IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1097 of 2012 (O&M)
Date of decision : 20.3.2019

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Rahimi
................Appellant

vs.

Mustkeen and others
.................Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Barjinder Singh, Advocate for the appellant

Mr. Sanjiv Pabbi, Advocate for respondent No.3
and Mr. Vinay Kumar, Legal Aid Counsel.

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H. S. Madaan, J. (Oral)

Briefly stated, facts of the case are that on 28.04.2007, petitioner claimant Rahimi widow of Mehtab r/o Ramgarh, District Alwar (Raj.), alongwith her daughter Asmeena, deceased, who was aged about 12 years, were travelling in a tempo, while being in the area of village Marora, then a pick-up vehicle bearing registration No. HR 55-C-4374 (hereinafter to be referred to as 'the offending vehicle'), being driven by its driver Mustkeen-respondent No.1 in a rash and negligent manner, overtook the said tempo. Thereafter, the tempo of respondent No.1 lost control over the pick-up van, which turned turtle in the fields. One Asmeena, besides Munfed and Rahimi, travelling in the pick-up van suffered injuries. Asmeena succumbed to the injuries suffered by her and died at the spot. Injured Munfed brought a claim petition bearing MACT case No. 33/6.8.2007 under Section 163-A of the Motor Vehicles Act, 1988, against the respondents i.e. Mustkeen- driver, Tayyub - owner and Oriental Insurance Company Limited, Gurgaon, Insurer of the offending vehicle. Whereas Rahimi widow of Mehtab, had brought claim petition bearing MACT case No. 34/12.1.2009 and Rasidan w/o Fazzar had brought MACT case No. 35/22.10.2009, against those very respondents. Since all the claim petitions had arisen out of the same accident, those were tried together by Motor Accidents Claim Tribunal, Nuh.

On notice all the three respondents appeared.

Respondents No. 1 and 2 filed a joint written statement, whereas respondent No.3 came up with a separate written statement. In the joint written statement filed on behalf of respondents No. 1 and 2, they denied the fact that any accident was caused by respondent No.1, while driving the pick-up van in question and rather contended that such pick-up van has wrongly been involved in the accident. They contended that petitioners are not entitled to claim compensation from the answering respondents. They craved for dismissal of the petitions.

In the written statement filed by respondent No.3, it took the preliminary objections that pick-up van vehicle was insured as goods carrying commercial vehicle and the policy covers the use only for carriage of goods and not for carrying passengers; the insured had violated terms and conditions of the policy as the vehicle insured was carrying passengers at the time of accident and that respondent No.1 was not holding a valid and effective driving licence at the time of accident and further that respondent No.2 not having a valid route permit to ply the vehicle and as such the answering respondent was not liable to satisfy the claim of the petitioners.

On merits, such respondent contested the assertions made in the claim petition, coming up with a plea for dismissal of the same.

From the pleadings of the parties, following issues were framed:-

1. Whether the accident in question was caused by respondent No.1 while driving vehicle by respondent No.1 while driving vehicle bearing Regn. No. HR55C-4374 in a rash and negligent manner resulting in death of Mahun as alleged OPP.

   Vide order dated 20.8.2010 issue No.1 was reframed as under:-

   Whether the accident in question took place due to use of vehicle bearing regn. No. HR55C-4374 resulting in death of Mahun as alleged? OPP.

2. If issue No.1 is proved, whether claimants are entitled to any compensation. If so, to what

extent and from whom? OPP

3. Whether respondent No.3 was not liable to make payment of any compensation on account of alleged violation of terms and conditions of insurance policy?
4. Relief.

Parties led evidence in support of their respective claims.

During the course of evidence, claimants examined as many as 7 witnesses and after tendering certain documents closed the evidence. On the other hand the Insurance company examined Mahesh Grover, Assistant, Oriental Insurance Company Ltd., Gurgaon as RW-1.

After hearing the arguments, the Tribunal dismissed all the three petitions being not maintainable, vide award dated 9.2.2011.

