IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2722 of 2019(O&M)
Date of Decision:27.09.2019

Shri Ram General Insurance Co. Ltd.

.................APPELLANT

Vs.

Bimla Devi and others

.................RESPONDENTS

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

Present: Mr.Rajbir Singh, Advocate the appellant-Insurance Company.

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DR. RAVI RANJAN, J.(Oral Judgment)

This Appeal is directed against the Judgement and Award dated 01.02.2019 passed by the Motor Accident Claims Tribunal, Narnaul(hereinafter referred to as "the Tribunal"), by which the claim petition filed by the claimants(respondents herein) under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") has been allowed and the respondents-claimants have been found entitled to receive a compensation for a sum of Rs.15,80,000/- on account of death of Satish Kumar in a motor vehicular accident alongwith interest @ 7% per annum from the date of filing of the claim petition till the realization of the awarded amount.

Short facts which are necessary of consideration of the *lis* stands enumerated as under:-

The claimants-respondents filed a petition under Section 166 of the Act for setting up a claim that on 25.10.2017, one Satish Kumar was returning from Village Bhojawa to his village on his motorcycle bearing Registration No.HR-35M/6449. At about 7.00 P.M. When he reached near village Mulodi, a vehicle Mahendra Max bearing Registration No.HR-66/5805 being driven by

Krishan Kumar, i.e., respondent No.1 in a claim petition, at a high speed in a rash and negligent manner, hit his motorcycle from behind. As a result of such collision, his motorcycle struck with a tree and he fell down and received serious injuries. The driver fled away from the spot alongwith offending vehicle but the said accident was seen by a co-villager of the deceased, namely, Vikram, who was following the motorcycle of Satish Kumar (since deceased). He had noted down the registration number of the offending vehicle. The injured was taken to GH Narnaul, where he was declared dead.

The driver and the owner of the offending vehicle filed their joint written statement denying the accident and involvement of the said vehicle in it, however, it was also stated in the written statement that in case the Tribunal comes to the conclusion that the accident took place due to rash and negligent driving of the concerned driver of the offending vehicle, i.e., respondent No.1 in the claim petition, then the Insurance Company would be liable to indemnify the owner as the vehicle was insured on the date of accident.

The Insurance Company also contested the claim case by filing its separate written statement supporting part of the statement made on behalf of the driver and the owner but at the same time alleging that the driver was not having a valid and effective driving licence and the vehicle was being plied in violation of the terms and conditions of the Insurance Policy. A further stand was also taken that there is collusion among the petitioner and the owner and the driver only with a purpose of extracting compensation amount from the Insurance Company.

The Tribunal, upon consideration of the rival pleadings, framed following issues:-

> "1. Whether the accident in question took place on account of rash and negligent driving of vehicle No.HR-66/5805 by the respondent No.1? OPP

2. If issue no.1 is proved, whether the claimants are entitled to receive any amount of compensation. How much and from whom? OPP

3. Whether the respondent no.1 was driving the offending vehicle in violation of terms and conditions of the insurance policy? OPR

4. Relief.”

The claimants, in order to substantiate their claim, examined Vikram Singh, i.e., the eye-witness as PW-1, Somdutt, the informant, as PW-2. Claimant No.1-Bimla, who is widow of the deceased, examined herself as PW-3 and one Rameshwar Dayal as PW-4 and various documents including the copy of final report submitted by the police under Section 173 Cr. P.C., other police documents such as complaints, postmortem report, copies of the statement under Section 161 Cr.P.C. and copy of FIR etc., were brought on record as documentary evidence.

However, it is interesting to note that respondents No.1 and 2 of the claim petition, i.e., driver and owner, though have filed their joint written statement refuting the allegations made in the claim petition but they did not lead any evidence. They even did not produced themselves to be examined as witness in this case.

Respondent No.3, i.e., the Insurance Company in the claim petition has produced Insurance Policy which has been brought on record as Ex.R1 but it has been recorded by the Tribunal that despite availing several opportunities, the respondents failed to conclude their evidence. Accordingly, it was closed.

Thus, it has to be construed that there is no evidence led by the respondents in the claim petition to rebut the evidence produced by the claimants.

The Tribunal, after hearing both the sides and considering the materials available on record has recorded the finding that the concerned motor vehicular accident was a result of rash and negligent driving by the driver of the offending vehicle and, as such, the claimants are entitled for compensation which was assessed to the tune of Rs.15,80,000/- alongwith interest @ 7% per annum.

In the aforesaid background of the factual matrix, I have heard learned counsel for the appellant-Insurance Company.

The first and foremost ground which has been taken by the appellant-Insurance Company at the time of hearing is that the claimants have not been able to prove that the concerned motor vehicular accident was a result of rash and negligent driving by the driver of the alleged offending vehicle and even that the alleged vehicle was involved in the accident. It is contended that there is no eye-witness and the testimony of the alleged eye-witness, v.i.z., Vikram, who has been examined as PW-1, is not trustworthy and creditworthy for the reason that in the cross-examination, he has stated that he was the first person to reach the spot after the accident which would definitely mean that he did not see the occurrence.

