IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1987-1999(O&M)
Date of decision:-20.3.2019

Pritam Kaur

...Appellant

Versus

Gurnam Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Chetan Kapoor, Advocate
for the appellant.

Mr.Vinod Gupta, Advocate
for respondent No.6.

****

<u>H.S. MADAAN, J.</u>

Petitioner – claimant – Pritam Kaur had filed a petition under Section 166 of Motor Vehicles Act, 1988 against respondents i.e. Gurnam Singh – driver, M/s New Pritam Bus Service, Patiala – owner of bus having registration No.PB-11-E-3595 and Insurance Company of the said bus, though particulars of the insurance company were not given and it was mentioned that those were to be disclosed by respondents No.1 and 2, then Jagjit Singh – driver, Ramesh Kumar – owner and New India Assurance Company Ltd. Sangrur – insurer of truck No.PB-13/2161, claiming compensation to the tune of Rs.5 lacs on account of death of her husband Hazura Singh in the motor vehicular accident.

As per the case of the petitioner/claimant, on 3.7.1994 her husband Hazura Singh was travelling in a truck having registration

No.PB-13/2161 going from Rajpura to Zirakpur; that when the said truck reached near Pehar, a bus bearing registration No.PB-11-E-3595 came from Zirakpur side, which was being driven by Gurnam Singh – respondent No.1 in a very rash and negligent manner; that on reaching near the truck, Gurnam Singh, bus driver lost control, resultantly the bus hit against front portion of the truck due to which Hazura Singh fell down from the truck and was crushed under tyres of the bus and died at the spot; that formal FIR for the offences under Sections 279 and 304-A IPC was registered at Police Station Sadar, Rajpura. According to the claimant, Hazura Singh was aged about 58 years and he was earning Rs.3,000/- per month; that the claimant was fully dependent upon him.

On notice of the claim petition, only respondents No.4, 5 and 6 put in appearance, whereas respondents No.1 and 2 did not appear and were proceeded against ex parte and due to their non-appearance particulars of respondent No.3 were not disclosed, as such could not be entered on the memo of the parties. In the written statement submitted on behalf of respondent No.4 – truck driver, he denied all the allegations in the claim petition refuting that Hazura Singh was travelling in his truck or that the accident had taken place due to contributory negligence. According to him, no such accident had taken place with his truck and he had been falsely involved in the criminal case.

Written statement filed by respondent No.5, owner of the truck is almost on the similar lines as that of respondent No.4.

Whereas respondent No.6 insurance company in the written statement filed by it contested its liability to pay compensation submitting that the accident had taken place due to rash and negligent driving of the bus by its driver and truck having registration No.PB-13/2161 insured with it was never driven rashly and negligently by its driver; that the deceased was travelling in the truck as a passenger, as such it was not liable to pay compensation for his death since the policy had been issued for goods vehicle and travelling of passengers in the goods vehicle does not come under purview of the insurance policy. The insurance company raised further objections that driver of truck was not having a valid driving licence at the time of alleged accident.

Replications were filed by the petitioner controverting the submissions made by the written statements whereas reiterating the averments made in the claim petition.

On the pleadings of the parties, following issues were framed:

1. Whether Hazura Singh died in a motor vehicular accident on 3.7.94 by driving a truck No.PB-13-2161, rashly and negligently by respondent No.4 -Jagjit Singh? OPP.
2. To what amount of compensation the claimant is entitled and from whom of the respondents? OPP.
3. Whether respondent No.4 was not having a valid driving licence at the time of alleged accident? OPR-6.
4. Relief

Both the parties led evidence in support of their respective claims.

In support of his case, the claimant had examined her son and attorney Jaspal Singh as PW1.

On the other hand, respondent No.6 tendered in evidence insurance policy as Ex.R1.

After hearing arguments, the Tribunal decided issue No.1 against the petitioner and in favour of the respondents, issue No.2 against the petitioner and in favour of the respondents, issue No.3 against the respondent and in favour of the petitioner. Resultantly, the claim petition was dismissed.

This award left the claimant aggrieved and she has approached this Court by filing the present appeal.

