In the High Court of Punjab and Haryana at Chandigarh

FAO No. 119 of 2013(O&M)
Date of Decision:10.5.2018

The Oriental Insurance Company Limited

---Appellant

vs.

Kuldeep Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr.Sanjiv Pabbi, Advocate
for the Appellant
Mr. Ashok Bector, Advocate
for respondents No. 1 to 3
Mr. Lalit Pathak, Advocate
for respondents No. 4 and 5

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Rekha Mittal, J.

The present appeal directs challenge against award dated 19.10.2012 passed by the Motor Accidents Claims Tribunal, Rupnagar (in short "the Tribunal") whereby compensation has been awarded on account of death of Niranjan Singh in a motor vehicular accident that took place on 16.11.2011 but Niranjan Singh succumbed to injuries on 26.11.2011.

In short, case of the claimants is that on 16.11.2011, Niranjan Singh alongwith his nephew Shinder Pal had gone to railway station to receive Kuldeep Kaur, claimant No. 1 who was on her way from Delhi by train. At about 11-00 p.m., the deceased alongwith Shinder Pal and Kuldeep Kaur was coming on foot on left side of the road from railway station, Anandpur Sahib. When they reached on the main Anandpur Sahib road, Inderjit Singh while driving motor cycle No. PB-12-K-T-8116 came at a very high speed, rashly and negligently and struck his motor cycle with deceased Niranjan Singh. Niranjan Singh received head injury and other multiple injuries. He was taken to Civil Hospital, Anandpur Singh from where he was referred to PGI Chandigarh. He succumbed to injuries on 26.11.2011. FIR No. 111 dated 20.11.2011 was registered in Police Station, Anandpur Sahib under Sections 279, 304-A of the Indian Penal Code regarding the occurrence.

The deceased was running a muniari shop/garments store and earning Rs. 15,000/- per month. Claimants are dependent upon income of the deceased. They claimed compensation of Rs. 30 lakhs alongwith interest.

The owner and driver of the offending vehicle, respondents No. 1 and 2 therein filed joint written statement averring that no accident took place on 16.11.2011 as alleged in the claim petition. They have further denied that respondent No. 1 or the vehicle in question was involved in the accident. A false case has been registered in connivance with the police just to get illegal compensation.

The appellant insurance company- respondent No. 3 also filed the written statement and raised preliminary objections challenging maintainability of the claim petition and validity of driving licence of respondent No. 1. It is alleged that claimants have filed false claim just to get compensation.

The Tribunal framed the following issues for determination:-

1. Whether the accident took place due to rash and negligent driving of respondent No.1?OPP
2. Whether claimants are LRs of deceased Naranjan Singh?OPP
3. Whether the claimants are entitled to compensation as prayed for?OPP
4. Whether the driver of motor cycle is not holding valid driving licence, and valid RC? OPR

5. Relief

The parties were permitted to adduce evidence in support of their respective contentions. After having heard counsel for the parties in the light of materials on record, the Tribunal answered issues No. 1 to 4 in favour of the claimants and they were awarded compensation to the tune of Rs. 17 lakhs, detailed hereunder:-

Monthly income of the deceased	Rs. 15,000/-
Deduction for personal expenses	1/3rd
Multiplier	14
Loss of dependency	16,80,000/-
Funeral expenses	Rs. 10,000/-
Loss of consortium	Rs. 5000/-
Loss of estate	Rs. 5,000/-

Counsel for the insurance company has assailed the award primarily to challenge findings of the Tribunal on issue No. 1 and quantum of compensation. It is argued that the occurrence in question took place on 16.11.2011 but the FIR came to be lodged on 26.11.2011 but in the FIR, particulars of the offending vehicle have not been recorded. It is argued with vehemence that had it been true that accident took place in presence of Shinder Pal and Kuldeep Kaur, as projected by the claimants, there was no reason for Shinder Pal not to report the matter immediately after 16.11.2011 and disclose particulars of the offending vehicle while lodging the FIR. It is argued with vehemence that the vehicle in question has been planted in connivance with the police in order to claim compensation from the insurance company and possibility of connivance at the instance of driver and owner of the offending vehicle is also not ruled out.