The claimant Rahimi, feeling aggrieved by the said award, has approached this Court by way of filing the present appeal, notice of which was given to the respondent-insurance company, which has put in appearance through counsel.

I find that whole approach of the Tribunal has been erroneous and misconceived. The claim petitions have been filed under Section 163-A of the Motor Vehicles Act, which are special provisions with regard to payment of compensation on structured formula basis. This Section dilates that notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be. Sub Section 2, gives further clarification providing that in any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person, which means that the claimant is not required to show that the vehicle involved in the accident was being driven in a rash and negligent manner. But strange enough, though issue No.1 was framed as under :-

> "Whether the accident in question was caused by respondent No.1 while driving vehicle by respondent No.1 while driving vehicle bearing Regn. No. HR55C-4374 in a rash and negligent manner resulting in death of Mahun as alleged OPP."

However, it was subsequently, reframed as under:-

> "Whether the accident in question took place due to use of vehicle bearing regn. No. HR55C-4374 resulting in death of Mahun as alleged? OPP."

The claimant had led sufficient oral as well as documentary evidence, to show that her daughter Asmeena had suffered injuries while travelling in a tempo, which turned turtle on account of rash and negligent driving of pick-up vehicle bearing registration No. HR-55C-4374. The Tribunal in para No.10 of the award has given finding that the accident in question had taken place due to rash and negligent driving of vehicle bearing registration No. HR-55C-4374 by respondent No.1 Mustkeen, resulting in injuries to Rashidan, Asgar, Sadam and Rahimi and death of Mahun.

Petitioner Rahimi in her statement Exhibit PW-4/A had categorically asserted that her daughter Asmeena also sustained injuries and she died due to the said injuries. For herself she stated that she had sustained injuries and has become disabled and spent a sum of Rs.50,000/- on her treatment etc.; that deceased Asmeena was 15 years old and she used to do agriculture labour work earning Rs.3,000/- per month.

If we see the post mortem report of Asmeena Exhibit P-12, in the lower court record, her age is mentioned to be about 12 years. Post mortem is shown to be performed on 28.4.2007 at 6.00 P.M. and as per information provided by the police, her death is stated to be due to roadside accident.

In terms of 2nd Schedule under Section 163-A of the Motor Vehicles Act, when age of victim is upto 15 years, then multiplier of 15 is to be used. This Schedule further provides that notional income for compensation to those who had no income prior to the accident for non-earning persons is taken to be Rs.15,000/- per annum.

Applying multiplier of 15, the compensation payable comes out to Rs. 15,000 X 15 = Rs.2,25,000/-. As per this Schedule, the claimant would be entitled to get funeral expenses of Rs.2,000/- and Rs.2,500/- towards loss of estate. Adding that amount, the total payable compensation comes to Rs.2,25,000 + Rs.2,000 + Rs.2,500 = Rs.2,29,500/-.

The award seems to have been passed in a very casual and cursory manner and it is somewhat incoherent that the claim of the petitioner has been rejected for unconvincing reasons when it was squarely covered by Section 163-A of the Motor Vehicles Act, 1966. The deceased has been held to be a gratuitous passenger. However, the approach adopted by the Tribunal is erroneous, since the deceased is not shown to have been travelling in the pick-up van but in the tempo. The accident is shown to have occurred on account of wrongful act of pick-up van driver, for the said reason, the driver, owner and Insurance company are liable. The claimant has nowhere claimed that she alongwith her minor daughter deceased was travelling in the pick-up van. Therefore, there was no question of the claimant and deceased being gratuitous passengers in the commercial vehicle i.e. Pick-up van and the insurance company denying its liability for the said reason.

Accordingly, the claimant-appellant is held entitled to a compensation of Rs.2,29,500/-. The claimant-appellant shall be entitled to get interest @ 7.5% per annum on the compensation from the date of filing of claim petition till actual realization, the liability of the respondents being joint and several. The appeal is allowed with costs.

(H.S. Madaan)
20.3.2019 **Judge**
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Whether speaking / reasoned Yes / No
Whether reportable Yes / No