IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-776-2008 (O&M)
Date of decision: 12.09.2019

New India Assurance Co. Ltd.

...Appellant

Versus

Bhateri and others

...Respondents

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

Present: Mr. Neeraj Khanna, Advocate for the appellant.

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H.S. MADAAN, J. (Oral)

On account of death of Mahabir Singh, in a motor vehicular accident, which took place on 15.02.2004 in the area near Ashok Brick Kiln, situated on Rewari-Mohindergarh road, allegedly on account of rash and negligent driving of Max Jeep bearing registration No. HR-39-T-0154 (hereinafter referred to as the offending vehicle) by Parveen Kumar-respondent No.1, widow of Mahabir Singh, namely, Smt. Bhateri and minor daughter Beena had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against the respondents i.e. Parveen Kumar-driver, Sunil Kumar-owner, Kanwar Singh-transferee of the owner and New India Assurance Company Ltd.,, Rewari-insurer of the offending vehicle in question, claiming compensation.

On notice, respondent Nos.1 to 3 put in appearance and offered a contest. After trial, Motor Accidents Claims Tribunal, Rewari, vide award dated 11.12.2007, accepted the claim petition and awarded compensation of Rs.3,70,000/- to the claimants with interest @ 7% p.a., from the date of filing of claim petition till actual realization, payable by respondent Nos.1 to 3, jointly and severally.

Insurance Company felt aggrieved by the award and has filed an appeal before this Court, notice of which was given to the respondents, however, they did not put in appearance, whereas, service upon respondent No.3 was dispensed with.

I have heard learned counsel for the appellant besides going through the record and I find that there is no illegality or infirmity with the award. The tribunal on proper appreciation of evidence adduced by the parties, relying upon testimony of eye witness, the cause of accident provided by PW-1 Krishan Kumar, formal FIR No.24 dated 15.02.2004 for offences under Sections 279, 337, 424 and 304-A IPC was registered at PS Rampura with regard to the accident, testimony of PW-3 Dr. T.C. Tanwar who had medico-legally examined Mahabir injured on 15.02.2004 and when he died, had conducted post mortem examination on his dead body as well as statement of PW-4 Dr. Parmod Parshad, Sethi Hospital, Gurgaon, where the injured had been admitted, who had died and in the absence of any rebuttal evidence adduced by the respondent, came to the conclusion that Mahabir Singh had expired after sustaining injuries in a motor vehicular accident caused due to rash and negligent driving of offending vehicle on 15.02.2004. This finding is correct and does not call for any interference.

With regard to quantum of compensation, the tribunal, on the basis of evidence available on record, had taken the age of deceased to be 47 years as entered in his post mortem report Ex.PW3/C, his monthly income was assessed to be Rs.3000/-, in view of the minimum wages prevalent at the relevant time. No future prospects were granted. 1/3rd amount was deducted towards his personal and living expenses; working out dependency of the claimants to be remaining 2/3rd i.e. Rs.2000 per month, annual dependency Rs.2000 X 12 = Rs. 24,000/-. Considering the age of deceased to be 47 years, multiplier of 15 was applied. In that way, the total compensation came out to Rs.3,60,000/-, whereas, only Rs.10,000/- had been awarded to the petitioner/claimant Bhateri on account of loss of consortium. The total compensation was worked out to Rs.3,70,000/-.

With regard to the liability to pay the compensation, respondent No.1 Parveen Kumar being driver, Sunil Kumar-owner and New India Assurance Company Ltd.,, Rewari-insurer of the offending vehicle were found to be jointly and severally liable.

The tribunal did not observe any violation of terms & conditions of the insurance policy, which might have absolved the insurance company of its liability to pay the compensation or wanted grant of recovery rights to it from the insured. Vide detailed discussion in para No.24 of the award, the tribunal has observed that by no stretch of imagination, it can be gathered that insured has violated the terms & conditions of the insurance policy in any manner as the driver was working under his employment and control at the relevant time.

Therefore, the insurance company cannot be exonerated from the liability. Thus, no interference with the award is called for in any manner. The same is upheld. The appeal is found to be without any merit and is dismissed accordingly.

12.09.2019 **(H.S. MADAAN)**
sumit.k **JUDGE**

Whether speaking/reasoned : Yes No
Whether Reportable : Yes No