IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3867-2014(O&M)
Date of decision:-6.5.2019

United India Insurance Company Pvt. Ltd.

...Appellant

Versus

Charan Kaur and others

...Respondents

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

Present: Mr.R.C. Gupta, Advocate
for the appellant.

Mr.Surender Gandhi, Advocate
for respondent No.3.

****

H.S. MADAAN, J.

Briefly stated, the facts of the case, as per version of the petitioner/claimant Charan Kaur are that on 13.12.2012, her husband Nachhattar Singh son of Sh.Sadhu Singh was coming towards village Ucha Jatana on his scooter having registration No.PB-49-5186; that at about 8:00 a.m., when he had reached near G.T. Road, Bus Stand Farour while driving the scooter on left side, then a bus having registration No.PB-10-CF-7388 (hereinafter referred to as the offending bus) being driven by respondent No.1- Baldev Krishan in a rash and negligent manner came from Samrala side and struck against the scooter of Nachhattar Singh and thereafter struck against a tree, as a result Nachhattar Singh fell down on the road towards right side of the bus, suffered injuries and died at the spot; that formal FIR No.147 dated 13.12.2012 for the offences under Sections 279, 304-A, 427 IPC was got recorded by Charanjit Singh son of Dharam Singh, who had seen the accident with Police Station Khamanon. According to the petitioner/claimant Charan Kaur, her husband Nachhattar Singh was working as a Contractor being mason and in addition to that he was doing dairy farming earning Rs.30,000/- per month; that she being his wife and Balwinder Singh – proforma respondent No.4 his son are his class I legal heirs. The claimant prayed that compensation of Rs.50 lacs be granted to her on account of death of her husband Nachhattar Singh in the road side accident.

On notice, all the three respondents appeared. Respondents No.1 and 2 had 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 raised preliminary objections challenging maintainability of the claim petition submitting that no such accident had taken place involving the offending bus and the claimant has concocted a false story in that regard just to get illegal compensation. On merits, the material assertions in the claim petition were denied and pleas taken in the preliminary objections were reiterated contending that the alleged bus is registered in the name of M/s Jujhar Construction and Travel Private

Limited. In the end, the answering respondents prayed for dismissal of the claim petition.

In the written statement submitted by respondent No.3 – insurance company, it denied the material assertions taking up legal pleas with regard to maintainability of the claim petition; that respondent No.1 was not having a valid and effective driving licence at the time of accident. The answering respondent also took objections regarding fitness certificate, registration certificate and route permit of the offending bus etc. According to the answering respondent, the claim petition was filed by the claimant in collusion with respondents No.1 and 2 falsely implicating the bus in question. Refuting the remaining allegations, such respondent also prayed for dismissal of the claim petition.

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

1. Whether Nachhattar Singh son of Sadhu Singh died in a vehicular accident allegedly took place on 13.12.2012 due to rash and negligent driving of bus bearing registration no.PB-10-CF-7388 driven by respondent no.1 as alleged? OPP.
2. Whether claimant is entitled to compensation and to what extent and from whom? OPP.
3. Whether driver of bus bearing no.PB-10-CF-07388 was not having valid and effective driving licence as alleged? OPR3.
4. Relief.

Both the parties led evidence in support of their respective claims.

In support of her case, the claimant Smt.Charan Kaur got recorded her statement as PW4 besides examining Sh.Roop Singh as PW1, Sh.Kulvir Singh as PW2 and Sh.Charanjit Singh as PW3.

On the other hand, respondents tendered in evidence documents Ex.R1 to Ex.R6.

After hearing arguments, the Tribunal while allowing the claim petition partly, awarded a compensation of Rs.7,97,000/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition till realization to the claimant payable by respondents No.1 and 2 jointly and severally but respondent No.3 being insurer of the offending bus was liable to indemnify the respondents No.1 and 2. The manner in which the compensation is to be apportioned was also given in the award.

This award left the respondent No.3 - insurance company aggrieved and it has approached this Court by way of filing the present appeal praying that the same be accepted, the impugned award be set aside and the appellant – insurance company be absolved of its liability to pay compensation to the claimant.

Notice of the appeal was given to respondents. However, only respondent No.3 put in appearance through counsel, whereas remaining respondents did not appear despite service.

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

Learned counsel for the insurance company has argued that respondent No.1 was not having a legal and valid driving licence at the time of accident and his own damage claim was rejected by the insurance company, therefore, at least recovery rights be granted to the insurance company.

I find that the Tribunal had framed issue No.3 as under:

Issue No.3.

'Whether driver of bus bearing no.PB-10-CF-07388 was not having valid and effective driving licence as alleged? OPR3'.

The onus of proving the said issue was upon respondent No.3 – insurance company. The Tribunal has observed that respondents No.1 and 2 had proved material documents i.e. copy of registration certificate of bus as Ex.R1, copy of insurance as Ex.R2, copy of route permit as Ex.R3 and copy of driving licence of respondents No.1 as Ex.R4. Furthermore, respondent No.3 had tendered verification report of driving licence as Ex.R5 and verification report of route permit as Ex.R6 and that tendering of those documents by respondent No.3 clearly proves that respondent No.1 was having a valid and effective driving licence at the time of alleged accident, therefore, this issue was decided against respondent No.3. It being so, the appellant – insurance company cannot rake up this dispute again. I do not find anything wrong with the verdict recorded by the Tribunal in that regard. Since the insurance company had not brought any cogent and convincing evidence to show that own damage claim of the insured had been rejected, therefore the case of the claimant is not adversely effected on that count. The Tribunal had taken Nachhattar Singh to be working as labourer, earning Rs.400/- per day and considering that he must have get work for 20 days in a month arrived at the conclusion that he was earning Rs.8,000/- monthly.

Learned counsel for the appellant has contended that the monthly income of the deceased should have been taken to be that of a casual labourer and as per minimum rates of wages in State of Punjab at the relevant time w.e.f. 1.9.2009 monthly income of casual labourer was Rs.3,398/-.

However, I find that this argument of learned counsel for the appellant does not hold good. It is specific case of the claimant that the deceased was a mason and was working as a contractor. Therefore, the Tribunal did not do anything wrong in taking his monthly income to be Rs.8,000/-. The dependency of the claimant is found to be Rs.4,000/- per month, annual dependency Rs.48,000/- (4000 x 12). The Tribunal has used multiplier of 14, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs.6,72,000/-(48000 x14).

The Tribunal has awarded a sum of Rs.1,00,000/- as consortium and Rs.25,000/- as funeral expenses. However, in view of citation ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009***, the claimant is 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/-. Thus, the total compensation comes out to Rs.6,72,000 + 70,000 = 7,42,000/-.

The Tribunal has wrongly awarded compensation of Rs.7,97,000/-. The same is reduced to Rs.7,42,000/-. The claimant would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization on the amount of Rs.7,42,000/-. Other terms and conditions in the original award shall remain the same.

With such modification, the appeal is allowed partly with costs.

6.5.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No