IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2672 of 2005 (O&M)

Date of Decision : 31.08.2018

Gian Singh and another

..... Appellants

Versus

Smt. Kulvinder Kaur and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present :- Mr. Bhupinder Singh Walia, Advocate for the appellants.

Appeal qua respondent Nos.1 to 4 stands dismissed, vide order dated 27.05.2005.

Mr. V.K. Garg, Advocate for respondent No.5/Insurance Co.

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MAHABIR SINGH SINDHU, J.

Present appeal has been filed under Section 173 of the Motor Vehicle Act, 1988 *(for short 'Act')* by the owner and driver of Harvesting Combine No.PIS-5293 *(for short 'offending vehicle')* against the impugned Award dated 09.04.2002, passed by learned Motor Accident Claims Tribunal, Fatehabad *(for short 'Tribunal')*, thereby granting the compensation of ₹ 3,47,000/- (Three Lakh Forty Seven Thousand) along with interest @ 9% per annum to the claimants (respondents Nos.1 to 4 herein) with the liberty that respondent No.5-Insurer shall be entitled to recover the same from the present appellants.

(2) Brief facts of the case are that claimants/respondent Nos.1 to 4 filed a Claim Petition under Section 163-A of the Act on account of death of

Ravinder Singh @ Harvinder Singh (*for short 'deceased'*) in a motor-vehicular accident occurred on 21.04.1999. It is averred that deceased as well as appellant No.2-Surjit Singh were deployed by appellant No.1-Gian Singh (owner of offending vehicle) as helper and driver respectively with the offending vehicle. On 21.04.1999, appellant No.2 along with deceased, Balbir Singh, Tarsem Singh and Sahib Singh were going from Village Sadhanwas to Village Hardflora, Police Station, Jalandhar while riding the offending vehicle. When they reached near Satluj river, a bus came from back side and to give side to the said bus, appellant No.2 moved the offending vehicle towards left side of the road and in the process, its steering became inoperative and as a result thereof, it hit against Safeda (eucalyptus) tree and fell into a ditch.

On account of accident, deceased as well as Balbir Singh suffered injuries, but unfortunately, deceased could not survive and died on the spot. His dead body was taken to Dayanand Medical College & Hospital, Ludhiana and Post Mortem was conducted. It was averred in the claim petition that deceased was getting a salary of ₹ 3500/- (Thirty Five Hundred) per month plus daily allowance of ₹ 20/- from appellant No.1.

(3) Upon notice, appellant Nos.1 and 2 filed joint written statement and raised preliminary objections, *inter alia,* regarding the maintainability, non-joinder, mis-joinder of necessary parties, locus standi, cause of action etc.

On merits, although, the factum of accident in question was admitted, but denied that same had taken place on account of negligence of appellant No.2; rather it was pleaded that everything happened as an act of God i.e. due to a technical defect with the offending vehicle and not on account of fault of appellant No.2.

Respondent No.5-Insurance Company filed separate reply and raised preliminary objections, *inter alia,* collusion by claimants/respondent Nos.1 to 4 with present appellants, registration of the offending vehicle in favour of appellant No.1 and valid driving license by appellant No.2/driver at the time of accident. Further submitted that offending vehicle was being driven in contravention of the terms and conditions of the Insurance Policy and the claim has been made on the higher side.

(4) On the basis of the pleadings of both the sides, learned Tribunal has framed the following issues:-

1. *Whether Ravinder Singh @ Harvinder Singh died and Balbir Singh, petitioner received injuries due to rash and negligent driving of combine no.PIS-5293 by respondent No.2? If so, to what effect? OPP.*
2. *Whether the petitioners are entitled to compensation? If so, to what amount and from whom ? OPP.*
3. *Whether respondent No.2 was not holding a valid driving licence at the time of accident? If so, to what effect? OPR 3.*
4. *Relief.*

Impugned award reveals that in order to prove their case, claimants/respondent Nos.1 to 4 examined Kulvinder Kaur as PW-1 and produced documentary evidence i.e. copy of DDR (Ex.P-1) and Post Mortem Report (Ex.P-2).

On the other hand, appellant No.2-Surjit Singh (Driver) appeared as RW-1 and appellant No.1-Gian Singh (owner) as RW-2.

Respondent No.5-Insurance Company produced Insurance Policy of offending vehicle as Ex.R-1 and driving license of appellant No.2/driver as Ex.R-2.

Learned Tribunal, while deciding Issue No.1, came to the conclusion that deceased died in the accident in question on account of rash and negligent driving of offending vehicle by appellant No.2.

