, insurance company, driver and owner of the offending car are jointly and severally liable to pay the compensation.

Aggrieved with the impugned award dated 12.05.2016 passed by the Tribunal, the insurance company has filed the present appeal.

Learned counsel for the appellant-insurance company has argued that the impugned award is based on assumptions and presumptions as well as conjectures and surmises. The oral as well as documentary evidence have been misread, misconstrued and misinterpreted. The Tribunal has brushed aside the contention of the insurance company and held that although there is conflict regarding the place of accident i.e. in MLC Ex.P14, it is stated to be Mahipalpur flyover, whereas in the FIR, it is stated to be IFFCO Chowk flyover, but the said discrepancy cannot mean that the insured vehicle was not involved in the accident. Thus, the Tribunal has discarded the contention raised by the insurance company that as per police intimation Ex.R1, the place of accident is stated to be Mahipalpur flyover, Delhi, whereas the FIR was registered at Gurgaon stating on the ground that the accident took place at IFFCO Chowk, Gurgaon. Many accidents take place at the same time at difference places, but this does not mean that all are caused by one vehicle only.

He has further argued that it is a case where the offending vehicle has been falsely implicated by the claimants, the insurer as well as the police. The statement of Ved Parkash @ Bablu (PW1) under Section 161 Cr.PC was recorded by the police on 28.10.2015 after about more than one month of the date of accident. Therefore, the Tribunal has passed the impugned award without there being any evidence against the vehicle insured. Similarly, the Tribunal has fell in error while granting future prospects. The income of deceased as Rs.15,000/- per month was claimed by the claimants, but the same was never proved on record. The basic salary of the deceased was Rs.8299/- and the claimants have failed to prove that the deceased was in permanent employment and his job was stable. There is no evidence on record that the salary of the deceased was likely to increase.

On the other hand, learned counsel for the respondents No.1 to 3-claimants has argued that there is no illegality in the impugned award passed by the Tribunal. The award is based on evidence and is a well reasoned.

I have heard learned counsel for the parties.

In accident claim cases, the burden to prove negligence of the driver of offending vehicle rests upon the claimant, but it is not as strict as it is on the prosecution, in criminal matters. The law regarding compensation in such like cases under MACT case is based on beneficial piece of legislation. These cases are not to be viewed with high-powered spectacles or microscopes, but a pragmatic approach is always required to be adopted. Though it being a case of 'hit and run', but an automatic presumption does not follow that the insured vehicle has falsely been involved. In the case in hand, the accident took place on 20.09.2015 and immediately after the accident, Ved Parkash @ Bablu (PW1) got the deceased admitted in Medicity Hospital, Gurgaon. Ex.P14 is the MLC of the said hospital, wherein the name and address of the accompanying person finds mention. The telephone number of said Ved Parkash is specifically mentioned in the MLC. The FIR was registered on 22.09.2015 on the statement of Chander

Shekhar i.e. uncle of the deceased wherein he has stated that some unknown vehicle has hit the deceased. But subsequently, during investigation, the police has recorded the statement of Ved Parkash @ Bablu (PW1) under Section 161 Cr.PC as Ex.P1. In that statement, he has elaborately described the accident and has stated that a white Alto car bearing registration No.HR-82-8206 i.e. the insured car has caused the accident and fled away from the spot after causing accident. This witness had attended the deceased after the accident and had brought the injured to the hospital. The presence of this witness has not been disputed by either of the parties. Though there is a conflict regarding the place of accident i.e. in MLC, it is stated to be Mahipalpur flyover, Delhi whereas in the FIR, it is stated to be IFFCO Chowk flyover, Gurgaon, but in any case, the vehicle involved in the accident is not disputed. Further, Mahipalpur flyover, Delhi and IFFCO Chowk flyover, Gurgaon fall on the same road i.e. National Highway No.8 and are situated at some distance. The place of accident was recorded by the hospital staff and the possibility of some misunderstanding cannot be ruled out more particularly when the victim was brought to the hospital in a serious condition and everybody who were associated in this process were mentally upset and one can find them in hurry to attend the injured and to give medical aid on priority. Therefore, on the basis of this minor discrepancy regarding the place of accident, the version of the claimants cannot be disbelieved. It has not come on record that the witness PW1 Ved Parkash is an interested witness in any manner.

So far as the argument raised by learned counsel for the appellant-insurance company that since the deceased was not working on a permanent job, the claimants were not entitled to future prospects, is concerned, the same cannot be accepted in view of the law laid down by Hon'ble Supreme Court in ***Rajesh Versus Rajbir Singh (2013) 9 SCC 54*** more particularly when the matter regarding future prospects is pending consideration before Hon'ble Apex Court in ***National Insurance Company Limited Versus Pushpa and others 2015(6) RCR (Civil) 844*** before the larger Bench for an authoritative pronouncement.

Since the matter regarding future prospects is pending consideration before Hon'ble Apex Court, the amount of compensation qua future prospects, as awarded by the Tribunal and deposited by the appellant-insurance company, shall be kept by the Tribunal in some nationalized bank in the shape of FDR and the same would be subject to outcome of decision in ***Pushpa and others' case (supra).***

In view of the above, this Court does not find any merit in the present appeal and the same is, accordingly, dismissed.

(HARI PAL VERMA)
JUDGE

February 28, 2017
Yag Dutt

Whether speaking/reasoned: Yes

Whether Reportable: No