IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 4886 of 2017 (O&M)
Date of decision: 29.08.2017

ICICI Lombard General Insurance Company Limited .... Appellant

Versus

Dev Kumar and others ....Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Sanjeev Goyal, Advocate
for the appellant

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Rekha Mittal, J.

The present appeal directs challenge against award dated 15.05.2017 passed by the Motor Accidents Claims Tribunal, Hisar (in short, 'the Tribunal') in regard to death of Sher Singh, father of the claimants in a motor vehicular accident that took place on 28.10.2014.

Counsel for the appellant-insurance company has sought to assail the award primarily on two counts. The first submission made by counsel is that as the claimants are adult sons of the deceased and were not dependent on income of the deceased, the Tribunal has erred in granting compensation to them.

Another submission made by counsel is that as driver of the alleged offending vehicle was not holding a valid driving licence, insurance company is liable to be exonerated of its liability to pay compensation or in the alternative, it is entitled to have recovery right against the insured after satisfying the award towards the claimants, if compensation assessed by the Tribunal is affirmed by the Court. To bring home his contention, he has relied upon verification report Ex R4 which was received under the Right to Information Act 2005. In addition, it is argued that as Jaibir Singh, driver is a resident of Bazirpur Dadhya, Tehsil Beri, District Jhajjar, he possibly could not get a driving licence from an authority at Nagaland in view of the provisions of Section 9 of the Motor Vehicles Act, 1988 (in short, the Act).

I have heard counsel for the appellant and perused the paper book particularly the award impugned.

The Tribunal, on a detailed consideration of issue with regard to entitlement of the claimants to get compensation in the light of judgments cited by counsel for the contesting parties, has arrived at a conclusion that the claimants being the sons of Sher Singh (since deceased) are entitled to get compensation qua loss of estate and they have been awarded an amount of Rs.2,00,000.00 towards loss of estate.

Counsel for the appellant has failed to cite any precedent that sons of a deceased, victim of motor vehicular accident even if gainfully employed cannot be allowed compensation qua loss of estate as they have been Class I heirs of their father under the Hindu Succession Act, 1956. Rather Hon'ble the Supreme Court of India in ***Gujarat State Road Transport Corporation, Ahmedabad v. Raman Bhai Prabhatbhai and another, AIR 1987 (SC) 1690*** while dealing with issue of legal representative of a deceased and entitlement of a brother to file an application for compensation has approved judgment of the Gujarat High Court ***Megjibhai Khimji Vira v. Chaturbhai Taljabhai, AIR 1977***

(Gujarat) 195 by holding that the view taken by Gurjarat High Court is in consonance with the principles of justice, equity and good conscious having regard to the conditions of the Indian Society. Every legal representative who suffers on account of death of a person due to a motor vehicular accident should have a remedy for realization of compensation and that is provided by Section 110-A to 110-F of the Motor Vehicles Act. These provisions are in consonance with the principles of law of torts that every injury must have a remedy. The same view was reiterated by Hon'ble the Supreme Court in ***Montford Brothers of St. Gabriel and another v. United India Insurance and another etc. 2014 ACJ (SC) 667***. In this view of the matter, I do not find any error much less illegality in findings of the Tribunal awarding compensation in favour of the claimants.

This brings the Court to the second issue with regard to driving licence of driver of the offending vehicle. The Tribunal in para 17 of the award under the heading, *who is liable to pay compensation*, has discussed in detail evidential value of statement of RW1 and verification report Ex.R4. A relevant extract therefrom reads as follows:-

> "Perusal of evidence of RW1 shows that he had asserted that vide verification report sought under RTI (Ex.R4) which was got through Dr. R K Dhowal, Investigation Officer, it was reported that no record of driving licence were found with Licensing Authority. Ex.R4 verification report relied upon by insurance company goes to show that Public Information Officer had conveyed their inability to provide any information or to verify the genuineness of said driving licence. Cross examination of RW1 goes to show that no date of issuance of driving

> licence was mentioned in RTI application. Even the name of person in whose favour driving licence was issued was not mentioned in RTI application. This goes to show that RTI application Ex.R5 by insurance company was without complete details. In absence of complete details response of Licensing Authority that no report regarding genuineness of licence can be given goes against the case of respondent No. 3 as onus to prove that respondent No. 1 was not having valid driving licence was upon respondent No. 3. Respondent No. 3 has failed to discharge said onus. In view of failure of respondent No. 3 to prove that respondent No. 1 was driving offending vehicle without any valid licence respondent No. 3 cannot be permitted to avoid its liability."

Counsel for the appellant has nothing to submit to challenge the factual findings recorded by the Tribunal. Admittedly, the insurance company has not examined an official from the Licencing Authority along with record to prove that licence Ex R2 was not issued by the authority concerned. In view of the observations made by the Tribunal coupled with failure of insurance company to examine an official of the concerned authority, there is no justifiable reason to differ with the findings recorded by the Tribunal that the insurance company has failed to discharge onus that driver was not holding a valid driving licence.

Counsel for the appellant has sought to assail findings of the Tribunal in regard to driving licence by raising an additional ground on the basis of Section 9 of the Act. The insurance company did not examine driver of the offending vehicle to seek his explanation as to what was his residential status at the time when licence was issued to him by concerned authority at Nagaland or circumstances under which he could submit an application with the authority concerned for issuance of a driving licence. In absence of insurance company having adduced such an evidence, it cannot derive any advantage to its contention from the provisions of Section 9 of the Act to contend that Licence Ex.R2 is not a valid licence.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

29.08.2017
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No