IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3836-2014(O&M) with
XOBJC-221-CII-2015(O&M)
Date of decision:-5.12.2019

National Insurance Company Ltd.

...Appellant

Versus

Smt.Rakhi and others

...Respondents

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

Present: Ms.Vandana Malhotra, Advocate
for the appellant.

None for respondents No.1 to 3/cross-objectors.

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H.S. MADAAN, J.

**CM-11673-CII-2014 in
FAO-3836-2014**

Heard.

For the reasons mentioned in the application, the same is allowed and delay of 77 days in filing of the appeal is condoned.

**FAO-3836-2014(O&M) with
XOBJC-221-CII-2015(O&M)**

Smt.Rakhi – widow, Baby Khushi – minor daughter and Smt.Dhanno – mother of Sanjay, an unfortunate victim of a road side accident had brought a claim petition under Section 166 of the Motor Vehicles Act against the respondents i.e. Mahavir - driver, Pritpal Singh –

owner and National Insurance Company Ltd. - insurer of Tata Tanker bearing registration No.PB-23-D-4205 (hereinafter referred to as the offending vehicle), claiming compensation to the tune of Rs.25 lakhs with interest and cost.

Briefly stated, the facts of the case as per version of the claimants are that on 19.1.2012, deceased Sanjay was going towards Durga Bhatta from his house at village Nahri on his motorcycle bearing registration No.HR-10J-8963 at a moderate speed; at about 9:00 a.m. when he had reached near Sadabahar Hotel on Sonepat – Bahalgarh road, suddenly the motorcycle of deceased struck against the offending vehicle, which was parked in the middle of the road negligently and the parking lights were not on; no brickbats or stones were placed near the vehicle so as to indicate the parking of vehicle there; no reflector had been placed on the road behind the vehicle as it was a thick fog on that day; after striking the tanker, Sanjay deceased suffered multiple grievous injuries and died on the spot; the incident was witnessed by Rajender son of Kartar Singh, resident of village Nahri, who was going towards Durga Bhatta in his car and was following the deceased; soon after the accident, the driver of offending vehicle fled from the spot; the police arrived at the place of accident on getting a telephonic message regarding accident in question; an FIR No.37 dated 19.1.2012 for the offences under Sections 279/304-A and 283 IPC was lodged by the complainant Rajender son of Kartar Singh by making statement to the police of Police Station Kundli, Sonepat.

According to the claimants, the deceased was working as a Clerk with Durga Bhatta Company and was getting salary of Rs.15,000/-

per month besides other perks; the claimants were fully dependent upon his earnings and they have suffered a great loss, mental shock, agony, love and affection etc.

Upon notice, all the three respondents were served and put in appearance. Respondents No.1 & 2 filed a joint written statement whereas respondent No.3 came up with a separate written statement.

In the joint written statement filed by respondents No.1 and 2, they had raised various preliminary objections contending that the claim petition was not maintainable; that the claimants had no locus standi to file the claim petition etc. On merits, the answering respondents contended that respondent No.1 had been falsely implicated in this case by the claimants in collusion with the local police when as a matter of fact such vehicle was not involved in the accident. Refuting the remaining assertions in the plaint, such respondents prayed for dismissal of the claim petition.

In the written statement filed by respondent No.3, it has also taken up various legal objections raising statutory defences contending that since breach of terms and conditions of the insurance policy had taken place, for want of fitness certificate, route permit etc. besides driving licence of respondent No.1, the answering respondent was not liable to pay any compensation. According to such respondent, the insured vehicle was being plied in violation of terms and conditions of the insurance policy. Such respondent also prayed for dismissal of the claim petition.

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

1. Whether the death of Sanjay son of Randhir Singh occurred due to the accident which took place on 19.1.2012 due to rash and negligent driving of Tata Tanker No.PB-23D-4205 by its driver-respondent No.1? OPP.
2. If issue No.1 is proved, to what amount of compensation, the petitioners are entitled to and from whom? OPP.
3. Whether the respondent No.1 was not holding a valid and effective driving licence on the date and time of alleged accident, if so, its effect? OPR-3.
4. Relief.

To prove their case, the petitioners had examined PW1 Rajender, PW2 Smt.Rakhi, PW3 Sudesh Kumar besides tendering certain documents.

On the other hand, the respondents have tendered in evidence documents i.e. copy of Insurance Policy as Ex.R1, copy of DL as Ex.P2, copy of RC as Ex.P3 and copy of route permit as Ex.R4 and copy of fitness certificate as Ex.R5.

After hearing arguments, the claim petition was allowed by Motor Accidents Claims Tribunal, Sonipat(hereinafter referred to as the Tribunal) vide award dated 19.11.2013 and compensation of Rs.8,41,200/- with interest at the rate of 7.5% per annum from the date of filing of the petition till the realization of that amount was awarded to the claimants, payable by all the respondents jointly and severally. It was directed that out of the compensation amount to be disbursed to the claimants, Rs.4,00,000/- will go to petitioner No.1 being widow of deceased Sanjay and petitioners No.2 and 3 would be entitled to receive the remaining compensation in equal proportions and out of the amount to be disbursed to the claimants, the share of minor petitioner No.2 shall be deposited in fixed deposit in a nationalized bank/post office fetching maximum interest till she attains the age of majority and out of the amount to be disbursed to petitioners No.1 and 3, 50% thereof shall be given to them in cash and remaining 50% of the amount to be disbursed to them along with up to date interest was ordered to be deposited in their names in fixed deposit scheme in any of the nationalized banks for a period of three years.

