

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.763 of 2018 (O&M)
Date of Decision: 05.02.2018

United India Insurance Company Ltd.

....Appellant

V/S

Kusum Saini and Ors.

....Respondents

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

Present : Ms. Suman Jain, Advocate,
for the appellant.

RITU BAHRI, J.(Oral)

The present appeal has been filed by the appellant against the Award dated 20.11.2017 whereby respondent Nos. 1 to 6 have been awarded compensation of Rs.17,95,375/- along with interest @7.5% p.a., by the learned Motor Accident Claims Tribunal, Chandigarh (for short, 'the Tribunal') on account of death of Rajender Kumar in road accident which took place on 24.08.2016.

FACTS NOT IN DISPUTE

Brief facts of the case are that deceased-Rajender Kumar going in a rickshaw on road from Manimajra, Chandigarh towards Saketri, Panchkula via I.T. Park, Chandigarh; that about 7:15 pm, he reached near the Government Veterinary Dispensary, Kishangarh and rickshaw was on its correct left side at normal speed, when truck bearing registration No. MP09HG2363 (herein after referred as "the offending Vehicle") driven by respondent No.1 Mann Singh came at high speed and in rash and negligent manner, from the side of railway fatak, Manimajra, Chandigarh and hit the rickshaw as well as deceased from behind; that as a result of accident, deceased suffered multiple injuries on vital organs of his body and died at the spot; that the accident took place due to rash and negligent driving of respondent no. 1. In this regard FIR No.125 dated 24.08.2016 under

Sections 279, 304 of IPC was registered against respondent No. 1 at Police Station I.T. Park, Chandigarh.

In the present appeal parties are not in dispute with the findings of issue no. 1 that accident took place due to the sole rash and negligent driving of respondent No. 1. While driving the offending vehicle was owned by respondent No. 2 and insured with respondent no. 3.

Learned counsel for the appellant filed the present appeal challenging the Award of the Tribunal on two grounds (i) that income of the deceased assessed by the Tribunal as Rs.8125/- per month which is on higher side being a unskilled labour and (ii) that the Tribunal failed to consider the fact that the alco meter test report was placed on record as Ex. R8 which clearly shows that the driver of the offending vehicle was under the influence of liquor at the time of the accident and that the driver has violated the terms and conditions of the insurance policy.

I have heard learned counsel for the parties and perused the case file.

The first arguments which is raised by the Ld. Counsel for the appellant is that income of the deceased assessed by the Tribunal is on higher side, is rejected on ground that income assessed by the Tribunal as per the Minimum Wages Act is on right side and does not require any interference.

However, As per the provisions of Section 185 of the Motor Vehicle Act if the driver is found driving the vehicle and has an alcohol exceeding 30 mg per 100 ml of the blood, then the driver is liable for drunken driving. Keeping in view the alco metro test report Ex. R8, a perusal of the same shows that quantity of alcohol found in blood viz., 304.9mg/100ml which is exceeding quantity as per the provision of section 185 of Motor Vehicle Act. Accordingly, it is held that the driver was driving the vehicle in question under the influence of liquor at the time of accident. Hence, recovery rights has been given to the insurance company.

Hence, after going through the findings of the impugned Award, the

orders of the learned Tribunal does not reflect any material irregularity or perversity which warranting interference. Hence the present appeal stands dismissed.

Dismissed.

05.02.2018
Riya Grover

(RITU BAHRI)
JUDGE

Whether speaking/reasoned Yes
Whether reportable No