Notice of the appeal was given to respondents. Only respondent No.6 has put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the appellant has argued that the Tribunal was not justified in rejecting the claim petition filed by the appellant/claimant considering that deceased was travelling in the truck as a gratuitous passenger as such no such liability could be fastened on the insurance company. However, no pecuniary liability was fastened upon driver and owner of the truck in question also. Furthermore, issue No.1 had also been wrongly decided against the appellant/claimant. He has submitted that the appellant/claimant had led enough evidence on record to show that the accident which had taken place on 3.7.1994 in which Hazura Singh had expired had taken place due to rash and negligent driving of truck by respondent No.4 – Jagjit Singh; that Jagjit Singh had been challaned and forwarded to face trial and he has since been convicted by the trial Court. Therefore, the impugned award cannot survive and it be set aside.

Whereas learned counsel for the respondent No.6 has defended the award as legal and valid stating that there is no reason to upset it.

After hearing the rival contentions and going through the file, I find that the impugned award is not sustainable. Though the claimant had not examined any eye-witness of the accident and Jaspal Singh son and attorney of claimant, who had got his statement recorded as PW1 had not seen the accident, but if we see the other evidence adduced in the form of post mortem report of deceased Ex.P2, copy of FIR Ex.P3, then it comes out that the accident in which the deceased had lost his life had taken place due to rash and negligent driving of truck by respondent No.4 – Jagjit Singh. The registration of FIR prima facie goes to show the rashness and negligence on the part of the driver of the vehicle causing accident. The very fact that the truck driver had been sent up to face trial, which ended in his conviction establishes the version of the claimant. Learned counsel for the appellant/claimant has placed on file copy of judgment rendered by Sub Divisional Judicial Magistrate, Rajpura showing that Jagjit Singh had been convicted for causing death of Hazura Singh by rash and negligent driving of the truck in question. It may be mentioned here that respondent No.4 – Jagjit Singh truck driver had not appeared in the witness-box to depose on oath that the accident, in which Hazura Singh had lost his life had not been caused by rash and negligent driving of the truck in question by him. Similarly respondent No.5 owner of the vehicle had not got his statement recorded to state that the truck belonging to him and driven by respondent No.4 was not responsible for the accident in question. The Presiding Officer of the Tribunal did not appreciate the evidence properly and interpreted the law in an appropriate manner while deciding the issues against the petitioner/claimant and dismissing the claim petition.

Section 166 of the Motor Vehicles Act is a piece of welfare legislation. It was enacted by the Parliament to provide relief to the persons, who suffered injuries in the motor vehicular accident as well as to the legal representatives of the victims, who unfortunately lost their lives in such mishaps. Strict rules of evidence and procedure are not applicable there.

Therefore, verdict given by the Tribunal on issue No.1 deciding the issue against the claimant in favour of respondents is erroneous and is reversed deciding this issue in favour of the petitioner/claimant and against the respondents.

With regard to issue No.3 - *"Whether respondent No.4 was not having a valid driving licence at the time of alleged accident? OPR-6"*, the Tribunal has decided this issue against the respondent – insurance company for the reason that it had not led any evidence to discharge the onus of proof placed upon it. The verdict in that regard is correct and no interference is called for.

