121.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2752-2017 (O&M)
Date of decision: 01.05.2017

UNITED INDIA INSURANCE COMPANY LTD. ... Appellant

versus

SHANTI & ORS .... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Ram Avtar, Advocate,
for the appellant.

HARI PAL VERMA, J.

CM-9312-CII-2017

Prayer in the application filed under Section 151 CPC is for condonation of delay of 2 days in refiling the appeal.

For the reasons stated in the application, same is allowed. The delay of 2 days in re-filing the appeal is condoned.

FAO-2752-2017

The appellant-Insurance Company has filed the present appeal against the award dated 14.12.2016 passed by Motor Accident Claims Tribunal, Panchkula (for short, 'the Tribunal'), whereby the claim petition filed by the claimants (respondents No.1 to 6 herein), under Section 166 of the Motor Vehicles Act, 1988, for grant of compensation on account of death of Rakesh (husband of respondent-claimant No.1, father of respondents-claimants No.2 to 5 and son of respondent-claimant No.6), was allowed and the claimants were held entitled to compensation of ₹14,72,840/-.

Briefly stated, as per claim petition, on 24.07.2015, the deceased-Rakesh was going from his house at Village Abheypur to Industrial Area, Phase-II, Panchkula, on foot. When at about 08.30 PM, he was crossing the road towards Industrial Area, Phase-II, Panchkula, in the meantime, a vehicle i.e motorcycle bearing registration No.CH-01-AG-9545 (for short, 'the offending vehicle'), being driven by Mehtab Ansari (respondent No.7 herein), came from opposite direction rashly and negligently at a very high speed, and struck against the deceased. As a result thereof, the deceased suffered multiple injuries. After the accident, the deceased was taken to General Hospital, Sector 6, Panchkula, from where, he was referred to PGI, Chandigarh, where he succumbed to his injuries. The accident was reported to the police by the father of the deceased i.e. respondent No.6 and accordingly, an FIR No.76 dated 25.07.2015 (Ex.P1) was registered in Police Station Sector 19, Panchkula. Hence, the claim petition for compensation was filed.

On notice, driver and owner (respondents No.7 & 8 herein) filed written statement denying the accident. However, they admitted that the offending vehicle was insured with the appellant-Insurance Company.

The appellant-Insurance Company filed written statement denying the accident and pleaded false implication of the offending vehicle. It has been further pleaded that in case, the accident, as alleged by the claimants, proved, then at the time of accident, the driver-respondent No.7 was not holding a valid and effective driving licence and the offending vehicle was not being driven in consonance with the terms & conditions of insurance policy and the same was not having route permit and fitness certificate.

The Tribunal framed the crucial issue i.e. *"Whether accident in question occurred due to act of sole rash or negligent driving of offending vehicle by the respondent no.1 at relevant time, at relevant site as alleged? OPP"* and held that there is sufficient material on record to conclude that the accident in question occurred due to sole act of rash or negligent driving of offending vehicle by respondent No.7 at the relevant time at the relevant site.

As regards income of the deceased, it has been pleaded by the claimants that he was working as Senior Operator with M/s Garg Electronics, Industrial Area, Phase-II, Panchkula, and drawing a monthly salary of ₹8,000/-. The claimants examined the Manager of said Garg Electronics as PW3, who deposed that the deceased was working as Machineman and was getting salary of ₹7,050/- per month and also placed reliance on attendance register (Ex.P5) for the month of July, ,2015 and salary certificates (Exs.P6 and P7). As per Ex.P7, the deceased was drawing salary of ₹7,050/-. Since Ex.P7 was issued on 11.03.2016 and the accident took place on 24.07.2015, the Tribunal discarded Ex.P7 being a manipulated document and took the income as ₹5,850/-.

As regards age of the deceased, at the time of his death, the same was stated to be 34 years by the claimants. His age was supported by copy of Aadhar Card of the deceased (Ex.R1), wherein his date of birth was mentioned as 01.02.1981.

Considering the age of the deceased as 34 years, the Tribunal applied 50% increase in his salary under the head of future prospects in view of law laid down by the Hon'ble Supreme Court in ***<u>Rajesh and others Versus Rajbir Singh and others-2013(9) SCC 54</u>***. Accordingly, the total income of the deceased as taken as ₹8,775/-.

Since the dependents were six in number, which includes the father of the deceased also being an old man, the Tribunal applied $1/5^{th}$ cut to the income (i.e. ₹8,775-₹1,755=₹7,020/-) as per the judgment of Hon'ble Supreme Court in ***<u>Sarla Verma Versus Delhi Transport Corporation and another-2009(6) SCC 121</u>*** and by applying multiplier of 16, the loss of dependency was assessed as ₹13,47,840/- (i.e.₹7,020x12x16). To the said amount of compensation, the Tribunal also added ₹1,25,000/- under the conventional heads i.e. loss of love and affection, consortium, funeral and last rites expenses etc. and the claimants were held entitled to compensation of ₹14,72,840/-.

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

Learned counsel for the appellant has argued that the Tribunal has wrongly awarded the compensation to the claimants by holding that the liability to satisfy the award was that of the appellant-Insurance Company. The Tribunal has misread, misconstrued and misinterpreted the oral as well as documentary evidence available on record. Admittedly, on the relevant date when the deceased was going to his workplace, he met with an accident and as per the finding of the Tribunal, his death did not occur during the course of his employment. As per Section 53 of the ESI Act, there is a clear-cut bar against receiving or recovery of compensation or damages under any other law and an insured person or his dependent shall not be entitled to receive or recover, whether from the employer of the insured person or from any other person, any compensation or damages under the Workmen Compensation Act, 1923 or any other law for the time being in force or otherwise, in respect of an employment injury sustained by the insured person as an employee under this Act.

I have heard learned counsel for the appellant.

So far as the quantum of compensation is concerned, the same does not warrant any interference. So far as the plea as regards Section 53 of ESI Act is concerned, the same is not attracted in the present case as the bar is against the person who is insured, whereas in the case in hand, it is not the person, who is insured, rather it is the vehicle which was insured. Therefore, the liability is upon the appellant-Insurance Company. The deceased had not died in the course of employment. Once, he had not died in the course of employment, Section 53 of the ESI Act does not bar the claimants to claim compensation under the Motor Vehicles Act. He had not reached at the place of work and the accident had caused on the way. Therefore, his death did not occur during the course of employment. Had the deceased died in the course of his employment and the claimants claimed compensation under the Workmen Compensation Act, despite receipt of benefit by his dependents under ESI Act, then position would have been different. Therefore, the provision of Section 53 of the ESI Act does not attract.

In view of above, I do not find any reason to interfere 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

01.05.2017
sanjeev

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