IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-6487-2011 (O&M)
Date of decision: 08.03.2018

New India Assurance Co. Ltd. ... Appellant

versus

Kulwinder Kaur & ors. ... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. R.C.Gupta, Advocate
for the appellant.

Mr. Gurcharan Dass, Advocate
for respondents No.1 to 6.

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Ramendra Jain, J.(Oral)

Through this appeal the insurance company has laid challenge to the impugned award dated 13.08.2011 of the Motor Accidents Claims Tribunal, SAS Nagar, Mohali (hereinafter referred as the Tribunal) awarding compensation of Rs.6,85,000/- to respondents No.1 to 8 (respondents No.7 and 8 have expired during the pendency of appeal) holding it liable to pay the same jointly and severally.

Briefly stated, one Surmukh Singh while travelling in a Mahindra Pick up Jeep bearing registration No.PB-23-D-6775 died in the intervening night of 06.01.2009 and 07.01.2009, on account of rash and negligent driving of respondent No.9/11 (both are the same person).

Legal representatives of deceased Surmukh Singh filed a claim petition under Section 166 of the Act for grant of compensation on account of his death in a motor vehicular accident. The Tribunal after holding trial granted compensation aforesaid to respondents No.1 to 8 vide impugned award dated 13.08.2011.

Learned counsel for the appellant – insurance company contends that according to the initial version of DDR No.13 dated 14.01.2009 recorded real brother of deceased namely Balbir Singh no one was responsible for his death. Later on LRs of deceased Surmukh Singh with dishonest and mala fide intention concocted a story and filed claim petition under Section 166 of the Motor Vehicle Act (hereinafter referred as 'the Act') against the appellant-insurance company in connivance with the owner and driver of the offending vehicle in which the deceased was travelling at the time of accident. In fact, deceased Surmukh Singh was travelling in the offending vehicle as gratuitous passenger and not as owner of the goods allegedly carried away in the same. The Tribunal has failed to appreciate that no invoice/receipt of goods or any other document was produced by the respondents-claimant in support of their assertion that deceased Surmukh Singh was travelling in the offending vehicle as owner of the goods being transported therein. . Even otherwise the claim petition of the respondents filed under Section 166 of the Act was not maintainable in view of the fact that no one was at fault in causing the death of Surmukh Singh as per initial version recorded in the DDR and for that reason, no FIR was also got registered against anyone.

On the other hand, learned counsel for the respondents has strongly refuted the submissions of the learned counsel for the appellant submitting that the impugned award of the Tribunal is legal and valid being passed on the basis of oral and documentary evidence brought on record qua negligence of respondent No.9/11, who was driver and owner of the offending vehicle and considering the fact that deceased Surmukh Singh was not travelling as gratuitous passenger, rather was travelling in the offending vehicle as owner of the goods, being transported therein.

Heard learned counsel for the parties and perused the record with their assistance.

It is well settled that the Tribunal constituted under Motor Vehicle Act, 1988 is to decide the claim petition either under Section 166 of the Act or under Section 163 of the Act on the basis of evidence led before it and not on the basis of DDR/FIR etc. In the instant case, Gurmit Singh – PW3 an eyewitness of the accident categorically testified about the negligence of respondent No.9/11, who caused the accident in question, resulting into the death of Surmukh Singh. This very witness has also testified that deceased Surmukh Singh was travelling in the offending vehicle as owner of the goods being carried therein. There is no rebuttal to the said witness led by the respondents-claimants from the side of the insurance company.

More so, the proceedings under Section 163-A/166 of the Act before the Tribunal are summary in nature. The Tribunal has to decide the case on preponderance of evidence. Since there is no evidence from the side of insurance company to controvert the evidence led by the respondents-claimants, therefore, this Court is not inclined to differ with the findings recorded by the Tribunal in the impugned award dated 13.08.2011.

With these observations, the instant appeal is dismissed.

08.03.2018 **(RAMENDRA JAIN)**
sonia **JUDGE**

Whether speaking/non-speaking? Yes/No
Whether reportable? Yes/No