IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

__FAO No.884 of 2018 (O&M)__
Date of Decision: February 14, 2018

New India Assurance Co. Ltd. ...Appellant

Versus

Priti and others ...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Pardeep Goyal, Advocate
for the appellant.

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__HARINDER SINGH SIDHU, J.__

The insurer has filed the present appeal challenging the award dated 7.10.2017 passed by the Motor Accident Claims Tribunal, Bhiwani (for short 'the Tribunal').

Brief facts as disclosed in the claim petition are that on 20.7.2015 in the area of Police Station Gurur a vehicular accident took place involving Bus No.CG-10F/0990 (herein for short 'the offending vehicle') and truck No.CG08C-0450, wherein, Rishi Pal Chauhan lost his life. The accident was alleged to have been caused due to rash and negligent driving of the offending vehicle. FIR regarding the accident was also registered.

The Tribunal assessed the income of the deceased at Rs.10,000/- per month, deducted 1/4th towards his personal expenses, applied the multiplier of 17 (deceased aged 25 years). The loss of dependency was assessed at Rs.15,30,000/- (7500x12x17). Besides, Rs.1,00,000/- towards 'loss of consortium', Rs.25,000/- as 'transportation and funeral expenses' and Rs.1,00,000/- towards 'loss of love and affection' were awarded. In all, compensation of Rs.17,55,000/- along with interest was awarded.

The appellant – Insurance Company has challenged the award on the ground that the finding of the Tribunal on the issue of negligence is not correct as no eye-witness of the accident was examined before the Tribunal. It is also argued that the amount awarded under the conventional heads is on higher side.

The Tribunal had framed the following issue on negligence:

> "*Whether the accident in question was took place on 20.7.2015 due to rash and negligent driving of vehicle No.CG-19F-0990 by respondent No.1 and caused death of Rishipal Chauhan, husband of petitioner No.1, father of respondents No.2 & 3 and son of petitioners No.4 & 5? OPP*"

To discharge the onus to prove the rash and negligent driving of the driver of the offending bus, the claimants examined Mohammad Aslam as PW2, who is the owner of the offending vehicle. While appearing before the Tribunal, Mohammad Aslam admitted that the accident occurred due to rash and negligent driving of the offending vehicle by its driver Mohammad Hanif. He testified that on the fateful day i.e. 20.7.2015, the offending vehicle (bus) was being driven by Mohammad Hanif, whereas, Rishi Pal Chauhan was the conductor/ ticket checker in the bus. At about 9.00 a.m., the driver of the offending vehicle hit the bus at the back side of truck bearing Reg.No.CG-08C-0450. He further testified that in the accident, many persons had suffered injuries. Conductor Rishi Pal Chauhan was taken to Charaya Hospital, from where, he was referred to Government

Hospital, Dhanmantari, but he succumbed to the injuries. He specifically stated in his version that the accident was caused due to rash and negligent driving of the offending vehicle.

It has also come on record that FIR regarding the accident was registered on the same day after the accident against Mohammad Hanif, driver of the offending vehicle. After investigation, the Police also filed charge-sheet against him in the court of Ilaqa Magistrate, where trial was going on against him.

So far as the argument regarding non-examination of any eye-witness to the accident is concerned, the Tribunal has noted that the accident had occurred in Chhatisgarh, whereas, the claimants are the residents of Bhiwani (Haryana) and they filed claim petition at Bhiwani. It has been observed that because of this, the claimants could not procure any eye-witness before the Tribunal at Bhiwani. Moreover, once the owner of the offending vehicle himself admitted that the accident had occurred due to rash and negligent driving of his vehicle and the proceedings under the Motor Vehicles Act being of summary nature, the Tribunal was justified in concluding that the accident was caused due to rash and negligent driving of the offending vehicle.

In **The United India Insurance Co. Ltd. vs. Deepak Goel and others, MAC.APP.No.750/2006,** decided on 24.01.2014, while taking note of the decisions of the Hon'ble Supreme Court, it was observed by the Delhi High Court as under:-

> *"xxx xxx xxx In a criminal case in order to have conviction, the matter is to be proved beyond reasonable doubt and in a civil case the matter is to be decided on the basis*

of preponderance of evidence, but in a claim petition before the Motor Accident Claims Tribunal, the standard of proof is much below than what is required in a criminal case as well as in a civil case. Undoubtedly, the enquiry before the Tribunal is a summary enquiry and, therefore, does not require strict proof of liability.

21. Nonetheless, in a case, where FIR is lodged, charge-sheet is filed and specially in a case where driver after causing the accident had fled away from the spot, then the documents mentioned above are sufficient to establish the fact that the driver of the offending vehicle was negligent in causing the accident particularly when there was no defence available from his side before the learned Tribunal. Thus, the claimants have proved negligence of the driver of the offending vehicle"

Thus, there is no ground to interfere with the finding of the Tribunal that the accident was caused due to rash and negligent driving of the offending bus.

Coming to the second argument regarding awarding higher amount under the conventional heads, it is observed that in the light of the decision of the Hon'ble Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi and others** **(2017) 16 SCC 680**, the Tribunal ought to have granted 40% increase in the income of the deceased towards future prospects. In other words, the loss of dependency will increase by 40% i.e. from 15,30,000/- to 21,42,000/-. No doubt, the Tribunal has awarded higher amount of Rs.2,25,000/- under the conventional heads, which should have been Rs.70,000/- only in view of the aforesaid decision. However considering that even if the amount of conventional heads is reduced and 40% increase on account of future prospects is granted, the amount payable to the claimants would be more than what has been awarded by the Tribunal, there is no justification for decreasing the amount of compensation. In view thereof there is no ground to interfere with the impugned award.

Hence, the appeal is dismissed.

It is made clear that this order has been passed on an appeal filed by the Insurance Company without hearing the claimants and is confined to the contentions raised herein. It is without prejudice to the rights of the claimants to separately agitate for enhancement on any ground that may be available to them.

February 14, 2018

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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No