

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5462 of 2017 (O&M)
Date of Decision: 22.08.2017

Reliance General Insurance Company
Limited

... Appellant

Versus

Paramjit Kaur and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

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

RAJIV NARAIN RAINA, J.

1. This is an appeal by the Insurance Company against the award of the Motor Accident Claims Tribunal, Jalandhar dated April 29, 2017. The claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 by the claimants on account of death of Ms. Surpreet Kaur, a minor girl aged 7 years and 8 months at the time of accident which led to premature death due to injuries suffered on the head as confirmed by the Post Mortem Report Ex.P-C.

2. The child was commuting with her family in an auto rickshaw on their way to attend a Bhog ceremony when the auto rickshaw driver lost control of the vehicle and struck an Alto car resulting in the accident where some passengers suffered injuries while the little girl succumbed to the injuries suffered in the accident.

3. The Tribunal has awarded ₹3.75 lakh as compensation with

interest @7.5% per annum from the date of filing of the claim petition i.e. August 31, 2016 till realization which amount comprises 1 lakh for loss of love and affection; 1 lakh as loss of future prospects of minor; ₹50,000/- under no fault liability and ₹25,000/- as funeral expenses.

4. There is no dispute that the auto rickshaw driver held a valid licence. He is facing criminal trial in FIR No.91 dated July 27, 2016 registered at Police Station Laddowal under Sections 279, 337, 338, 427 and 304-A of the IPC. Ajit Singh respondent No.1 was the driver and owner of the offending vehicle and has been held liable to make payment of the compensation with the appellant-Company's liability being joint and several.

5. Finding of rash and negligent driving has been recorded by the learned Tribunal on a presumption that when driver of offending vehicle is facing criminal trial, prima facie, it can be presumed that he is responsible for the accident. Besides, the learned Tribunal noticed that due to non-stepping into the witness box before the Tribunal by driver Ajit Singh an adverse inference is to be drawn against him. For this proposition, the Tribunal drew strength from the decision of this Court in National Insurance Company Limited v. Sanjay Kumar and others, II (2011) ACC 75.

6. The argument that prospective income in the case of a child of 8 years should not have been granted is not an argument worth acceptance. The Tribunal has determined notional income of a child although she was not in age of earning capacity. Had she lived, she would spend some amount on herself although from pocket money from parents. Moreover, the loss of a girl child of 8 years is a severe blow to the family left behind leaving a permanent scar on the hearts and minds of the family and relatives. A

tragedy which leaves the family in a psychiatric shock.

7. The learned counsel for the appellant insurer company has relied on Surender Kumar Arora and another v. Dr. Manoj Bisla and others, (2012) 4 SCC 552 arguing that the petition was filed under Section 166 by the parents and not under Section 163-A and, therefore, the entire responsibility of proving the act of rash and negligent driving by the driver of the vehicle was on the claimants. If cogent evidence was not adduced then the Courts would be justified in rejecting the claim petition.

8. This argument is not tenable since the Tribunal has only awarded ₹50,000/- under no fault liability and has, therefore, aptly moulded the relief.

9. I find no infirmity at all in the well considered and balanced award of the Tribunal and would dismiss this appeal in limine.

(RAJIV NARAIN RAINA)
JUDGE

22.08.2017
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Whether speaking/reasoned Yes

Whether reportable No