IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.7371 of 2018
Date of Decision: 07.12.2018

National Insurance Company Ltd. ....Appellant

Vs.

Bimla Devi and others ....Respondents

CORAM: HON'BLE MR.JUSTICE DR. RAVI RANJAN

Present:- Mr.Harsh Aggarwal, Advocate, for the appellant.

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DR. RAVI RANJAN, J.

Heard learned counsel for the appellant/Insurance Company.

This appeal is directed against the judgment and Award dated 31.07.2018 passed by the Motor Accident Claims Tribunal, Jhajjar in which death of Suresh Kumar has occurred on account of accident due to rash and negligence driving by the offending vehicle.

It is contended that the driver was not holding a valid driving licence to ply the heavy motor vehicle. The alleged offending vehicle was a truck. It is contended that this issue was raised before the Tribunal. The Tribunal in paragraph 40 has recorded that the driver of the offending vehicle was holding a valid driving license without going through the contents of the copy of licence Ex.R-1 which was produced by the appellant/respondent No.3 before the Tribunal. Those documents have been brought on record as Ex.R-1 and Ex.R-2 and Xerox copies of those documents have been produced before this Court at the time of hearing. From the driving license, it appears that the driver was granted license for plying light motor vehicle on 07.04.2005 and motorcycle with gear on 07.04.2005 and transport vehicle on 26.12.2016.

Learned counsel for the appellant submits before this Court emphasizing on the authorization certificate of N.P.(Goods) issued by the Transport Department to impress upon this Court that since it was issued for multi axle goods vehicle, thus, the concerned vehicle has to be considered to be heavy vehicle for which license was not granted.

Prima facie, this limb of argument advanced on behalf of the appellant/Insurance Company appears to be attractive but, on deeper scrutiny, this Court's opinion is otherwise. It is apparent from the license and the authorization certificate issued by the transport department that unladen weight of the vehicle concerned is 9000 kg. Section 2(16) of the Motor Vehicles Act, defines heavy good vehicle as under:

Section 2 (16):

“heavy goods vehicle” means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of either of which, exceeds 12,000 kilograms”

It is apparent from the above that such type of vehicle is to be classified as heavy goods vehicle which has more than 12,000 Kg. of unladen weight which is obviously not the present vehicle is having as per Ex.R-2 issued by the Transport Department. Thus, in my considered view, the same cannot be considered as heavy motor vehicle and as such, the submissions made on behalf of appellant that driver did not have a valid driving license is to be rejected.

Learned counsel raised a second issue regarding quantum of compensation that the deduction under the head of personal expenditure has been done merely 1/5th of income which should have been 1/4th in view of the decision of the Hon'ble Supreme Court in the case of Smt. Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.(2009) 6 SCC 121 in particular in paragraph 14 thereof. As the concerned was having 5 dependents, it was held by the Apex Court in the aforesaid decision that, if dependent family members are 4 to 6 in number then 1/4th of the income should be deducted towards the personal and living expenses. Upon a question asked from the learned counsel as to what was the total amount which would have been awarded and if calculation is made considering 1/4th deduction, i.e., in such case what would be the difference in the awarded amount? After doing calculation, it is stated before this Court that the Tribunal has awarded Rs.26,68,000/- as a round figure and if the deduction is made 1/4th of the earning in place of 1/5th under the head of personal expenditure then the difference would be of Rs.78,320/-. However, learned counsel is not in a position to inform whether the awarded amount has already been paid by the Insurance Company or not.

Accordingly, I am of the considered view that, since the interest has been merely given @ 7% per annum which, in the case of death of a young person like the deceased who was 35 years of age, in my opinion, should have been at least 9%, the difference amount of Rs.78,320/- would not be such a hefty amount for which every thing is required to be re-opened and recalculated. Thus, in a peculiar circumstances of this case and in the interest of justice, the appellant is directed to make the payment of compensation amount to the dependents of the deceased, if not already paid.

In the result, this appeal stands disposed of without making any modification in the award.

(DR. RAVI RANJAN)
JUDGE

07.12.2018
anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No