

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

FAO No. 1681 of 2018 (O&M)

Date of decision : November 02, 2018

Magma HDI General Insurance Company LimitedAppellant

Versus

Saroj and othersRespondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Pankaj Mehta, Advocate
for the appellant.

LISA GILL, J.

Present appeal has been filed by Magma HDI General Insurance Company Limited challenging award dated 04.01.2018 passed by the learned Motor Accident Claims Tribunal (District Judge), Mohali (hereinafter referred to as the 'Tribunal').

Brief facts necessary for adjudication of the case are that the claimants filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Hari Ram @ Raj Kumar on 20.05.2016 in a motor vehicle accident caused due to driving of the offending vehicle, i.e. tractor trolley bearing registration No. RJ-13-RB-8019 by Sikandar Singh - respondent No. 7 in a rash and negligent manner. It was averred that Hari Ram @ Raj Kumar alongwith his brother Satpal was going towards Kapurthala to Khajuwala, District Bikaner on a truck at slow speed and on the left side of the road. When they reached near Baba Khetarpal's place, Malout, the offending tractor trolley came from the opposite side at a fast speed and struck against their truck. Hari Ram was hit

by the wooden logs, which were loaded in the trolley of the tractor. As a result thereof, Hari Ram @ Raj Kumar received serious injuries. He was taken to Civil Hospital, Malout from where he was referred to Government Hospital, Sriganaganagar, where he succumbed to his injuries.

Learned counsel for the appellant argues that the accident in question, in fact, never took place with the offending tractor trolley as concluded by the learned Tribunal. FIR in this case was registered against an unknown person. Registration number of the tractor was not mentioned in the FIR, which is attached as Annexure P1 (Ex. P1) with this appeal. The only detail regarding the tractor as mentioned in the FIR is that it was one 'tractor Eicher model No. 368'. Moreover, as per the vehicle technical inspection report dated 02.06.2016, the tractor was in a good condition, therefore, the accident could not have taken place with the tractor. Moreover, income of the deceased has been wrongly assessed as ₹12,000/- per month. At best, income of the deceased could be assessed as that of a daily wager. In the month of May 2016 minimum wages in the State of Punjab were ₹342. It is, thus, prayed that the impugned award dated 04.01.2018 be set aside.

I have heard learned counsel for the appellant and have perused the file with his assistance.

FIR No. 0043 dated 20.05.2016 was registered against respondent No. 7 – Sikandar Singh. Learned counsel for the appellant does not deny that respondent No. 7 is facing the proceedings emanating from FIR No. 0043. The manner in which the accident in question took place is clearly detailed in FIR which was registered at the very outset. It is specifically mentioned that offending tractor was being driven in a rash and

negligent manner. Hari Ram pulled his truck to one side, however, the tractor trolley hit the truck due to which Hari Ram lost control of the truck which hit the nearby shops. The tractor trolley was admittedly loaded with logs of wood. There is indeed nothing on record to indicate that the accident in question did not take place due to rash and negligent driving of the offending tractor trolley by respondent No. 7. Claimants have succeeded in proving their case on the basis of preponderance of probabilities. PW2 Satpal - brother of the deceased, who was also travelling in the said truck, has clearly deposed in respect to the said accident. Involvement of the offending vehicle in the accident is duly proved on a preponderance of probabilities. Reference to the vehicle inspection report dated 02.06.2016 is clearly misplaced as learned counsel for the appellant fairly states that the said report was not exhibited before the learned Tribunal. Moreover, this report which mentions the right hand side vertical guard of the trailer to be broken does not come to the aid of the appellant in any manner. In this view of the matter, learned Tribunal has rightly concluded that the accident in question took place on 20.05.2016 due to rash and negligent driving of the offending vehicle by respondent No. 7.

Similarly, I do not find any ground to interfere in respect to the quantum of compensation awarded. This is so for the reason that the claimants have duly proved on record that the deceased was the owner of the truck bearing registration No. RJ-31-G-4300. Copy of the registration certificate of the truck (Ex.PW1/H) has been proved on record. Permit of the truck (Ex.PW1/I) also reflects the ownership of the deceased. Insurance policy (Ex.PW1/J) also mentions the deceased to be the owner of the truck.

It is categorically proved on record that the deceased was indeed the owner

of the truck. Therefore, learned Tribunal has rightly observed that his income cannot be assessed to be that of a mere driver employed on a heavy vehicle merely on the ground that he himself was driving the truck alongwith his brother has a cleaner. I do not find any ground to interfere in the assessment of the income of the deceased as ₹12,000/- per month at the time of the accident in this appeal filed by the appellant - insurance company. Learned counsel for the appellant is unable to point out any ground for reduction of the awarded compensation.

No other argument has been raised.

Keeping in the view the facts and circumstances of the case, this appeal filed by the insurance company is dismissed with no order as to cost.

November 02, 2018
rts

(Lisa Gill)
Judge

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