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

FAO No.2714 of 2012
Date of Decision.11.01.2018

Reliance General Insurance Co. Ltd. ....Appellant

Vs

Shamshad Hussain and another ....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Tajender K. Joshi, Advocate for the appellant.

Ms. Manjit Kaur, Advocate for Mr. Shalender Mohan, Advocate for respondent Nos.1 and 2.

-.-

AMIT RAWAL J.(ORAL)

The present appeal has been preferred by the insurance company against the award rendered by the Tribunal on the following grounds:-

(i) The entire liability to pay compensation has been fastened upon the appellant-insurance company, being the insurer of the Tata 407 bearing registration No.HR-46B-1997 whereas it was a contributory negligence involving the Santro Car bearing registration No.HR-05W-2219 in which the deceased was travelling. The Tribunal has negated the argument on the premise that the FIR bearing No.787 dated 01.10.2010 under Sections 279/304A/427 IPC was registered against the driver of Tata 407 but the driver and owner did not appear in the witness box.

(ii) The deceased was having an income of ₹21,707/- per month including various allowances, which should have been segregated and not to be added in the gross salary.

Learned counsel appearing for the respondents-claimants submits that the appeal filed by the appellant deserves dismissal as the aforementioned arguments are not sustainable in the eyes of law.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Joshi, for, the appellant-insurance company has not been able to place on record any material i.e. direct, cogent or corroborative evidence to establish that it was a case of contributory negligence. If the insurance company could have summoned the investigating officer to support their case, much less, placed on record the mechanical report as well as the site plan, there was no occasion for the Tribunal to fasten the entire liability on the insurance company, owing to registration of the FIR. Even the driver of the offending vehicle insured by the appellant insurance company has not come forth to support the version of the insurance company.

A cumulative effect of the same would be that the insurance company had miserably failed to discharge the onus, therefore, the aforementioned argument is rejected.

As regards the point regarding segregating the allowances from the income, law on this point is very settled that the gross salary including the allowance shall be taken into consideration while assessing the compensation under the Motor Vehicles Act.

I find no ground for interference in the well reasoned award rendered by the Tribunal. Resultantly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

January 11, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No