IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1257-2015 (O&M)
Date of decision: 08.10.2018

ORIENTAL INSURANCE COMPANY LTD ... Appellant

Versus

LABH KAUR & ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

Mr. Deepak Aggarwal, Advocate
for respondents No.1 and 2.

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REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 27.10.2014 passed by the Motor Accidents Claims Tribunal (Fast Track Court), Bathinda whereby compensation has been awarded on account of death of Sandeep Singh in a motor vehicular accident that took place on 07.10.2012.

The Tribunal has awarded compensation of Rs.5,05,621/- (rounded off to Rs.5,06,000/-).

The sole submission made by counsel for the appellant-insurance company is that as the claimants have failed to substantiate their plea that accident is the result of rash and negligent driving of offending vehicle by Dr. Krishan @ Dr. Krishan Gopal respondent No.3, findings of the Tribunal on issue No.1 are liable to be set aside and application for grant of compensation may be dismissed. To substantiate his contention, he has pointed out towards facts elicited in cross examination of Balkar Singh, the only witness examined by the claimants to discharge onus of issue No.1.

Counsel representing the claimants has supported findings of the Tribunal on issue No.1 with the submission that the Tribunal, on a detailed consideration of the materials on record and by relying upon the judgments referred to in para 9 of the award, has rightly arrived at a conclusion that accident took place because of rash and negligent driving of offending vehicle EON Magna car No.PB-03Z-5364 by Dr. Krishan @ Dr. Krishan Gopal respondent No.3.

Before adverting to the submissions made by counsel for the parties, it is appropriate to notice briefly the facts pleaded by the claimants. As per case of the claimants, on 07.10.2012, Sandeep Singh was going from his residence at Bathinda to Best Price Mall for duty as a security guard on CT 100 Bajaj motorcycle No.PB-03N-7998. Claimant No.2 was on duty as security guard and waiting for Sandeep Singh on the main gate of Best Price Mall. At 2.00 pm, after crossing the road Sandeep Singh was in front of gate of Best Price Mall, Bhucho. At that time Hyundai EON Magna car No.PB-03Z-5364 driven by respondent No.3 came at a high speed in a rash and negligent manner from Rampura side and hit motorcycle of Sandeep Singh. Sandeep jumped from the motorcycle, fell on the road and sustained multiple grievous injuries. He was taken to Adesh Medical College and Hospital, Bathinda-Barnala road and succumbed to injuries on 11.10.2012.

Labh Kaur and Balkar Singh, both the claimants appeared in the witness box to prove their case. Balkar Singh lodged DDR No.15 of 12.10.2012 with P.P. Bhucho Mandi and the same is Ex.C1. Balkar Singh appeared in the witness box and tendered into evidence his duly sworn affidavit Ex.CW2/A. In para 2 of the affidavit, he has reiterated version of the claimants raised in the application for compensation. However, in his cross examination, he has stated that he reached the place of accident 15/20 minutes after the occurrence.

A relevant extract from his cross examination in Punjabi, translated in English, reads thus:-

> I am working as security guard in BPCL. The accident occurred in my presence. The road in question is approximately 100 ft. wide and is four laned. It is correct that at the place of occurrence four buses can pass simultaneously. I reached the place of occurrence 15/20 minutes after the accident. I made inquiry at the spot and came to know that the accident has occurred as a stray animal came in front of the car and the report was lodged accordingly. Ruqa was not sent by the hospital authorities to the police and for that reason there was delay in lodging the report.

Perusal of findings recorded by the Tribunal makes it apparent that the Tribunal has not adverted to cross examination of Balkar Singh CW2 while saying that CW2 is an eyewitness of the accident who was cross examined at length but nothing could be brought forth to suggest that he has not witnessed the accident or that the accident has not taken place due to rash and negligent driving of EON car by respondent No.1.

A plain but careful reading of the aforesaid extract leaves no manner of doubt that Balkar Singh was not present at the spot and for that reason, he lodged DDR Ex.C1 recording the factum of accident having occurred because a stray animal suddenly appeared on the road. In the given circumstances, testimony of Balkar Singh is not at all sufficient to establish plea of the claimants that accident is the result of rash and negligent driving of offending vehicle by respondent No.3. In this view of the matter, findings of the Tribunal answering issue No.1 in favour of the claimants and against the respondents cannot be allowed to sustain and accordingly set aside.

As the claimants have failed to discharge onus of issue No.1, they are not entitle to compensation qua loss of dependency or under conventional heads. However, in the light of judgment of this Court **National Insurance Company Ltd. Vs. Harjit Singh and another, 2016 (1) PLR 735**, they are allowed compensation of Rs.50,000/- under 'No Fault Liability'. A relevant extract from **Harjit Singh and another's case (supra)** reads as follows:-

> 3. In a situation where the Insurance Company cannot be made liable under the terms of the policy, there is a minimum liability which the Motor Vehicles Act constitutes under Section 140 where all that has been seen is whether the

vehicle that was involved in the accident had been insured with the particular Insurance Company. If it was in a case of injury resulting in permanent disability, the maximum compensation will be Rs.25,000/- and in case of death, the maximum compensation of Rs.50,000/- would require to be paid in terms of the judgment of the Supreme Court in Eshwarappa @ Maheshwarappa and another Versus C. S. Gurushanthappa and another-2010(8) Scale 263.

4. The awards of the court below are modified and in FAO No.1245 of 2003, the Insurance Company's liability will be restricted to Rs.25,000/- with interest as granted already and in FAO No.5016 of 2003, it is restricted to Rs.50,000/- with interest as granted already. The awards passed against the Insurance Company over the above amounts stipulated under Section 140 in petition filed under Section 163-A of Motor Vehicles Act are not tenable and set aside.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

08.10.2018 **(REKHA MITTAL)**
ashok **JUDGE**

Whether speaking/reasoned: Yes / No
Whether repxortable: Yes / No