

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

**FAO No.2831 of 2012
Date of Decision.17.01.2018**

ICICI Lombard General Insurance Co. Ltd.

.....Appellant

Vs

Smt. Kamlesh and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.M.Suri, Advocate
for the appellant.

None for the respondent No.8.

-.-

AMIT RAWAL J.(ORAL)

C.M No.12353-CII of 2012

For the reasons stated in the application, delay of 25 days in re-filing the appeal is condoned.

Application is allowed.

C.M. No.12534-CII of 2012

For the reasons stated in the application, delay of 242 days in filing the appeal is condoned.

Application is allowed.

FAO NO.2831 of 2012

The present appeal has been preferred by the insurance company against the award passed by the Tribunal challenging the liability fastened upon it.

Mr. R.M. Suri, learned counsel appearing on behalf of the appellant submitted the claim petition had been filed under Section 163-A of the Motor Vehicles Act for claiming compensation on account of death of

one Shri Bhagwan, who unfortunately died in a road accident occurred on 20.07.2009 while taking a journey from Panipat to Ajmer in a Eicher Mini Truck bearing registration No.HR-67-7007, driven by the deceased. The story as projected in the claim petition was that when the deceased reached near Niwara Pullia within the jurisdiction of Police Station Kardhani Jaipur City at about 4 AM, the steering of the vehicle of the aforementioned vehicle went out of order and resultantly, turned turtle and struck against the truck bearing registration No.RJ-14GB-1787 driven by one Om Parkash, who took the deceased to the hospital. The deceased at the time of the accident was 35 years old and was working as driver having an income of ₹3300/- per month. An FIR bearing No.226 dated 21.07.2009 was also registered in Police Station Kardhani Jaipur City (South). The insurance company contested the claim petition by taking various objections but the Tribunal awarded a compensation of ₹4,82,200/- along with interest @6% per annum from the date of filing of the claim petition and the owner and insurer of the vehicle bearing registration No.HR-67-7007 were held liable jointly and severally to satisfy the award. In fact, the claim petition was not maintainable as the deceased himself was negligent in driving the vehicle. The provisions of Section 163-A of the Motor Vehicles Act were not interpreted in the correct perspective by the Tribunal as the amount of compensation is also on the higher side. The driver was not holding a valid driving licence on the date of accident, thus, urges this Court for setting aside the finding qua liability.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Suri. The Tribunal on the basis of preponderance of

evidence gave the finding on issue No.1 in paragraph 21 of the award, which reads as under:-

“21. So far as the responsibility to pay the compensation is concerned from the evidence and record available on the file, it is proved that the accident in question was caused as the steering of the vehicle which was being driven by the deceased himself become out of order and due to that mechanical defect, the said vehicle turned turtle on Ajmer-Delhi Highway and struck with another truck bearing No.RJ-14-GB-1787 and there is no contrary evidence has produced by the respondents. Therefore, it is held that the respondents No.1 and 2 are liable to pay compensation awarded to the claimants jointly and severally. This issue No.1 is decided accordingly.”

The provisions of Section 163-A of the Motor Vehicles Act reads as under:-

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.

Explanation.—For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.”

On conjoint reading of the finding rendered by the Tribunal and provisions of Section 163-A, it is settled position on record that the accident took place due to mechanical defect, which could not be anticipated by any sane person, therefore, the argument of Mr. Suri regarding non-maintainability of the petition is wholly misplaced and hereby rejected. Taking an income of ₹3300/- per month, making a deduction of 1/4th in a peculiar circumstance that there were six dependents and adopting a multiplier of 16 for assessing a compensation of ₹4,82,200/- including ₹2000/- for funeral expenses and ₹5000/- towards loss of consortium is just and reasonable.

No ground for interference is made out. The appeal stands dismissed.

(AMIT RAWAL)
JUDGE

January 17, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No