IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2698-2013(O&M)
Date of decision:-6.8.2019

ICICI Lombard General Insurance Company Ltd.

...Appellant

Versus

Madan Mohan Ghai and others

...Respondents

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

Argued by: Mr.A.S. Sidhu, Advocate
for the appellant.

Ms.Shivya Sehgal, Advocate
for respondents No.1 to 3.

Ms.Neha Jain, Advocate
for respondent No.4.

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H.S. MADAAN, J.

On account of death of Smt.Sudesh Ghai in a road side accident, which took place on 10.7.2007 in the area of Sahil Motel GT Road, Sirhind due to driving of Pick up van bearing registration No.PB-23-F-0759 (hereinafter referred to as the offending vehicle) by respondent No.1 – Ram Pal Sharma at a very high speed and in a rash and negligent manner, resultantly the said vehicle went out of control and turned turtle, her legal representatives i.e. Madan Mohan Ghai – husband, Sandeep Ghai and Mandeep Ghai - sons had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 impleading Ram Pal Sharma –

owner and driver and ICIC Lombard Motor Insurance Branch Ludhiana - insurer of the offending vehicle as respondents, claiming compensation to tune of Rs.5 lakhs.

On getting notice, respondent No.2 – insurance company put in appearance through counsel and contested the claim petition, whereas respondent No.1 was proceeded against ex parte. Issues on merits were framed. The parties were afforded opportunities to lead evidence.

Vide Award dated 28.2.2013, the claim petition was accepted by learned Motor Accidents Claims Tribunal, Ludhiana and compensation of Rs.5,73,271/- was awarded to the claimants in equal shares, payable by both the respondents, however, liberty was granted to respondent No.2 to recover the amount so paid by it from respondent No.1.

The respondent No.2 – insurance company felt aggrieved by the said Award and has approached this Court by way of filing an appeal.

Notice of the appeal was issued to the respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record and I find that there is no merit in the appeal.

The Tribunal on analysis of the evidence brought on file by the parties and considering the facts and circumstances of the case had come to the conclusion that the accident in which the deceased had suffered injuries was caused on account of rash and negligent driving of the offending vehicle by respondent No.1, in that way issue No.1 was decided in favour of the claimants and against the respondents. Though the Tribunal had noticed DDR No.18 dated 10.7.2007 recorded with

Police Station Sirhind regarding the accident, copy of which being Ex.P24 in which it was mentioned that the accident had taken place suddenly and no body was at fault. The Tribunal had observed that the DDR was recorded on the basis of statement of respondent No.1 Ram Pal Sharma – driver of the offending vehicle and the said document could not be considered to find cause of the accident, since driver of the offending vehicle would certainly plead his innocence regarding the reason for the accident and he could not be expected to say that he had caused the accident by rash and negligent driving. The claimants had examined Smt.Kanta Devi as PW2, who had provided the eye-witness account of the accident in her affidavit Ex.PB deposing in consonance with the case of the claimants and in her cross-examination, her credibility could not be shaken. Respondent No.1 did not appear in the witness box to state on oath that he was not author of the accident by his rash and negligent driving of the offending vehicle. In postmortem report Ex.P68, it was found to have been mentioned that Smt.Sudesh Ghai had suffered injuries due to overturning of the vehicle. Such finding recorded by the Tribunal cannot be faulted on any account.

Coming to issue No.3, the Tribunal considering the report of driving licence Ex.R2 and copy of driving licence Ex.R3 observed that respondent No.1 – Ram Pal Sharma was having licence to drive motorcycle and LTV and his licence was valid from 7.6.2006 to 6.6.2009; that the accident had taken place on 10.7.2007, in that way, respondent No.1 was having a valid and effective driving licence at the time of accident. Furthermore, it was established on record that the vehicle was having valid registration certificate also.

