111

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 4754 of 2017 (O&M)
Decided on: 07.09.2017

United India Insurance Company Ltd. ....Appellant

versus

Parveen Rani and others ....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Ashwani Talwar, Advocate,
for the appellant.

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Rajbir Sehrawat, J. *(Oral)*

1. This is an appeal filed by the Insurance Company of the offending vehicle challenging the award passed by the Motor Accident Claims Tribunal, Patiala, whereby the claimants were awarded an amount of Rs. 10,65,000/- as compensation on account of death of Anwar Khan in the motor vehicle accident.

2. The case as pleaded by the claimants in the claim petition; is that on 27.08.2014, Anwar Khan (now deceased) was going on his Suzuki Motorcycle bearing registration No. PB-10ER-6184 from the side of Nabha to Khanna. He was followed by Salim Khan on his Vespa scooter along with Kehar Ali. When Anwar Khan reached within the revenue limits of Sahauli, the car bearing registration No. PB-11-AZ-2649 (hereinafter to be referred as 'the offending vehicle'), being driven by respondent No.1 in a rash and negligent manner, came from the opposite side and struck the motorcycle of

the deceased. As a result of the said accident, Anwar Khan fell on the road and received injuries. Anwar Khan was taken to the Civil Hospital, Nabha; from where he was referred to Government Rajindra Hospital, Patiala. However, at Patiala the doctors declared him as 'brought dead'. Therefore, it was claimed that the death had happened due to rash and negligent driving of the driver of the offending car.

3. The written statements were filed by the respondents. Respondents No. 1 and 2 have pleaded that although the FIR had been lodged against them but the car is not involved in this accident. It has been further pleaded that the claimants have no relation with deceased Anwar Khan. Respondent No. 3 also filed written statement taking preliminary objections as usual. However, it was pleaded by the Insurance Company that the driver was not holding a valid and effective driving license at the time of accident in question. It was further pleaded by the respondent-Insurance Company that accident in question was caused due to rash and negligent driving of the driver of the motorcycle. So, the insurance Company had taken a plea of the contributory negligence of the deceased in the accident.

4. The parties led their respective evidence. The claimants examined the eyewitness of the accident PW-1, Salim Khan and other witnesses to show the accident in question; as well as the relation of the claimants with the deceased. Respondent No. 4 has herself stepped into the witness box as RW-3 to claim her status as legal representative of deceased-Anwar Khan. Besides this, for the

same purpose RW-1, Shankar Kumar and RW-2, Mohd. Aslam were also examined. However, the Insurance Company did not lead any oral evidence. Copy of the driving license, registration certificate and the insurance policy were placed on record by respondents No. 1 and 2.

5. After appreciating the evidence and statements of the witnesses, the Tribunal held that the offending vehicle was negligent and the accident happened due to rash and negligent driving of the driver of the offending vehicle. Still further, the Tribunal held that the deceased was of 37 years of age and accordingly, multiplier of 15 would be applied in this case. The notional income of the deceased was assessed to be ₹7,000/- per month since it had come on record that deceased used to take construction work of the houses and buildings on contract. However, the income of the deceased claimed by the claimant was not accepted on the ground that the relevant documents were not produced. It was further held that both the claimants as well as performa respondent No. 4 were proved to be dependent upon deceased-Anwar Khan at the time of accident in question. Therefore, 1/3rd deduction from the total income was made by the Tribunal on account of personal expenses. The driver of the offending vehicle was held to be having a valid driving license and the vehicle was held insured by the respondent-Insurance Company.

6. As per the above said criteria, the claimants were awarded ₹8,40,000/- on account of loss of income on the basis of notional income of ₹7,000/- per month, after deduction of 1/3rd and by

applying multiplier of 15. Besides this, funeral expenses of ₹25,000/- was awarded; ₹1,00,000/- was awarded as compensation on account of loss of consortium and ₹1,00,000/- was awarded on account of loss of love and affection. Hence, a total of ₹10,65,000/- was awarded as compensation by the Tribunal.

7. Assailing the award, learned counsel for the appellant has submitted that since the accident in question was a head-on-collision, therefore, it was the case of contributory negligence. To support his argument, he relied upon the judgment of the Hon'ble Supreme Court rendered in ***Bijoy Kumar Dugar Versus Bidyadhar Dutta and others, 2006(2) RCR (Civil) 590***. Learned counsel for the appellants has further argued that the award has wrongly held more legal representatives than the number of claimants as entitled to compensation. Therefore, it is his argument that if some of the claimants were excluded then deduction on account of personal expenses would increase and, therefore, lesser amount would be awarded to the claimants.

8. However, this Court does not find any merit in the point raised by learned counsel for the appellant. Merely because, it is head-on collision or the vehicle coming from opposite sides collide with each other does not show that it was a case of contributory negligence of drivers of both the vehicles. It is quite possible that one vehicle tries his best to avoid the collision but still the other vehicle coming from the front side strike against the vehicle due to rashness in its driving or by sheer mechanical failure. Therefore,

the plea of negligence on the part of the driver of the vehicle of the deceased is a question of fact; which was required to be proved by the Insurance Company by leading positive evidence in the form of oral or documentary evidence. However, the Insurance Company has not led any evidence to prove how there was some negligence on the part of the deceased. The judgment relied upon by the learned counsel for the appellant is of no help to his case. The judgment of the Supreme Court is distinguishable from the present case on its facts. The Hon'ble Supreme Court in that case had held that findings of contributory negligence recorded by the Tribunal on the basis of the evidence in that case was a finding of fact and, therefore, the Hon'ble Supreme Court did not find any cogent and convincing reason to interfere with the well reasoned order of the Motor Accident Claims Tribunal on the point of contributory negligence. On the contrary, in the present case the Tribunal has recorded a finding that; in fact, it was the driver of the offending vehicle which was responsible for the accident. It is further recorded that despite lengthy cross examination nothing adverse could be extracted from the eyewitness to the contrary. Otherwise also, as stated above, the Insurance company, who asserted the factum of the contributory negligence did not lead any evidence whatsoever to substantiate its plea taken by it in its written statement. Therefore, the very plea of the Insurance Company has not been owned by it in the evidence; by not examining any witness to support the pleadings.

9. In view of the above, this Court does not find any perversity in the

finding of the Tribunal on the point of negligence of the driver of the offending vehicle.

10. The next argument raised by the learned counsel for the appellant regarding excluding some of the legal representatives from the list of the claimants; held entitled to receive compensation, is also liable to be rejected outrightly. The finding of the Tribunal recording the status of the parties as entitled to receive compensation is based on evidence led by the respective parties. Merely because, the Insurance Company would have got some benefit because of the lesser number of the claimants in the case; is no ground to discard marital status of one of the parties in the proceedings, which otherwise has been held to be proved as per the evidence on the file. Therefore, this plea of the learned counsel for the appellant is also rejected.

11. No other point was argued.

12. In view of the above, it is held that there is no illegality and perversity in the findings recorded by the Tribunal qua the liability of the respondent-Insurance Company. Hence, the present appeal is dismissed being devoid of any merit.

7th September, 2017 **[RAJBIR SEHRAWAT]**
shabha **JUDGE**

Whether speaking/reasoned - Yes
Whether reportable - Yes