To assail quantum of compensation assessed by the Tribunal, it is argued that the Tribunal accepted plea of the claimants that the deceased was earning Rs. 15,000/- per month without any satisfactory much less tangible material on record that the deceased was running a shop of muniari/garments or earning Rs. 15,000/- per month.

Counsel representing the claimants has supported findings of the Tribunal on all the issues with the plea that the same are based upon detailed and correct appreciation of materials on record. It is further argued that as the question of accident is to be decided on the basis of balance of probabilities, witnesses examined by the claimants particularly Davinder Singh Ahlmad PW1, HC Balbir Singh PW2, Kuldeep Kaur PW3 and Shinder Pal PW4 are sufficient to establish plea of the respondents/claimants that accident is the result of rash and negligent driving of offending vehicle by Inderjit Singh, its driver.

Another submission made by counsel is that neither Inderjit Singh nor owner of the offending vehicle appeared in the witness box to counter testimonies of Kuldeep Kaur and Shinder Pal, eye witnesses to the occurrence. The testimonies of eye witnesses get substantiated from the fact that on the basis of FIR registered by Shinder Pal, Inderjit Singh has been charge sheeted by the police vide report submitted under Section 173 of the Code of Criminal Procedure (Ex. P2) and criminal proceedings were pending before the Judicial Magistrate. The Tribunal has rightly assessed income of the deceased at Rs. 15,000/- per month. The claimants have filed an application in appeal for placing on record documents Annexures A-1 to A-4 to corroborate version that earlier the deceased was running a muniari/garments shop which is now being run by his widow Smt.Kuldeep Kaur as shown in photograph (Annexure A-4). Claimants are entitled to benefit of increase in income for future prospects and adequate compensation under conventional heads.

I have heard counsel for the parties, perused the paper book and the records.

Indisputably, Niranjan Singh sustained injuries on 16.11.2011 but the

FIR was lodged by Shinder Pal on 26.11.2011. However, it has been proved on record that with regard to admission of Niranjan Singh in PGI, Chandigarh on account of sustaining injuries in a road side accident, intimation was sent to the concerned police station on 17.11.2011. Niranjan Singh sustained serious injuries in the accident that proved fatal during his hospitalization in PGI, Chandigarh. It is difficult to expect from Shinder Pal and Kuldeep Kaur, nephew and widow of Niranjan Singh to bother about lodging of criminal proceedings in place of taking care of the injured and to ensure that he gets proper medical treatment so that he could be saved. There cannot be any dispute that lodging of FIR is not a *sine qua non* for maintaining an application for compensation. If non-lodging of FIR cannot constitute a ground for rejecting claim for compensation, delay of 10 days in lodging the FIR particularly in the circumstances discussed hereinabove, cannot be taken seriously to find fault in the conduct of Shinder Pal and Kuldeep Kaur. Shinder Pal lodged FIR on 26.11.2011 and in the FIR, there is clear reference to the name, father's name and particulars of driver of motor cycle that hit Niranjan Singh. In column No. 9 of the FIR, motor cycle is stated to be WITHOUT NUMBER (M/C DISCOVER).

