In the High Court of Punjab and Haryana at Chandigarh

FAO-6177 of 2018(O&M)
Date of Decision: 4.10.2018

S.B.I General Insurance Company Limited

---Appellant

versus

Anju and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Ms. Vandana Malhotra, Advocate
for the appellant

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<u>Rekha Mittal, J.</u>

The present appeal assails award dated 12.3.2018 passed by the Motor Accidents Claims Tribunal, Hisar (in short "the Tribunal") whereby compensation has been assessed on account of death of Prikshit in a motor vehicular accident that took place on 14.2.2016.

The sole submission made by counsel for the insurance company is that the Tribunal while deciding issue No. 1 has held that accident is the result of composite negligence of drivers of Bolero RJ-10UA-6214 and truck No.HR-39B-6624 insured with the appellant and driver of the insured vehicle has been attributed negligence to the extent of 50% but the Tribunal has seriously erred by fastening liability to pay entire compensation upon the driver, owner and insurer of aforesaid truck. In addition, it is argued that the Tribunal has not given liberty to recover 50% of amount from the owner, driver and insurer, if any, of Bolero, therefore, award passed by the Tribunal is liable to be modified.

Apart from the fact that the appeal has been filed after 86 days' unexplained delay, the same is devoid of merit and deserves to be dismissed.

Indisputably, the driver, owner and insurer, if any, of Bolero have not been impleaded as party in the claim preferred by Anju and others qua death of Prikshit. There cannot be any dispute that if the accident is the result of composite negligence of two or more vehicles, claimants have the liberty in law to seek compensation from either of the joint tort-feasors. This apart, as the claimants have not impleaded driver, owner and/or insurer of Bolero as a party, the Tribunal could not decide the question of composite negligence of driver of Bolero. In the given scenario, it is difficult to accept contention of the appellant that findings of the Tribunal fastening liability to pay entire compensation upon the insurance company suffer from an error much less illegality, warranting intervention.

After passing of award by the Tribunal, the insurance company filed application for review/modification of order dated 12.3.2018 and the same was disposed of by the Tribunal vide order dated 7.7.2018 by leaving the insurance company at liberty to take recourse to remedy in law against the other vehicle. As such, the Tribunal has rightly given the aforesaid liberty.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

4.10.2018

PARAMJIT

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