IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1809 of 2008 (O&M)
Date of Decision: January 09, 2018

Oriental Insurance Co. Ltd.

..Appellant(s)

Versus

Jasbir Kaur and others

..Respondent(s)

with

FAO No. 4640 of 2008 (O&M)

Jasbir Kaur and another

..Appellant(s)

Versus

Jit Bachan and others

..Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Ashwani Talwar, Advocate for
Mr. Akash Sridhar, Advocate
for the appellant.

Mr. Mohit Garg, Advocate
for respondents 1 & 3.

Mr. Rahul Makkar, Advocate for
Mr. L.M. Gulati, Advocate
for respondents no.4 & 5.

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ANITA CHAUDHRY, J.

Delay in filing and refiling of appeal(s) condoned.

These are two appeals, one filed by the insurance company and other by the claimants against the award dated 20.11.2007, passed by the Motor Accident Claims Tribunal, Patiala (here-in-after referred to as the Tribunal).

The facts need to be enumerated in detail. Ajit Singh a Peon with Punjabi University was proceeding on his Kinetic Honda scooter from Urban Estate, Patiala towards Telephone Exchange on 14.05.2003. His son Varinderpal Singh was following him on a separate scooter. At about 4:00 PM when Ajit was near the water tank of Phase-II on Rajpura - Patiala Road, a car driven by respondent no.1 came in a rash and negligent manner from the link road side and left side of the deceased and hit the scooter, as a result he fell down and sustained injuries and later succumbed to the injuries.

Respondents no.1 & 2(b) denied the accident and pleaded that the scooter skidded and they had taken the injured to a clinic on humanitarian grounds for first aid and thereafter he was taken to Amar Hospital. It was pleaded that Ajit was over 60 years of age and he was driving the scooter negligently and at a high speed and when he saw the car ahead of him he got nervous and suddenly applied brakes and his scooter skidded. It was pleaded that respondent no.1 along with his father saw the scooterist falling on the road and stopped their car and took him to the clinic and his son was called and thereafter he was rushed to Amar Hospital in their car and no accident had taken place and false case had been registered. It was pleaded that they had been falsely implicated and the special staff of the Crime Branch had found that the case was false and had recommended its cancellation.

The insurance company denied the accident and pleaded that the policy had been procured after the accident.

The Tribunal accepted the statement of the son and held that respondent no.1 had caused the accident. The statement of RW-3 was rejected.

The Tribunal had taken the income of the deceased at Rs.5,000/- per month. One third was deducted towards personal expenses and multiplier of 8 was applied to calculate the compensation of Rs.3,33,400/-. In para 18, there is a reference to the fact that the High Court vide its order dated 25.02.2007 had ordered payment of Rs.10,000/- to the claimant, therefore, that amount was added and an award of Rs.3,43,400/- was passed.

I have heard counsel of both the sides.

The submission on behalf of the insurance company is that it was a case of false implication and they had got the matter investigated and that report was submitted but the Tribunal did not consider it. It was also urged that if it is found that the vehicle was involved then the insurance company has to be exonerated as the insurance had been taken after the accident and there is ample material on the record in this regard. It was urged that the accident had taken place at Patiala at 4:00 PM and according to owner the vehicle was at Ludhiana and the cover note was issued at 2:50 PM and a perusal of the policy would show that it does not contain the details of the chassis number or engine number and there is no reference to the earlier insurance policy and had there been detail of an earlier policy then the surveyor was not required to examine the vehicle and but as there is no reference to the earlier policy, therefore, the survey was a must, it was not carried out that day. It was urged that the distance between Ludhiana and Patiala is over 90 kilometers and takes over one and a half hour and the vehicle could not have reached Patiala by 4:00 PM. It was urged that the uncle of the driver is a DSP and it appears that some help had been received and the FIR was later sent for cancellation. It was urged that a perusal of Ex. R-2 would show that it does not have the agent number and the premium had been deposited the next day and had the amount been paid before 3:00 PM, it would have been deposited in the bank the same day.

The submission on behalf of the owner-driver was that it was a case of false implication and no accident had occurred with the car and there is a delay in lodging the FIR and they have made a complaint to the Human Right Commission and the police had also carried out its investigation and had found that it was a false case and on the basis of the report submitted by the police his complaint was disposed of and the report and the statements were tendered in evidence.

The submission on behalf of the claimants was that the inquiry report had been procured from the police on account of the influence exercised by uncle of respondent no.1 who is a DSP. It was urged that respondent no.1 had filed an application before the SSP for withdrawal of the case and investigation was carried out by the Superintendent of Police and a report had been given by the SSP, which was sent to Inspector General of Police on 29.03.2004 and this fact has been pleaded in the replication and the report was that Jit Bachan was involved and there were directions to arrest him and there was recommendation for filing of challan but later on it was managed. It was urged that the deceased was a Peon and addition towards future prospects should be made and the multiplier of 11 would apply and addition on the miscellaneous heads should be made as per the latest judgment rendered by Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi*** in SLP (Civil) No.25590 of 2014.

Since there is a serious dispute about the involvement of the vehicle and also whether it was insured after the accident, it is necessary to first refer to the evidence led by the parties.

The claimants had examined Varinderpal Singh author of the FIR. As per the case put up by the claimants, the accident had occurred at 4:00 PM. The FIR was lodged within four hours. Varinderpal Singh had stated that he was following his father on a separate scooter and the accident occurred in front of him. According to him, his father was initially taken to Deep Hospital and was then shifted to Amar Hospital. The FIR records that a call was received from hospital and a police official was deputed to record the statement. There is no dispute with respect to the time and the date of the accident.