The Tribunal considering age of deceased to be 42 years as mentioned in her postmortem report Ex.P68 and as deposed by Madan Mohan Ghai in his affidavit Ex.PW1/A. As per the case of the claimants, the deceased was earning Rs.3,000/- per month from the job of tailoring and embroidery. PW1 Madan Mohan Ghai and PW2 Kanta Devi had deposed in that regard. The Tribunal took the income of deceased to be so observing that even even an unskilled person can manage to earn that amount. No deduction towards personal expenses was made. In view of ratio of authority ***New India Assurance Company Limited Versus Gopali, 2012(3) RCR(Civil) 819***, deduction of 1/3rd amount was not done since deceased was found to be a poor person having income below Rs.5,000/- per month and deduction of only 1/10th was ordered. Therefore, dependency of the claimants was taken to be Rs.27,00/- per month. The Tribunal has used the multiplier of 14, which is appropriate.

It may be mentioned here that the accident had taken place in the year 2007, an amount of Rs.3,000/- per month appears to be somewhat on lower side. Furthermore, no addition towards future prospects was made. Even the efforts put in by the deceased in doing household chores and household work were also not considered, in that way her income should have been taken to be more than Rs.3,000/- per month but it was not so done. Further, the amount of compensation awarded under the conventional heads is also very low since a sum of Rs.5,000/- only has been awarded to Madan Mohan Ghai towards loss of consortium when in terms of authority ***National Insurance Company Limited Versus Pranay***

Sethi and Ors.(supra), the claimants are 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/-. The Tribunal has however granted a sum of Rs.14,671/- towards the medical treatment of the deceased before she left this mortal world.

Since the claimants have neither filed any appeal against the award nor preferred cross-objections, there is no ground to enhance the compensation but one thing is certain that there is no ground to decrease it.

Now coming to the liability of the insurance company. The Tribunal has kept in view the fact that the deceased was gratuitous passenger travelling in a transport vehicle. Therefore, as per terms and conditions of the insurance policy Ex.R1, the insurance company is not liable to pay any compensation. The Tribunal has kept in mind this fact and for that reason has granted recovery rights to the insurance company.

Learned counsel for the appellant – insurance company has referred to judgment ***Manager, National Insurance Company Ltd. Versus Saju P. Paul and Anr., 2013(1) (RCR)(Civil) 869*** by the Apex Court, wherein it was observed that the insurance company shall not be liable to pay compensation, if gratuitous passengers travelling in goods vehicle are not covered under insurance policy. However, this judgment does not help the appellant – insurance company much since this is not disputed that insurance company is not liable to pay the compensation amount to the claimants, however, considering that Section 166 of the

Motor Vehicles Act is a piece of welfare legislation, the insurance company is directed to make the payment at first instance and then granted it recovery rights to recover it from the respondent No.1. Neither the Tribunal has made the insurance company jointly and severally liable with respondent No.1 nor this Court intents to do so. In the judgment itself, the insurance company had been directed to pay the compensation amount and then recover it from the insured. Therefore, this judgment is not much helpful to the case of the appellant.

Learned counsel for the respondents/claimants had also relied upon several judgments i.e. ***Manuara Khatun & Ors. Versus Rajesh Kr.Singh & Ors.*** passed in Civil Appeal No.3047 of 2017 arising out of SLP(C) No.5805/2013. In that judgment, the Apex Court in para No.22 has observed as under:

> *22. In view of the foregoing discussion, we are of the view that the direction to United India Insurance Company (respondent No.3) – they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Company – respondent No.3) to first pay the awarded sum to the appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo) – respondent No.1 in execution proceedings arising in this very case as per the law laid down in Para 26 of Saju P. Paul's case quoted supra.*
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> The appeal had been disposed of accordingly.

Learned counsel for the claimants/respondents has further referred to judgments ***Oriental Insurance Co. Ltd. Versus P.K. Sukumaran and others, 2018 ACJ 697***, ***Arun Kumar Agarwal and another Versus National Insurance Company and others, 2010(3) RCR(Civil) 827*** and ***Santosh Devi Versus National Insurance Company Ltd. and others, 2012(2) RCR(Civil) 882*** in that regard.

Therefore, I find that since the interest of the appellant – insurance company is adequately protected by granting it a right to recover the compensation amount paid/payable by it to the claimants under the award from respondent No.1 – insured, there is no occasion to interfere with the impugned award in that respect.

Thus, the appeal stands dismissed with costs.

6.8.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No