IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 17.08.2017

FAO No.5060 of 2017 (O&M)

Reliance General Insurance Company Ltd. ...Appellant

Vs.

Savitri Devi & another ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Suman Jain, Advocate, for the appellant.

RAJIV NARAIN RAINA, J.

1. It appears from the record that the deceased – Jitender was sitting on the tractor bearing Registration No.HR-13C-9073 on the fateful day driven by Mahesh, who was also the owner of the tractor insured with the appellant – Insurance Company. The license to drive a tractor was valid and the vehicle was injured when the fatal accident took place on 11.02.2016. The tractor was plying on road with men on board when Jitender (deceased) sitting on the mudguard fell to be crushed by the tyre of the trolley. Unfortunately, he died due to injuries sustained in the accident. That is how the case was born.

2. Also, an FIR bearing No.86 dated 12.02.2016, in this regard, was registered at Police Station Jhajjar under Sections 279 and 304-A IPC on a statement made by complainant Ashwani, who was an eye-witness and would later depose in favour of the claimant i.e. the mother of the deceased as PW-2 to support the reconstruction of the incident in the Tribunal by oral

testimony of events which lead to the untimely death of Jitender in a fatal motor accident in the prime of youth aged about 27 years as per the post-mortem report.

3. Though there was no definite proof of income of the deceased, but the deceased appeared to hold the qualification of an ITI Diploma certificate (Ex.P2) with the National Trade Certificate (Ex.P3) to boot. The Motor Accident Claims Tribunal, Jhajjar assessed the monthly income at ₹7000/- per month, a sum which I hold does not warrant interference as that would be also the approximate to the minimum wages fixed for manual work per month in the year of death. The multiplier of 17 has been applied with the net income assessed at ₹84,000/- (7000x12) out of which half was deducted by the Tribunal as personal expenses of the deceased in relation to his assumed income relying upon the Supreme Court ruling in <u>Sarla Verma (Smt.) & others Vs. Delhi Transport Corporation & another, (2009) 6 SCC 121</u>, which comes to ₹42,000/- standardizing compensation packages.

4. I do not think that the Tribunal committed any patent illegality in reducing net income by half and not 1/3rd during the approximate social and economic status of the family at the time of death where there was only one claimant, the mother, leading a rural life in her son's avocation as adjunct help to a brick-kiln and loading of bricks on the tractor trolley as is suggested from the evidence by the opposite parties trying to deny the claim.

5. In these circumstances as far as income is concerned, the deceased may not have had to spend more than half of his income on himself with no profligate spending or rural social milieu he was accustomed and born into and therefore the deduction is in order.

6. Further, the Tribunal has awarded ₹1 lakh for loss of old age support to the mother, which is in line with Rajesh Vs. Rajbir Singh, (2013) 9 SCC 54 and is not liable to be interfered with.

7. A sum of ₹25,000/- was given towards funeral and transportation expenses, which also is in order.

8. The liability to pay the awarded compensation has been fastened on the appellant – Insurance Company and the contention that the driving license may have been valid for driving tractor, but at the time of incident, the tractor was attached with a trolley and, therefore, a license for Light Transport Vehicle was required under the Act as deposed by RW-1 Vivek Kumar, Legal Retainer, while appearing on behalf of the Insurance Company as its witness does not appeal to me to make only the owner and driver of the vehicle i.e. tractor as liable.

9. The Tribunal has not agreed to this argument that the tractor trolley was being used for commercial purposes for supply of bricks. The trolley has no separate license and the death occurred as a result of fall while sitting on the tractor which has nothing to do with the trolley except to hook them on. The license was valid till 06.03.2023 for scooter, motorcycle, car jeep and tractor.

10. The version in the FIR was that the deceased Jitender used to load the tractor with material from brick-kiln suppliers of Village Raiya. The Insurance Company brought the attention of the Tribunal to the Insurance Policy Ex.R-6, which contains 'Special Conditions' provided that:- '*this tractor is rated as an agricultural tractor based on information of exclusive use for agricultural purpose provided to the Agent/Sales Manager*'. And for this reason, the Insurance Company would still insist in

appeal flagrant violation of the terms and conditions of the contract of insurance, that if they are breached no compensation is payable at all by the indemnifier company. Terms of an insurance policy have to be strictly construed. It is further contended by the Insurance Company that Jitender (deceased) was sitting on the mudguard of tractor and, therefore, he was an unauthorized passenger and as a result the company is discharged from its liability under the contract of insurance. In this regard, the affidavit (Ex.PW2/A) of PW-2 Ashwani when read shows that the deceased was sitting on non-offending vehicle and Jitender fell down from the tractor and died as a consequence of the fall getting entangled by the wheels of the trolley.

11. The Tribunal noticed the law of this Court in United Indian Insurance Co. Ltd. Vs. Ramji Lal & others, 2012 ACJ 640 holding that person sitting on mudguard of a tractor and suffering death or injury in motor accident as a result of carelessness is a gratuitous and unauthorized passenger who will be disentitled to relief of compensation. His claim in these circumstances is not covered by the requirements of compulsory insurance under Section 147(1) of the Motor Vehicles Act.

12. To understand this issue, it was pointed out by the driver of the vehicle that he had also paid premium for driver/conductor/cleaner, by a comprehensive insurance policy and in any case the FIR version was that deceased Jitender used to do the work of loading bricks and, therefore, he was not the driver/conductor/cleaner of the tractor in question. However, the facts indicate, as asserted by the driver/owner that neither the tractor was being used for agricultural purpose nor the policy of tractor covers two persons.

13. In the main and without expressing any final opinion on the rights and liabilities of the owner/driver, since he is not in appeal, prima facie, it appears to me as correct that the Tribunal found Issue No.3 i.e. whether respondent No.1 was not holding a valid and effective license at the time of accident, on the evidence on record, against the Insurance Company and in favour of claimants and I would support the Tribunal, in placing sufficient safeguards in the way of the rights of the Insurance Company to recover the compensation from the 1st respondent, but with a liability, in the first instance, to pay the compensation awarded. This would be subject to appeal, if brought by the non-appellant owner under policy cover of insurance.

14. Accordingly, the award of compensation has been made by the Tribunal entitling the claimant to ₹8,39,000/- with interest at the rate of 7.5% per annum from the date of filing the petition till realization over the awarded sum. In my considered view recovery rights have been properly granted to the Insurance Company even if the deceased was a gratuitous passenger covered under Section 147 of the Motor Vehicles Act, 1988 which is in line with the numerous decisions including the one cited by Mr. Jain in Oriental Insurance Co. ltd. Vs. Brij Mohan & others, (2007) 7 SCC 56.

15. In the matter of dividing the compensation amount and its apportionment amongst the claimants, the Tribunal has rightly released a sum of ₹5 lakh to the mother in cash and the balance to be deposited in a nationalized bank for a period of three years in fixed deposit to earn interest thereon.

16. Moreover, if the mother needs the amount deposited in the Bank for her necessity as owner of the amount, she will be at liberty to make

an appropriate application to the Tribunal in case of legal necessity before maturity of the deposit, which if applied for shall be decided by the Tribunal in accordance with law, but keeping in mind that the compensation sum belongs to the mother and none else has any right on it.

17. I have hardly any reason to interfere in the well reasoned award on all the aspects and would dismiss the appeal.

18. Accordingly, order is pronounced which was reserved.

17.08.2017 **[RAJIV NARAIN RAINA]**
Vimal **JUDGE**

Whether speaking/reasoned: *Yes*
Whether Reportable: *No*