IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5246 of 2017
Date of Decision.17.11.2017

National Insurance Company Ltd. ....Appellant

Vs

Kamla Devi and others ....Respondents

Present: Mr. Rajbir Wasu, Advocate
for the appellant.

Mr. Vijay Lath, Advocate
for respondent Nos.1 and 2.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

Mr. Vijay Lath, Advocate has put in appearance on behalf of the claimants. Both the parties are *ad idem* that since the evidence of the eye-witness is referred, the appeal can be disposed of without summoning the other record.

Owing to the aforementioned request, I proceed to dispose of the appeal.

Mr. Wasu, learned counsel appearing on behalf of the appellant-insurance company submits that the Tribunal has committed illegality and perversity in awarding the compensation on account of death of Tarlochan Kumar, who was aged 21 years at the time of accident occurred on 29.12.2014 at about 5 pm with a jeep bearing registration No.HR-01Q-3493 driven by Ravinder Singh and owned by Mohan and Subhash i.e. respondent Nos.3, 4 and 5 respectively in the present appeal. In order to lend support to the memorandum of appeal, he raised the following arguments:-

(i) the claimants have not been able to establish the rash and negligent driving of the scorpio jeep as the eye witness examined by the claimants namely Paramjit Singh, AW2 did not support the claim of the claimants *viz-a-viz* the involvement of the scorpio and therefore, the insurance company being insurer of the scorpio jeep is not liable to indemnify the owner as the same was not involved in the accident.

(ii) AW2 was not even coherent and consistent and subjected to extensive cross-examination *viz-a-viz* the registration number of the motor cycle driven by the deceased at the time of accident.

All these factors if taken conjunctively, the claim petition was liable to be dismissed.

Even assuming that the scorpio jeep was involved in the accident, the amount of compensation awarded by the Tribunal by taking 50% future prospect is against the ratio decidendi culled out by Hon'ble Supreme Court in ***National Insurance Company Limited Versus Pranay Sethi and Ors.*** passed in Special Leave Petition (Civil) No.25590 OF 2014 on 31.10.2017 and the amount of ₹1 lac each for loss of love and affection to the parents, ₹1 lac for loss of consortium to respondent No.1 and ₹25,000/- for funeral expenses are on higher side. The deduction of 1/3rd towards personal expenses is also on the higher side whereas it should have been one half, as the deceased was a bachelor, thus, urges this court for reduction of amount of compensation.

Mr. Vijay Lath, learned counsel appearing on behalf of the claimants submits that he does not dispute the plea of insurance company with regard to amount of compensation calculated by the Tribunal, in view of the ratio decidendi culled out by Hon'ble Supreme Court in ***Pranay Sethi's case*** (supra). As regards the involvement of the vehicle, he stated that examination-in-chief and cross-examination of AW2, if read conjunctively, it surfaced that the eye-witness had seen the accident from a short distance and mere discrepancies here and there would not non-suit the claimants from claiming the compensation, on the premise of not establishing the rash and negligent driving of the scorpio vehicle. In fact, there was not even a single suggestion of non-involvement of the scorpio vehicle, thus, urges this court for dismissal of the appeal qua liability.

I have heard learned counsel for the parties and appraised the paper book. As regards the non-involvement of the scorpio vehicle, I am of the view that the mode and tenor of examination-in-chief and cross-examination of Paramjit Singh, AW2, if read conjunctively, reveals that not even a single suggestion has been put that the scorpio vehicle bearing registration No.HR-01Q-3493 was not involved. Nothing prevented the insurance company to summon the file from the Criminal Court where purportedly challan had been filed against the driver of the vehicle, place on record the mechanical report or site plan in support of its plea of non-involvement of the vehicle in the accident. Having failed to so, in my view, the insurance company has not been able to rebut the evidence led by the claimants, therefore, not discharged the onus.

As regards the issue of quantum, I will re-assess the compensation as per the ratio decidendi culled out by Hon'ble Supreme Court in ***Pranay Sethi's case*** (supra). I will take the income of the deceased as ₹6600/- per month as assessed by the Tribunal and increase the same to the extent of 40% as future prospects, apply a deduction of one half towards personal expenses and apply a multiplier of 18 to assess the loss of dependency as ₹9,97,920/-. I will further add to it ₹15,000/- for loss of estate and ₹15,000/- for funeral expenses.

In sum, the compensation payable shall be ₹10,27,920/-. Therefore, the insurance company shall be liable to satisfy a sum of ₹10,27,920/- only along with interest @7% per annum from the date of filing of the claim petition till its realization. Any amount deposited by the insurance company before the Tribunal and the amount of ₹25,000/- deposited before this Court at the time of filing of the appeal shall be adjusted against the part payment of the aforementioned amount of compensation. The aforementioned amount shall be distributed equally between the claimants.

For the reasons aforementioned, I uphold the award passed by the Tribunal qua liability of the insurance company and modify the same on the issue of quantum by reducing the amount of compensation as ₹10,27,920/- along with interest as mentioned above. Resultantly, the appeal filed by the insurance company is partly allowed.

(AMIT RAWAL)
JUDGE

November 17, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No