In the High Court of Punjab and Haryana at Chandigarh

FAO No. 5212 of 2018(O&M)
Date of Decision: 18.8.2018

The Oriental Insurance Company Limited

---Appellant

versus

Rajender and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.R.C.Gupta Advocate
for the appellant

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Rekha Mittal, J.

The present appeal directs challenge against award dated 31.5.2018 passed by the Motor Accidents Claims Tribunal, Hisar (in short “the Tribunal”) whereby compensation has been awarded on account of death of Parkasho in a motor vehicular accident that took place on 27.4.2016.

The Tribunal has awarded compensation of Rs. 16,77,968/-, detailed hereunder:-

Monthly income of the deceased	Rs. 7976/-
Addition in income for future prospects	40%
Deduction for personal expenses	$1/4^{th}$
Multiplier	16
Loss of annual dependency	Rs. 1,00,498/-
Total loss of dependency	Rs. 16,07,968/-
Funeral expenses	Rs. 15,000/-
Loss of estate	Rs. 15,000/-
Loss of consortium	Rs. 40,000/-

Counsel for the appellant has assailed the award on two counts. It is argued that alleged offending vehicle was not nabbed at the spot but falsely involved in the occurrence on the basis of FIR lodged on the next day of the occurrence. The occurrence was a head on collision between the three wheeler in which the deceased was travelling and Tata 407, therefore, it was a case of composite negligence of two vehicles and the insurance company of Tata 407 should be allowed to have right of recovery against the owner, driver and insurer of the three wheeler.

To assail quantum of compensation assessed by the Tribunal, it is argued that the Tribunal has treated the deceased as a house wife but allowed addition in income for future prospects @ 40%.

Another submission made by counsel is that the insurance company is entitled to be exonerated of liability to pay compensation or press for right of recovery as licence of driver of Tata 407 was blocked on 29.12.2014 as recorded in document mark 'A', therefore, the driver was not competent to drive the vehicle on the date of occurrence.

I have heard counsel for the appellant, perused the paper book particularly the award.

Indisputably, the FIR qua the occurrence was lodged on the very next day and the same records registration particulars of the offending vehicle. On due investigation of FIR, challan was presented in the Court against Kedar Nath, respondent No. 1 before the Tribunal. Kedar Nath did not appear in the witness box to counter case of the claimants or testimony of the witnesses examined that the occurrence is the result of rash and negligent driving of Tata 407. That being so, I do not find an error much less illegality in findings of the Tribunal on issue No. 1 attributing rashness and negligence to driver of Tata 407.

So far as plea of the insurance company that the present is a case of composite negligence of two vehicles involved in the occurrence, the claimants have been given liberty in law to seek compensation from either of the joint tort feasors. The Tribunal has no obligation to decide the extent of negligence attributable to the vehicles involved in the accident except when contributory negligence has been attributed to the vehicles. This apart, driver, owner and insurer of the three wheeler in which the deceased was travelling have not been impleaded as a party in the claim application, therefore, there was no occasion with the Tribunal to determine the question of composite negligence much less the extent attributable to the vehicles involved in the occurrence. In this view of the matter, counsel for the appellant cannot derive any advantage to his contention from the factum of alleged composite negligence of two vehicles.

Coming to compensation assessed by the Tribunal, the Tribunal has assessed income of the deceased at Rs. 7976/- per month, added 40% for future prospects and deducted $1/4^{th}$ for personal expenses and in the process, monthly loss of services comes to Rs. 8375/- per month. The deceased left behind family consisting of her husband, three minor children aged 17, 13 and 8 years. The occurrence in question took place in April 2016. A house wife has multifarious duties to perform. Taking into consideration the judgment of this Court **United India Insurance Company Limited vs. Sube Singh and others FAO No. 218 of 2014 decided on 15.1.2014** affirmed by Hon'ble the Supreme Court, income of the deceased assessed by the Tribunal cannot be faulted with.

This brings the Court to the last submission with regard to the driver not possessing a valid licence. The Tribunal, by taking into consideration various judgments on the issue, has recorded its conclusion in para 24 and rejected contention of the insurance company on two grounds stated in sub paras 1 and 2 thereof. Indisputably, the order vide which licence of the driver was blocked has not been produced on record. Even the letter mark 'A' regarding factum of blocking of licence with effect from 29.12.2014 has not been proved, in accordance with law. In this view of the matter, I find merit in findings of the Tribunal that the insurance company has failed to discharge its liability to prove that the insured is guilty of committing intentional breach of the terms and conditions of the insurance policy, entitling the insurance company to press for right of recovery against the insured.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

18.8.2018
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No