IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.985 of 2015 (O&M)
Date of decision:24.09.2018.

Shri Ram General Insurance Company Ltd.

...Appellant

Versus

Rahul Singh and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Rajbir Singh, Advocate for the appellant.

Mr. Aminder Singh, Advocate for respondents No.1 and 2.

Service of respondents No.3 and 4 stands dispensed with Vide order dated 11.05.2016.

LISA GILL, J.

This appeal has been filed by the Insurance Company challenging the award dated 22.08.2014 passed by Motor Accident Claims Tribunal, Ludhiana (`Tribunal' for short). No appeal or cross objections have been filed by the claimants.

Brief facts necessary for adjudication of the case are that claimants/respondents No.1 and 2 filed a petition under Section 166 of Motor Vehicles Act seeking compensation on account of death of their mother Reeta Rani in a motor vehicle accident which took place on 26.11.2011. It was pleaded that Reeta Rani (deceased) along with her son Rahul Singh, claimant/respondent No.1 was going to Tajpur Road from Tibba Road on the motor cycle bearing No.PB-10DD-7652 driven by claimant/respondent No.1. Reeta Rani, his mother was riding pillion. When they reached Tajpur Road, opposite Bawa Dairy at about 06.30 pm, the offending tractor bearing No.

PB-18-0835 came from behind, driven in a rash and negligent manner by respondent/Amandeep Singh and struck against the motor cycle. Resultantly, respondent No.1/Rahul Singh and his mother-Reeta Rani fell down on the road. Front tyre of the offending tractor ran over the stomach of Reeta Rani and on the left leg of respondent No.1. Reeta Rani died at the spot. Claimant/respondent No.1 was rushed to CMC Hospital, Ludhiana and thereafter referred to PGI, Chandigarh. The accident was witnessed by Sewa Singh son of Gurmail Singh, who was coming behind the motor cycle. FIR No.155 was registered under Sections 279,304-A,337 and 338 IPC at Police Station Division No.7 (Vardhman) on 26.11.2011. Post-mortem of the dead body of the deceased was conducted. It was claimed that Reeta Rani was 41 years old at the time of accident. She was running a boutique and earning Rs.20,000/- per month. Claimants/respondent No.1 and 2 i.e. son and daughter of the deceased claimed to be dependent upon Reeta Rani. Their father had already passed away earlier. Compensation was thus prayed for.

Learned Tribunal held that the accident in question took place due to the rash and negligent driving of tractor by respondent-Amandeep Singh. A sum of Rs.14,95,000/- was awarded as compensation to the claimants. Income tax return filed by the claimant was ignored by the learned Tribunal and income of the deceased was assessed at Rs.8750/-. Multiplier of 14 was applied. Aggrieved from the award dated 22.08.2014, present appeal has been filed by the Insurance Company.

It is contended that the Insurance Company is not liable to satisfy the entire claim as it is a case of contributory negligence. Learned counsel for the appellant submits that it is a case of a head on collision, therefore, the entire responsibility cannot be of the tractor insured with the appellant. It is further contended that quantum of compensation is excessive and income of the deceased has wrongly been assessed as Rs.8750/- by taking the income of the deceased as Rs.5000/- per month and adding Rs.3750/-. It is contended that income tax returns for the year 2010-2011 filed by the deceased were rightly not relied upon by the learned Tribunal. However, income of the deceased has been assessed in an incorrect manner. It is, thus, prayed that the same be reduced.

Learned counsel for the claimants/respondents No.1 and 2 has refuted the averments made on behalf of the appellant. It is submitted that in case an appeal or cross objections had been filed by the claimants, they would have been entitled to much higher compensation especially keeping in view of the judgment of the Hon'ble Supreme Court in National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009. It is denied that there is any contributory negligence which would justify any deduction in the amount of compensation awarded to the claimants. In these circumstances, it is prayed that the present appeal be dismissed and award dated 22.08.2014 be upheld.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

A perusal of the record reveals that as per the FIR, which was recorded on the statement of Sewa Singh, it was stated that the deceased Reeta Rani along with her son Rahul Singh, CW1 was proceeding from Tibba Road to Tajpur Road on a motor cycle bearing No.PB-10DD-7652. At about 06.30 pm, when they reached Tajpur Road, opposite Bawa Dairy, the offending tractor bearing No.PB-18-0835 came from behind in a rash and negligent manner without blowing any horn and struck against the motor cycle, as a result of which respondent No.1 Rahul Singh and his mother Reeta Rani fell on the road and the front tyre of the offending tractor ran over the stomach of Reeta Rani and on the left leg of respondent No.1. Reeta Rani died on the spot. Respondent No.1 Rahul Singh, who appeared before the learned Tribunal as CW1, testified regarding the manner in which the accident took place. Ravi Kumar, another eye witness, also deposed on similar lines.

It is borne out from the record that the offending tractor hit the motor cycle from behind. Argument that there was a head on collision is not substantiated by the evidence on record. There is not an iota of evidence to indicate any contributory negligence on the part of respondent No.1. Finding of the learned Tribunal on issue No.1 is accordingly upheld.

In respect to the income of the deceased which was assessed by the learned Tribunal, it is noted that income tax return of the year 2010-2011 (Ex.C6) was relied upon by the claimants with the averments that the deceased was earning Rs.1,30,400/- per annum. Learned Tribunal, however, ignored this income tax return on the ground that no income tax return prior to that has been placed on record, though there is no denial of the fact that this income tax return was filed prior to the death of Reeta Rani. It is further observed by learned Tribunal that the said income tax return has not been proved on record as per law as no official from Income Tax Department had been examined to prove the authenticity or genuineness of the said income tax return. Learned Tribunal has at the same time observed that since the deceased was a young widow having to fend for herself and her two children, she must necessarily have carried on some vocation so as to generate income.

In the factual matrix of the case, I do not find any justification in reducing the income of the deceased from Rs.8750/- even if it is agreed that the method of assessing the income may not be correct. In my considered opinion, no ground is made out for reduction of the compensation awarded to the claimants.

Keeping in view the facts and circumstances of the case, I do not find any ground whatsoever to interfere in the impugned award dated 22.08.2014 in this appeal filed by the Insurance Company.

This appeal is accordingly dismissed with no order as to costs.

(LISA GILL)
JUDGE

September 24, 2018
Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No