123.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-206-2017 (O&M)
Date of decision:26.04.2017

NEW INDIA ASSURANCE COMPANY LTD .... Appellant

versus

RAJBIR KAUR & ORS .... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Vinod Gupta, Advocate, for the appellant.

HARI PAL VERMA, J.

The appellant-New India Assurance Company Limited has filed the present appeal against the award dated 13.10.2016 passed by Motor Accident Claims Tribunal, Karnal (for short, 'the Tribunal'), whereby the claim petition filed by the claimants (respondents No.1 to 4 herein), under Sections 166 & 140 of the Motor Vehicles Act, on account of death of Chabeg Singh (who was father-in-law of respondent-claimant No.1 and grandfather of respondents-claimants No.2 to 4) in a motor vehicular accident which took place on 05.07.2012, was partly allowed and the claimants were held entitled to compensation of ₹4,90,400/- by the Tribunal.

Briefly stated, as per claim petition, on 05.07.2012, when the deceased-Chabeg Singh was going on a motorcycle bearing No.HR-05-X-4748, then Baljit Singh (respondent No.5 herein), while driving oil tanker bearing registration No.HR-37-A-3237 in a rash and negligent manner, hit him. As a result thereof, the deceased received serious multiple and grievous injuries on vital parts of his body. After the accident, he was shifted to Civil Hospital, Karnal, but he succumbed to the injuries on his way to hospital.

On notice, the driver-Baljit Singh-respondent No.5 appeared in person to contest the claim petition, but thereafter, he did not appear before the Tribunal and ultimately, was proceeded ex parte. The owner of the offending vehicle, namely, Harnam Singh (respondent No.6 herein) appeared, filed written statement and contested the claim petition. He pleaded that a false case was registered against the driver by the police in collusion with the claimants. He denied the involvement of the vehicle in the accident. He further submitted that the claimants are neither legal heirs nor dependents on the income of the deceased.

The appellant-Insurance Company also filed its written statement and took preliminary objections regarding maintainability, locus standi, cause of action, estoppel, petition being bad for mis-joinder and non-joinder of necessary parties and that the claim petition has been filed by the claimants in connivance and in collusion with the driver in order to extract the compensation. It was further submitted that the driver was not holding valid and effective driving licence at the time of accident and the offending vehicle was being plied in violation of terms & conditions of insurance policy as well as the provisions of Motor Vehicles Act.

After hearing the parties, the Tribunal held that the accident was caused due to rash and negligent driving of oil tanker by its driver-Baljit Singh-respondent No.5 and awarded compensation of ₹4,90,400/- in the following manner:-

1.	Loss of income due to death of deceased Chabeg Singh	Rs.3,65,400/-
2.	Funeral and conveyance expenses	Rs.25,000/-
3.	Loss of Estate, love & affection	Rs.1,00,000/-
	Total	Rs.4,90,400/-

Aggrieved against the aforesaid award, the appellant-Insurance Company has filed the instant appeal.

Learned counsel for the appellant-Insurance Company has argued that the offending vehicle i.e. Oil Tanker bearing registration No.HR-37-A-3237 was not involved in the accident, as the driver of the said tanker was acquitted by the criminal court on the ground that the identity of the vehicle is not known. He has further argued that the claimants were not dependents and legal heirs of the deceased-Chabeg Singh and, therefore, they were not entitled for any compensation under the Act. He has further argued that the driver, who was driving the tanker was not having a valid licence as the licence was issued from Nagaland, whereas he was a resident of District Karnal. Moreover, the driver was not holding a valid and effective driving licence on the date of accident as the driver-Baljit Singh was driving oil tanker for which specific endorsement in regard to hazardous goods is necessary on the driving licence after a special training in this regard, but there is no such endorsement on the driving licence.

I have heard learned counsel for the appellant.

So far as the argument of the learned counsel for the appellant that since the driver of the offending vehicle has been acquitted by the criminal court, the Insurance Company is not liable to pay the compensation, cannot be accepted for the reason that such acquittal does not affect the merits of the case. An order of acquittal in criminal case has no bearing in a claim petition filed under the Motor Vehicles Act. The Tribunal has rightly placed reliance on the judgments of this Court in ***<u>Charan Singh Versus Sanjay Kumar and others-2015(8) RCR (Civil) 741 (P&H)</u>*** and ***<u>Reliance General Insurance Company Limited Versus Mohinder Kaur and others-2015 (3) RCR (Civil) 687 (P&H)</u>.*** Further, the Hon'ble Supreme Court in ***<u>Parmeshwari Versus Amir Chand and others-2011 (2) RCR (Civil) 153</u>*** has held that in motor accident claim petitions, strict principle of proof like a criminal case is not warranted and the claimants are merely required to establish their case on the touchstone of preponderance of probability.

The other argument of learned counsel for the appellant-Insurance Company that the claimants are not the dependents and legal heirs of the deceased, also deserves to be negated. Since Rajbir Kaur-claimant/ respondent No.1 is widow of Gulab Singh, who had already expired and Karamjit Kaur, Harmit Kaur are daughters and Jodha alias Judhveer Singh is the son of Gulab Singh, then the claimants were dependents on Chabeg Singh (father-in-law of Rajbir Kaur and grandfather of other claimants). Therefore, this plea of the appellant cannot be accepted that they were not the dependents on the deceased. Further, the appellant-Insurance Company has not been able to prove that the driving licence of Baljit Singh-respondent No.5 was fake, rather, it has been admitted by the concerned authority vide document Ex.R10 that the driving licence, in question, had been issued from that authority and, therefore, it has been duly proved that the driver of the oil tanker was holding a valid driving licence at the time of accident. Furthermore, the appellant-Insurance Company has not examined any witness from the concerned licensing authority to prove the authenticity of document Ex.R10.

Once the appellant-Insurance has failed to prove the driving licence of driver-Baljit Singh-respondent No.5 as fake and invalid, then the Insurance Company cannot avoid its liability. Therefore, the appellant-Insurance Company is liable to indemnify the owner/ insured-respondent No.6. Once it is held that the driver was holding a valid driving licence, the argument that for such like vehicle i.e. Oil tanker, special training is required, cannot be accepted.

In view of above, this Court does not find any illegality in the well reasoned award passed by the Tribunal and accordingly, the appeal filed by the appellant-Insurance Company stands dismissed.

(HARI PAL VERMA)
JUDGE

26.04.2017
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Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No