While deciding Issue No.2, learned Tribunal awarded compensation of ₹ 3,47,000/- to the claimants (respondent Nos.1 to 4 herein) along with interest @ 9% per annum from the date of the filing of the petition till its realization.

Learned Tribunal found that offending vehicle was duly insured with respondent No.5/Insurance Company, but as per the Policy (Ex.R-1), there was a sitting capacity of only one person i.e. driver and at the time of accident, deceased, Balbir Singh, Tarsem Singh and Sahib Singh were riding the offending vehicle and as such, the same was in breach of terms and conditions of the Insurance Policy. As a result thereof, learned Tribunal came to the conclusion that Insurance Company is not liable to pay the compensation and both the appellants (owner and driver of the offending vehicle) were held liable for the payment of compensation, but at the same time, Insurer was directed to pay the same to the claimants, but liberty was granted to the Insurance Company to recover the same from both the appellants.

(5) It is argued by learned Counsel for the appellants that deceased was travelling in the offending vehicle as a helper and not in the gratuitous capacity. Further argued that there was no breach of any terms and conditions of the Insurance Policy and, therefore, learned Tribunal has wrongly granted the recovery rights against the appellants.

On the other hand, learned Counsel for the Insurance Company submitted that recovery rights, granted by learned Tribunal against the present appellants, are perfectly legal and justified and present appeal deserves to be dismissed.

(6) Heard arguments from both sides and perused the paper-book.

(7) It deserves to be mentioned here that no record of learned Tribunal is available with the case file as this case was burnt as per the report of the Registry on account of the fire incident, that had taken place in this Court in January, 2011.

In view of the above factual position, on 20.08.2018, learned Counsel for respondent No.5/Insurance company undertook to supply photocopy of the record, whatever was available with him, but he has only supplied the copy of paper-book containing grounds of appeal and impugned award to the Registry of this Court. Even during the course of hearing also, both sides were requested to supply the photocopy of the record of learned Tribunal, if available with them, but both have shown their inability. Resultantly, this Court has no option except to decide the matter on the basis of contentions of the parties, coupled with grounds of appeal and impugned award being an old matter.

(8) It transpires from the impugned award that deceased was deployed as a helper with the offending vehicle by appellant No.1, whereas appellant No.2 was working as driver. Therefore, at least, it cannot be construed that deceased was travelling in the capacity of a gratuitous passenger with appellant No.2, rather it is amply proved that he was accompanying him on instructions from appellant No.1 who was his employer. Still further, learned Tribunal, in paragraph 13 of the impugned award, has observed that as per the Insurance Policy (Ex.R-1), the sitting capacity of the offending vehicle was only for one person i.e. driver, whereas in the written statement, filed by appellants, it is admitted that Balbir Singh, Tarsem Singh and Sahib Singh were also riding the offending vehicle at the time of accident. Therefore, learned Tribunal has rightly come to the conclusion that it amounts to violation of the terms and conditions of the Insurance Policy and in the absence of any record i.e. Insurance Policy (Ex.R-1) or written statement, filed by appellant No.2, this Court has no option except to agree with the conclusion drawn by learned Tribunal. It needs to be clarified that this is not the case of the appellants that there was no fundamental breach of the Policy, but it is contended that there was no breach of Policy at all.

(9) As noticed at the outset of this order, the claim petition was filed by respondent Nos.1 to 4/claimants under Section 163-A of the Act and relevant part of which is extracted hereinbelow:-

> *“ **163A. Special provisions as to payment of compensation on structured formula basis:-** (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be. ”*

From the perusal of sub-Section 1 of Section 163-A of the Act, it is apparently clear that in case of death or permanent disablement on account of an accident, the owner of the motor vehicle or the authorized insurer shall be liable for the compensation and it does not talk about the liability of the driver at all. Therefore, learned Tribunal has wrongly fastened the liability of appellant No.2, being driver of the offending vehicle and granted the consequent recovery rights in favour of the Insurance Company qua him also.

At the same time, this Court does not find any ground to interfere with the liability of appellant No.1 i.e. owner as well as recovery rights against him as neither the Policy (Ex.R-1); nor written statement filed by the appellants is on record. Even no material has been shown to this Court at the time of hearing also for taking a different view as expressed by learned Tribunal.

As a result thereof, the appeal qua appellant No.2/driver is allowed and impugned award, fastening his liability is set aside. Appeal on behalf of appellant No.1/owner is dismissed and he will be liable for payment of entire compensation, as awarded by learned Tribunal and the same can be recovered from him by the Insurer as per law.

Disposed off accordingly.

August 31, 2018 **(MAHABIR SINGH SINDHU)**
dkp/Gagan **JUDGE**

Whether speaking/reasoned	*Yes*
Whether Reportable	*Yes*