Feeling aggrieved by the said award, the respondent No.3 – insurance company has filed an appeal before this Court, notice of which was given to the respondents. Initially respondents No.1 to 3 had appeared through counsel and filed cross-objections seeking enhancement of compensation, however, later on there was no representation on their behalf.

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

The first and foremost argument advanced by learned counsel for the insurance company was that it was a clear case of contributory negligence. This plea was specifically taken before the Tribunal but the Tribunal wrongly rejected the same and since that plea is made out from the facts and circumstances of the case, the same be accepted and be held as a case of contributory negligence.

However, I find that such plea cannot be accepted. The

Tribunal dealt with that issue in detail and then came to the conclusion that the Tribunal is satisfied that the claimants have succeeded in establishing that on 19.1.2012 the offending vehicle had been parked in the middle of the road negligently and parking lights were not on and no brickbats or stones were placed behind the vehicle so as to indicate the parking of the vehicle nor any reflector was placed on the road behind the vehicle and since it was thick fog on that day, the motorcycle of the deceased struck against the offending vehicle, due to which deceased Sanjay received fatal injuries and died at the spot. The deposition of PW1 Rajender, who had provided the eye-witness account of the accident coupled with the documents i.e. copy of FIR Ex.P1, copy of postmortem report Ex.P106 were relied upon while coming to this conclusion. It was also kept in view that in the month of January thick fog engulfs the entire north India, so the parking of the offending vehicle in middle of the road without any indication was an act of sheer negligence on the part of respondent No.1 and deceased cannot be held responsible for any contributory negligence. The justification is proper and appropriate and does not call for any interference. It has to be kept in mind that respondent No.1 did not opt to appear in the witness-box and to state on oath that he was not negligent in happening of the accident. Therefore, such argument of learned counsel for the insurance company cannot be accepted.

Learned counsel for the appellant insurance company put forward another argument that respondent No.1 was not having a legal and valid driving licence, which amounted to violation of terms and conditions of the insurance policy, therefore the insurance company is absolved of its liability to pay compensation.

Again this contention is not convincing. Firstly it has to be taken note of that the offending vehicle was not in motion when the accident had taken place rather respondent No.1 – driver of the offending vehicle has been found guilty of negligence of parking his truck in the middle of the road without any indication. The Tribunal while deciding issue No.3 has observed that as per the driving licence of respondent No.1 Ex.R2, such driving licence was valid up to 19.3.2013 and he was authorized to drive the offending vehicle at the time of accident. It has further been observed that respondent No.3 insurance company had failed to produce any evidence to show that driving licence of respondent No.1 was invalid and ineffective at the relevant time or the vehicle in question was being driven in violation of terms and conditions of the insurance policy. Though learned counsel for the appellant has contended that appellant insurance company had got written report from R.T.O., Etawah and such office vide report dated 11.7.2014 had informed that series of driving licence bearing No.M-75903/2004/2007 had not been issued from this office and in the year 2007 no series from that numbers had been issued. According to learned counsel for the appellant, in that way that licence is fake. However, the appellant - insurance company had not produced any such evidence before the Tribunal and the report in question is after passing of the award. Even otherwise, such document has not been properly proved. Therefore, it cannot be said that respondent No.1 did not possess a valid and effective driving licence at the time of accident, which amounted to violation of the terms and conditions of the insurance policy, thus absolving it of any liability to pay compensation to the claimants.

Thus no merit is found in FAO-3836-2014 preferred by the insurance company and the same is dismissed accordingly.

Now coming to the XOBJC-221-CII-2015 filed by the claimants. The age of the deceased at the time of his death in the accident was 32 years. The Tribunal had taken him as an unskilled labourer assessing his monthly income as Rs.5,400/-. However, the Tribunal has not made any addition towards future prospects. As is natural, income of a person gets enhanced and increased with passage of time. Detailed formula for addition of income towards future prospects is given in ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009***. In terms of the same, if the deceased was self employed or having fixed monthly income and was aged below 40 years, then 40% of the his monthly income is added towards future prospects. Doing that the monthly income of the deceased is assessed to be Rs.7,560/-(5400 + 2160). Deducting 1/3rd of the amount towards personal and living expenses of the deceased, the monthly dependency of the claimants comes out to Rs.5,040/-, annual to be Rs.60,480/-(5040 x 12). Considering the age of the deceased, the multiplier 16 was rightly applied by the Tribunal. Doing that the compensation amount is worked out to Rs.9,67,680/- (60,480 x 16).

In view of the ratio 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 total compensation comes out to Rs. 9,67,680 + 70,000 = 10,37,680/-.

The Tribunal has awarded compensation of Rs.8,41,200/-.

In this way, the additional amount comes out to Rs.1,96,480/- (10,37,680 - 8,41,200). The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the additional amount of Rs.1,96,480/-. Since the amount has been enhanced, the directions with regard to release of compensation amount to the claimants in cash and with regard to deposit in the form of FDR shall stand modified proportionately.

With such modification, XOBJC-221-CII-2015 filed by the claimants are allowed partly with costs.

5.12.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No