IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-6160-2018 (O&M)
Date of Decision:04.10.2018

United India Insurance Co. Ltd. ... Appellant

Versus

Anita & others ... Respondents

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

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

...

TEJINDER SINGH DHINDSA, J.

The appellant/Insurance Company has filed the instant appeal assailing the award dated 08.08.2018 passed by the Motor Accident Claims Tribunal, Charkhi Dadri and in terms of which a total compensation amount of Rs.18,74,400/- along with interest @ 7.5% per annum has been awarded in favour of the claimants on account of death of Sandeep in a motor vehicle accident that took place on 23.05.2015.

Briefly, it may be noticed that a claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 seeking compensation to the tune of Rs.2 crores on account of death of Sandeep S/o Sh. Ran Singh. It was averred that on the fateful day, Sandeep (since deceased) was proceeding on a motorcycle bearing registration No.HR-36-N-9794 and he was struck by a bus bearing registration No.RJ-18-PA-1920 which was being driven in a rash and negligent manner by the driver, namely, Ram Niwas. FIR No.270, dated 23.05.2015 was registered at Police Station Sadar Dadri under Sections 279/304-A IPC. Claimants were the widow, minor son

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and aged parents of the deceased. While claiming compensation, it was asserted that deceased had been working at Bahrain and earning a handsome amount in foreign currency but presently he was in India and was working as a taxi driver. Claim petition was contested by the driver and owner of the offending bus by filing a joint written statement taking a stand that the claim petition is not maintainable in the present form qua them as the vehicle was comprehensively insured with the Insurance Company. The driver of the vehicle was stated to be holding a valid driving license to ply the bus in question and as such, Insurance Company was liable to indemnify the owner/driver. The Insurance Company filed a reply taking a stand that no accident as alleged had taken place. The claim petition had been filed on account of collusion between the parties and only with the objective to claim compensation.

Upon the pleadings on the parties, the following issues were framed by the Tribunal:

> *"1. Whether the accident in question took place on 23.05.2015 due to rash and negligent driving of the vehicle bearing registration No.RJ-18-PA-1920 by respondent No.1 and caused the death of Sandeep? OPP*
> *2. If issue No.1 is proved, whether the petitioners are entitled to claim compensation, if so to what amount and from whom? OPP*
> *3. Whether the petition is not maintainable in its present form? OPR*
> *4. Whether respondent No.1 is not having any valid and effective driving license at the time of alleged accident? OPR*
> *5. Relief."*

As regards issue No.1, findings were returned by the Tribunal that death of Sandeep took place on account of injuries suffered in an

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accident that took place on 23.05.2015 involving the offending bus and which was being driven in a rash and negligent manner. Insofar as quantum of compensation is concerned, age of the deceased was accepted as 31 years as mentioned in his driving license mark 'A'. Income of the deceased was assessed as Rs.6500/- per month. Tribunal further assessed that in the capacity of a taxi driver, the deceased would be earning an additional income of Rs.100/- per day for 25 days in a month i.e. Rs.2500/-. Total income of the deceased as such was calculated as Rs.9000/- per month while treating him to be a skilled worker. A deduction of 1/4th was made towards personal and living expenses. 40% addition in income was granted towards future prospects. Multiplier of 16 was applied and the compensation amount was computed as Rs.18,14,400/-. A sum of Rs.15,000/- was awarded towards funeral expenses and a like amount of Rs.15,000/- towards loss of estate. The liability to pay the compensation amount was held to be joint and several upon the respondents. Consequently, the Insurance Company was held liable to satisfy the award.

Mr. Ashwani Talwar, learned counsel representing the appellant/Insurance Company has advanced submissions primarily with regard to false involvement of the vehicle in question. In this regard, it is submitted that the FIR was registered at the instance of father of the deceased and who in his cross-examination admitted that he was not an eye witness. Further contended that the Investigating Officer ASI Karambir was examined as PW6 and who admitted in his cross-examination that during the investigation, no eye witness, who had seen the accident had joined the investigation. It has further been argued that PW2, Devi Dayal, who claimed to be a passenger in the offending bus is a procured witness and his

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statement is not trustworthy as his name was not even reflected as witnesses in the final investigation report Ex.P2. A feeble attempt has been made by counsel to assert that even the compensation amount is on the higher side.

Having heard counsel for the appellant at length, this Court is of the considered view that no interference in the matter is warranted.

It is a case where the accident had took place on 23.05.2015. The FIR, Ex.PW3/B had been promptly got registered on the same very day i.e. on 23.05.2015. The offending vehicle had been found at the site of the accident itself. After due investigation, challan Ex.P2 had been filed against the driver, Ram Niwas and it is the conceded position of fact that the driver was even facing trial. The factum of prompt registration of FIR and trial of the driver of the offending bus in a criminal Court would be taken to be sufficient to arrive at a conclusion that the accident took place with the offending vehicle and on account of rash and negligent driving particularly in view of the fact that no defence had been taken by the driver. During the course of the arguments, it has not been controverted that the Insurance Company did not examine any witness to prove the fact that the driver and owner of the offending bus were having any relation with the family of the claimants. Furthermore, the Tribunal has taken into account Ex.P3 i.e. the mechanical report reflecting damage to the bus as also the mechanical report to prove the involvement of motorcycle No.HR-36-N-9794 being driven by Sandeep in the accident in question. Merely for the reason that no eye witness had joined investigation cannot be the sole basis to conclude that the offending bus has been falsely involved.

Even as regards quantum of compensation, this Court is of the considered view that the same has been computed by the Tribunal by

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adhering to the parameters/guidelines furnished by the Apex Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77** and **National Insurance Company Limited Vs. Pranay Sethi & others, 2017 (4) RCR (Civil) 1009.**

There is no merit in the appeal and the same is accordingly dismissed.

Pending applications, if any, shall also stand disposed of.

04.10.2018 **(TEJINDER SINGH DHINDSA)**
harjeet **JUDGE**

i) Whether speaking/reasoned? Yes/No

ii) Whether reportable? Yes/No

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