With respect to finding on issue No.2, the verdict is wrong. The Tribunal has observed that the deceased travelling in the truck was a gratuitous passenger, as such respondent – insurance company is not liable to pay any compensation. But the Tribunal has not given any finding as to whether the driver and owner of the truck are liable to pay any amount to claimant as compensation or not. Learned counsel for the appellant/claimant has referred to authority ***Manuara Khatun & Ors Versus Rajesh Kr. Singh & Ors, 2017 ACJ 1031*** by the Apex Court wherein while dealing with a claim petition under Sections 147 and 166 of the Motor Vehicles Act, 1988 when the accident had been caused due to negligence of driver of the vehicle, which was carrying gratuitous passenger, it was observed that Insurance Company is not liable to pay compensation to victims of accident, who were gratuitous passengers, though such insurance company was directed to pay compensation awarded to victims and recover the same from owner of vehicle in execution proceedings arising in that case. Learned counsel for the appellant/claimant has further referred to consolidated judgment delivered by High Court of Delhi in MAC APP.81 to 84, 87 and 90 of 2018. As per facts of the said case several persons along with respective goods were travelling in the offending truck to be transported to Gangotri, Uttrakhand from their village Baghanki, Manesar, District Gurugram, Haryana; they were carrying goods for the holding of *LANGAR* (free kitchen) by all of them; that on account of rash and negligent driving of the truck by its driver, the accident had taken place, consequently the truck along with goods had fallen into a ditch, resultantly all the occupants of the truck including driver had sustained fatal injuries. The legal representatives of the deceased persons travelling in the truck had brought claim petitions, which were allowed by MACT and compensation was granted to them. However, they had filed appeals being dissatisfied with the amount of compensation granted to them and those appeals came up for hearing before Delhi High Court. The question cropped up as to whether the deceased were gratuitous passengers and insurance company was liable to pay compensation. Relying upon the judgment ***Manuara Khatun & Ors Versus Rajesh Kr. Singh & Ors***(supra) by the Apex Court wherein it was declared that in case of gratuitous passengers, it is duty of the insurer to satisfy the award first, while invoking the principal of "pay and recover"; that principal was applied and insurance company was directed to pay the awarded compensation to claimants and thereafter, recover it from the owner of insured vehicle and since the driver of the vehicle had expired and no steps have been taken to bring on record his legal representatives.

Learned counsel for the appellant has further stated that Special Leave Petition filed against the judgment passed the Delhi High Court had since been dismissed. He has referred to order dated 25.10.2018 by the Apex Court in that regard.

On the other hand, learned counsel for the Insurance company has referred to authority ***National Insurance Co. Ltd. Versus V. Chinnamma and others, 2005(1) PLR 98*** by the Apex Court as well as ***National Insurance Company Limited Versus Prema Devi and others, 2008(5) SCC 403*** by the Apex Court.

However, I find that authorities referred to by learned counsel for the appellant/claimant find application to the facts of the present case, whereas it is not so with respect to the authorities referred to by learned counsel for the insurance company.

With regard to the judgment ***National Insurance Co. Ltd. Versus V. Chinnamma and others*** (supra) it had different facts when death of a person travelling in a tractor trolley had taken place and it was observed that the passenger was travelling in a tractor-trailer along with his good and insurance company is not liable. In the present case also, the insurance company is not being settled with any pecuniary liability. Though it is required to pay compensation amount to claimant and then recover it from the driver and owner of the insured truck. The other authority ***National Insurance Company Limited Versus Prema Devi and others*** (supra) is earlier in time and had somewhat different facts from the facts of the present case.

Now coming to determine the compensation amount to which the claimant is entitled. According to version of the claimant, the deceased was aged about 58 years and was earning Rs.3,000/- per month and claimant was dependent upon him. The evidence adduced by the claimant has virtually gone unrebutted. The amount of Rs.3,000/- per month cannot be taken to be excessive by any stretch of imagination considering that his wife, the claimant was dependent upon him.

In view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** in such an eventuality 15% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs.3,000 + 450 = Rs.3,450/-.

In terms of the ratio of authority ***Smt.Sarla Verma and***

others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77 deduction of 50% should be made towards self expenses Doing that the dependency of claimant comes out to Rs.1,725/- per month, annual dependency comes out to Rs.1,725 x 12 = Rs.20,700/-.

Applying multiplier of 9 in view of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr.***(supra), the compensation payable comes out to Rs. 20,700 x 9 = 1,86,300/-.

In view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors.***(supra), the claimant is entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-.

Thus, the total compensation comes out to Rs. 1,86,300 + 70,000 = 2,56,300/-, which shall be payable by respondents No.4 to 6 with interest at the rate of 7.5% per annum from the date of filing of the claim petition till actual payment. It is directed that respondent No.6 – insurance company would pay the compensation amount with interest and cost and thereafter it would be entitled to recover that amount from respondents No.4 and 5, the driver and owner of the offending truck, respectively.

The appeal stands allowed accordingly.

20.3.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No