IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-3746-2014 (O&M)
Date of Decision:14.09.2018

Shri Ram General Insurance Co. Ltd. ... Appellant

Versus

Mohammad Islam & others ... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Tejinder K. Joshi, Advocate for the Appellant.

Mr. Rakesh Dhiman, Advocate for respondents No.3 and 4.

...

TEJINDER SINGH DHINDSA, J. (ORAL)

CM-11299-CII-02014:

In view of the averments made in the application which is duly supported by an affidavit of the counsel himself, the delay of 272 days in re-filing the accompanying appeal is condoned.

Application is disposed of.

CM-11300-CII-2014:

Instant application has been filed under Section 5 of the Limitation Act seeking condonation of 133 days delay that has occurred in filing the accompanying appeal.

Notice in the application had been issued.

Respondents No.1 and 2 i.e. the claimants inspite of having been duly served, chose not to appear and were, accordingly, proceeded ex parte vide order dated 13.10.2015.

The owner and driver of the vehicle i.e. respondents No.3 and 4 duly represented and have chosen not to file any reply to the application.

Rather prayer made in the application has not even opposed.

In view of the averments made in the application and submission advanced by counsel, I find that sufficient cause has been shown for condonation of 133 days delay in filing the accompanying appeal.

Prayer is accepted.

Delay condoned.

Main appeal:

Instant appeal has been filed by the appellant/Insurance Company assailing the award dated 29.11.2012 passed by the Motor Accident Claims Tribunal, Gurgaon and in terms of which a sum of Rs.3 lakhs as compensation has been awarded in favour of the claimants along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till actual realization on account of death of Mohd. Mustafa who was aged 7 years in a motor vehicle accident that took place on 08.10.2011.

The liability to pay the compensation amount has been held to be joint and several between the respondents i.e. the driver, owner and Insurance Company.

At the outset, it may be noticed that inspite of having been duly served, no representation was caused on behalf of respondents No.1 and 2 and as such, vide order dated 13.10.2015, they were proceeded ex parte.

I have heard counsel for the appellant/Insurance Company and Mr. Rakesh Dhiman, learned counsel representing the owner and driver of the offending vehicle i.e. respondents No.3 and 4.

Briefly, it may be noticed that a claim petition under Section

166 of the Motor Vehicle Act, 1988 had been filed by the claimants i.e. the parents of the deceased, who was a boy aged 7 years. Claimants had asserted that while Mohd. Mustafa (since deceased) was playing in a street, a recovery van bearing registration No.HR-63-8460 being driven in a rash and negligent manner struck against him and the child succumbed to the injuries suffered. FIR No.328, dated 08.11.2011, under Sections 279/304-A IPC was got registered at Police Station Sohna.

Claim petition having been contested, the following issues were framed by the Tribunal:

> *"1. Whether the accident in question was caused by respondent no.1 while driving vehicle bearing registration No. HR-63-8460 in a rash and negligent manner resulting into death of Mohammad Mustafa as alleged? OPP*
>
> *2. If issue No.1 is proved, whether the claimants are entitled to any compensation and if so to what effect and from whom? OPP.*
>
> *3. Whether respondent No.3 is not liable to make payment of any compensation on account of alleged violation of terms and conditions of insurance policy? OPR (3)*
>
> *4. Relief."*

Insofar as issue No.1 is concerned, findings were returned by the Tribunal in favour of the claimants and it was held that Mohd. Mustafa had died on account of injuries suffered in an accident and which took place on account of rash and negligent driving of the offending insured vehicle bearing registration No.HR-63-8460. Such findings are not even being put to question in the instant appeal at the hands of the Insurance Company.

Issues No.2 and 3 were dealt with together. The Tribunal taking into account the testimony adduced on record and by noticing that the deceased was a student of first class in a school at Sohna and by relying upon the judgment of this Court in **Shamsher Singh Vs. The New India Insurance Company Limited & others, 2012 (1) PLR 184** as also in **Kismat & another Vs. Khub Ram & others, 2012 (3) PLR 27** has taken the notional income to be Rs.15,000/- per annum and has applied a multiplier of 18. The compensation amount, as such, has been computed to be Rs.2,70,000/-. An additional sum of Rs.30,000/- has been awarded towards pain and suffering of the parents on account of demise of their young child as also for the last rites. The total compensation amount awarded is Rs.3 lakhs.

Insofar as the liability to pay the compensation amount, the same has been fastened upon the Insurance Company. Even though, learned counsel representing the appellant/Insurance Company has made a feeble attempt towards contending that the amount of compensation awarded is on the higher side and a multiplier of 15 ought to have been applied, yet this Court does not find such submission to be well founded. In the case of **Lata Wadhwa Vs. State of Bihar, 2001 (4) RCR (Civil) 673,** the Apex Court had awarded an amount of Rs.75,000/- in addition to other amount of compensation towards loss of love and affection on account of demise of a child aged between 5-10 years. Even if the contention raised by counsel for the appellant was to be accepted and a multiplier of 15 was to be applied even then the compensation amount arrived at would remain same by adding the amount of Rs.75,000/- towards love and affection as per **Lata Wadhwa's case (supra).**

In view of the above, no intervention is called for insofar as the compensation amount that has been awarded by the Tribunal in the impugned award.

The next submission raised by counsel for the appellant is that as per evidence adduced on record i.e. Ex.R1 which is a copy of the registration certificate of the offending vehicle, the class of the vehicle mentioned therein was a heavy goods vehicle. Counsel contends that the owner of the vehicle has not placed on record any route permit and under such circumstances, the liability to pay the compensation amount could not have been fastened upon the Insurance Company. Even such contention is found to be without merit.

Perusal of the impugned award would reveal that a categoric and specific stand has been taken on behalf of the owner that the vehicle mentioned in the registration certificate was a Heavy Goods Vehicle but it was not being plied and used for transportation of goods but was being used as a recovery van. Under such circumstances, the Tribunal has taken the correct view and has held that the onus was upon the Insurance Company by leading cogent evidence to prove that the vehicle was being used as a goods carrier and as such there being a breach of terms and conditions of the policy to escape from the liability to pay the compensation. Concededly, no such evidence was forthcoming at the hands of the Insurance Company.

In view of the discussion above, no scope for interference in the award is made out.

Appeal is dismissed.

14.09.2018 **(TEJINDER SINGH DHINDSA)**
harjeet **JUDGE**

i) Whether speaking/reasoned? Yes/No

ii) Whether reportable? Yes/No