Shinderpal and Kuldeep Kaur appeared in the witness box to establish plea of the claimants that accident took place due to rash and negligent driving of offending vehicle by Inderjit Singh. Nothing tangible and material has been elicited in their cross examination to disregard or disbelieve their testimonies or prove that they were not eye witnesses to the occurrence. On the contrary, Inderjit Singh driver of the offending vehicle did not appear in the witness box to counter testimonies of Shinder Pal and Kuldeep Kaur or substantiate plea of respondents No. 1 and 2 before the Tribunal that accident was not caused by Inderjit Singh or the vehicle in question was not involved in the occurrence. Counsel for the insurance company has failed to point out any materials brought on record to prove that the vehicle in question was involved as a result of collusion between the claimants and driver/owner of the offending vehicle. Further more, on due investigation of FIR registered by Shinder Pal, Inderjit Singh has been put to trial for causing the accident and committing offence punishable under Sections 279, 304-A of the Indian Penal Code. Taking into consideration the oral and documentary evidence on record coupled with failure of driver of the offending vehicle to counter testimonies of Shinder Pal and Kuldeep Kaur without any tangible explanation raising an adverse inference against the respondents before the Tribunal, I find it difficult to accept contention of the insurance company that findings of the Tribunal on issue No. 1 suffer from an error much less illegality warranting intervention. As a natural consequence, findings of the Tribunal on issue No. 1 are liable to be affirmed and ordered accordingly.

This brings the Court to quantum of compensation assessed by the Tribunal. Claimants raised a plea that the deceased was earning Rs. 15,000/- per month from general store (muniari shop). In the claim application, there is no averment as to the place where the deceased was running a general store/muniari shop though his address is of mohalla Keshgarh Sahib, Anandpur Sahib, District Rupnagar. The claimants have not examined any witness doing business in the same locality or the person from whom the deceased had been making purchases for running a general store/muniari shop. The claimants filed application No. 3501-CII of 2014 under Section 151 of the Code of Civil Procedure for placing on record documents Annexures A-1 to A-4. Annexure A-1 is a copy of assessment register of Municipal Council, Anandpur Sahib for the year 2012-13 qua some property in the name of Smt. Kuldeep Kaur wife of late Sh. Niranjan Singh in Mohalla Keshgarhia Chowk. The entry in the assessment register is not a document of title qua property to which it pertains. Annexure A-2 is the bill-cum-receipt issued by the Punjab State Power Corporation Limited in respect of account in the name of Smt. Kuldeep Kaur. Annexure A-3 is the retail invoice of

Ajit Singh and sons, wholesale General Merchants, Main Bazar, Anandpur Sahib with regard to purchase worth Rs. 4780/-. The document is neither per se admissible in evidence nor can lead to record a finding that the said purchase was made by the deceased for the purpose of his business. The photograph Annexure A-4 is not at all sufficient to establish plea of the claimants that deceased was running a muniari shop or the said shop is now being run by his wife. Even otherwise, the documents sought to be relied upon by the claimants for proving business of the deceased i.e. Annexures A-3 and A-4 have not been proved, in accordance with law. In this view of the matter, claimants cannot derive any advantage to their contention from the documents annexures A-1 to A-4 to prove occupation and income of the deceased. Claimants have failed to adduce satisfactory much less cogent evidence to substantiate their plea that deceased was running a general store or he had been earning Rs. 15,000/- per month. Nevertheless, there is nothing on record suggestive of the fact that deceased was suffering from any disability to impair his capacity to earn livelihood for him and his family. Hence, taking a clue from the minimum wage available at the relevant time, income of the deceased is assessed at Rs. 5000/- per month. Deduction for personal expenses and multiplier allowed by the Tribunal are affirmed. The claimants are entitled to increase in income for future prospects @ 25% . In this manner, loss of dependency comes to Rs. 7,00,000/- [5000 x 12 x 14 + 8,40,000 + 2,10,000 (25%) = 10,50,000-3,50,000(1/3rd).

Under conventional heads, claimants are entitled to Rs. 70,000/- detailed hereunder:-

Loss of consortium to widow	**Rs. 40,000/-**
Expenses on funeral	**Rs. 15,000/-**
Loss of estate	**Rs. 15,000/-**

Total compensation is Rs. 7,70,000/- and compensation awarded by the Tribunal is reduced to the extent of **Rs.9,30,000/-**(17,00,000-7,70,000). The insurance company shall be entitled to recover excess amount, if already paid, by filing an appropriate application before the Tribunal.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms. No order as to costs.

(Rekha Mittal)
Judge

10.5.2018
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Whether speaking/reasoned: Yes
Whether reportable : Yes/No