It is further stated that though PW-2 claims that he was not an eye-witness and the factum and manner of accident was narrated to him by his co-villager-Vikram, who has been examined as PW-1 and thereafter he took the injured to the hospital and lodged First Information Report but he has not disclosed the description and registration number of the vehicle concerned in the F.I.R.

Thus, on the strength of the aforesaid, it is contended that the PW-1 in fact is a projected witness and since there is no eye-witness, the claimants would not be entitled for any compensation as negligence is not proved and further that the vehicle was also planted in the scene later on.

However, the aforesaid submissions made on behalf of the appellant-Insurance Company are noted only to be rejected for the following reasons:-

Learned counsel is reading one line in between from the cross-examination so far as PW-1 is concerned. The whole case of the claimants as set up in the FIR or even in the affidavit filed by PW-1 is that he was following the motorcycle of the deceased when the offending vehicle struck the motorcycle of the deceased from behind and due to impact of the accident, it further struck with the tree. Due to impact of such collision, the deceased fell down and received fatal injuries. PW-1 has not denied in the cross-examination that he was not following the motorcycle and he has not seen the occurrence. He has merely stated that he was the first person to reach the spot of the accident after the alleged accident took place. It is obvious that he will reach the place of accident only after the accident took place because he was following the motorcycle from behind but it doesn't mean that he was driving his motorcycle with closed eyes and could not see what was happening in front of him.

So far as the second issue raised is concerned, it is true that the vehicles' registration number and make has not been disclosed in the First Information Report and this is further correct that the informant (PW2) has stated in the FIR itself that the factum and manner of accident was narrated by PW-1-Vikram, who was his co-villager and was following the motorcycle of the deceased, but having said so, it has also to be kept in mind that if the brother of a person gets such type of fatal injury and is struggling for life, the entire attention would be on taking him to the Hospital. It may be possible, even if certain things were narrated to him that he might have been skipped writing one or two of them. Vikram has stated that he had narrated the manner of accident to the informant and he has also categorically stated that he had noted down the make and registration number of the offending vehicle which he transmitted to the police when his statement was being recorded under Section 161 Cr.P.C. at this residence.

He has taken a similar stand before the Tribunal also. Thus, such minor discrepancy would not be sufficient to dislodge the claimants in view of the certain unimpeachable evidence which is available in the form of FIR and also final report submitted by the police under Section 173 Cr.P.C. after completion of investigation and obviously due to which the driver of the offending vehicle is facing criminal trial.

The next issue which has been raised by the appellant-Insurance Company is regarding the computation of compensation amount and for that purpose, assessment of monthly income of the deceased. It is contended that without any evidence being on record, Rs.11,000/- per month income has been assessed by the Tribunal. The Tribunal, while dealing with the issue, has noticed that the claim is that deceased was a Carpenter and used to do work of interior decoration also and was earning Rs.25,000/- per month. One Rameshwar Dayal has been examined as PW-4 who is co-villager and has deposed that the deceased was not only a skilled Carpenter but he has also installed certain machines such as Randa Machine etc. and he used to engage 3-4 other Carpenters for doing his work and making furnitures etc. A diary being maintained by the deceased has also been brought on record as PW3/A by one of the claimants, i.e., PW-3 widow of the deceased which shows that it was prepared in the normal course and also seems to be genuine.

The Tribunal, on appreciation of evidence, brought by the claimants was satisfied that he was not only working as Carpenter but was also working with several hands. But the difficulty was that the claim of monthly income of Rs.25,000/- could not be substantiated by any direct evidence.

Learned counsel for the appellant-Insurance Company has produced a Notification issued by Govt. of India to show that, at best, even considering him to be semi-skilled or skilled person of Class-B, his income would be round about Rs.9,000/- to 10,000/- but the Tribunal has assessed his income at Rs.11,000/- per month.

In my, view since the evidence to some extent has come that he was not only doing his job as a skilled Carpenter but he was taking help of 4 and 5 other persons also for running a business of carpentry for making furniture and other things for household use and selling it, if the income has been assessed slightly above of the minimum wages, the same cannot be faulted with and appears to be reasonable.

It has next been contended that the age of the deceased was aged 50 years but under the head of future prospects, 25% of the income has been added which should have been 10% in view of the law laid down by the Constitution Bench of the Hon'ble Apex Court in **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) R.C.R. (Civil) 1009.**

However, relevant portion from the aforesaid decision of the Apex Court has been extracted and quoted in the impugned Judgment itself. According to which an addition of 25% was to be done when the deceased was aged between 42 to 50 years. Thus, in above view of the matter, in my considered opinion, such addition by the Tribunal cannot be faulted with.

Having held so, I am of the view that no cogent ground could be raised by learned counsel for the appellant-Insurance Company, at the time of hearing, warranting any interference by this Court in the impugned Judgment and Award.

In the result, this appeal, being devoid of any merit, is dismissed.

(DR. RAVI RANJAN)
JUDGE

27.09.2019
Anjal

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No