The respondents had examined Jit Bachan who in his affidavit has stated that no accident has taken place with his car and it was the deceased who was driving his scooter carelessly and negligently and lost balance and fell down on the road and died on the spot. He has admitted his presence on the spot and had stated that he and his father took the injured to a nearby clinic on humanitarian grounds and thereafter the son of the deceased was called and the injured was taken to Amar Hospital.

The Tribunal had rejected the story put forward by respondent no.1 and a finding was recorded that the vehicle was involved and the accident occurred in the manner disclosed by Varinderpal Singh. The finding has become final as against Jit Bachan as no appeal had been filed by him.

The counsel appearing for the insurance company had urged that the FIR had been cancelled and the vehicle was not involved but this submission cannot be accepted. The FIR was prompt and it is difficult to believe that a person who helps another in the time of need would have been arrayed as an accused just to claim compensation. It could be that Jit Bachan after the accident assisted them as he was foreseeing a problem on account of the accident, therefore he lent a helping hand to shift the injured to the hospital. The involvement of the vehicle is proved. The mere fact that the police cancelled the FIR does not make a difference. It has come in evidence that the uncle of Jit Bachan was a DSP and some help had come in and they got the FIR cancelled. The Tribunal had correctly assessed the evidence and had relied upon the statement of Varinderpal who is the author of the FIR and the Tribunal had rightly recorded a finding that the car was involved in the accident and the death occurred on account of the accident caused by Jit Bachan.

Dealing with the appeal filed by the insurance Company first, it is now to be examined as to whether the vehicle had been insured prior to the accident or after the accident. Copy of the registration certificate shows that the year of manufacture of the car is 1998. The accident had occurred in May 2003. The policy on which the owner has relied upon shows the date of issuance of cover note as 14.05.2003 i.e. the same date on which the accident occurred. The time indicated is 2:50 PM. The engine number and the chassis number are not mentioned.

The argument led on behalf of the insurance company was that had the vehicle been insured prior to the accident then the details of the vehicle would have found a reference in the policy or on the cover note and it can be assumed that the vehicle was not insured prior to 14.05.2003 and it would have required a personal survey by their official.

The insurance company had got an inquiry conducted through their investigator and the investigator's report was introduced in evidence, which reveals that the agent's code number was mentioned on the cover note but the agent had denied that the cover note was written by her. Somebody else had used the agent's code on the cover note falsely. The Branch Manager had admitted his signatures on the cover note and he had made a statement that the cover note was completed by Dimple Chopra who had been providing business to him and he had not checked the car personally on that day. The Branch Manager did not know who had paid the premium and who got the car insured but he did remember that his signatures were obtained by one Dimple Chopra. The insurance policy was obtained at Ludhiana whereas the accident had taken place in Patiala and it would have taken over 1½ hour to reach Patiala and if the formalities of insurance had been taken place between 2:50 up to 3:30 PM then the car could not reach Patiala by 4:00 PM. The investigator had rightly found a number of lapses in the policy namely there was no proposal form or pre-insurance inspection report. There is no reference of previous insurance. The number of kilometers the car had covered was not mentioned. The engine and chassis number were not found on the cover note or in the policy. No digital photographs were taken. The agent whose number was used had denied that she had issued any policy. All the circumstances point out to the fact that the policy had been obtained after the accident and with someone who wanted to do a favour to the DSP who was related to the owner. The time indicated in the cover note/policy was wrongly mentioned so as to bring the accident under the policy and it is held that the policy had been obtained after the accident and the insurance company would not be liable to pay the compensation. The compensation would be payable by the owner and driver jointly and severally. The finding recorded by the Tribunal on this aspect is reversed.

Now coming the appeal filed by the claimants, the age of Ajit was mentioned as 56 in the postmortem report. The deceased had left behind his widow and two major sons. So it was only the wife who could be said to be a dependent. The deceased was working as a peon in Punjabi University. Considering the salary certificate and keeping into account the fact that there was some deduction on account of some loan, the income can be taken as Rs.5,464/- per month and making an addition of 15% as per latest judgment rendered by Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi*** in SLP (Civil) No.25590 of 2014, the income would be Rs.6,283/- for the purposes of calculation.

The claimants could have easily produced record to prove the age. It appears that it has been intentionally kept away. The age indicated in the PMR would be taken and the multiplier applicable would be 9. Since only the wife was a dependent, the deduction would be 1/2 and the income available for calculations would be Rs.3,142/- per month (rounded off) and the compensation would be Rs.3,142/- x 12 x 9 = Rs.3,39,336/-. Considering that the accident had taken place in 2003, Rs.25,000/- is added for loss of consortium, Rs.5,000/- is added for funeral expenses and Rs.10,000/- for loss of estate and the compensation payable was Rs.3,79,336/-. The Tribunal had allowed Rs.3,43,400/-, which would be deducted. The remaining amount would be payable with interest @ 6% by the owner-driver from the date of filing of appeal. If the insurance company has paid any amount that would be returned by the owner-driver to the insurance company within two months, failing which the insurance company can recover the same by filing an execution petition and they would be entitled to interest as would be awarded by the Executing Court.

The award is modified to the extent noted above. The appeal (FAO-1809-2008) filed by the insurance company is allowed. The appeal (FAO-4640-2008) filed by the claimants is partly allowed.

(ANITA CHAUDHRY)
JUDGE

January 09, 2018
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No