IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O No. 389 of 2014
Date of decision:- 12.07.2019

ICICI Lombard General Insurance Co. Ltd. ...Appellant

Versus

Rajni and others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. A.S. Sidhu, Advocate
for the appellant

Mr. Pankaj Katia, Advocate
for the respondents.

RITU BAHRI J. (Oral)

This appeal is by the insurance company disputing the liability foisted upon it by the Motor Accident Claims Tribunal, SAS Nagar, Mohali (for brevity, the tribunal'), vide its award/order dated 10.09.2013 whereby the appellant-Company (for short 'the appellant') was held liable to make the compensation to the tune of Rs.09,87,271/- on account of damage and repair to the vehicle bearing registration No. CH-03-J-1365.

Facts not in dispute

On 12.02.2012, deceased Neeraj Kumar along with Dinesh Bharat, Parveen Kumar and Sunil Kumar and Ramesh Mittal was going from Rajpura to Zirakpur in Sonata car bearing registration No. CH-03-J-1365. The car was being driven by Neeraj Kumar. In the meantime, a truck bearing registration No. RJ-07-GB-9179 was going ahead of them. When they reached near Patiala Dhaba situated on the right side of the road, the driver of the truck without giving any signal, suddenly turned the truck towards the Patiala Dhaba. Thus, the car driven by Neeraj Kumar struck against the right side of the truck and fell into the ditches on the side of the road and thereafter struck against the tree. Due to the impact, Neeraj Kumar and Bharat died on the spot whereas other occupants sustained injuries, who were shifted to Gian Sagar Hospital, Banur.

The learned Tribunal after going through the entire evidence held that the accident had occurred due to rash and negligent driving of the driver of the offending vehicle by relying upon the deposition of Parveen Kumar-Eye witness as P.W.2 and P.W.3-Sanjeev Kumar, Manager, Berkley Hyundia who proved the estimate of damaged car as PW3/A and PW3/B.

Learned counsel for the appellant has argued that firstly it is a case of contributory negligence as the car was being driven at a very high speed and the driver of the car failed to keep adequate distance with the ahead going vehicle (offending truck).

Learned counsel for the appellant further argued that the learned Tribunal has erred in accepting and relying on the rough estimate prepared by Ashok Dhiman, Supervisor at Berkley Hyundai. This rough estimate was never produced in the Court by Ashok Dhiman himself but by P.W.3 Sanjeev Kumar an official of body shop. The estimate has been prepared merely on account of visual scrutiny, that too of a supervisor and on the basis of photographs taken.

On the other hand, learned counsel for the respondents submits that it is not a case of contributory negligence and the learned Tribunal has righty held liable the Insurance Company to pay the compensation of Rs.9,87,271/-, which is not on the higher side.

Heard learned counsel for the parties.

A bare perusal of Annexre A-2 (FAO No. 389-2014) shows that the car of the deceased was 2003 Model and market price of the vehicle was Rs.4,07,194/-. As per insurance policy (A-3), in the category of limits of liability,the Insurance company was liable to pay Rs.70,50,333/- on account of damage to third party property.

After going through Annexure A-2 and A-3, this Court is of the view that it is not a case of contributory negligence but the compensation awarded by the Tribunal is on the higher side and thus, the appeal stands allowed and the compensation of Rs.09,87,271/- on account of damage and repair to the vehicle bearing registration No. CH-03-J-1365 is reduced to Rs.6,00,000/-. The claimants are entitled to compensation to the tune of Rs.6,00,000/-.The remaining conditions of disbursal of amount and recovery rights shall remain unaltered.

12.07.2019 (***RITU BAHRI***)
G Arora ***JUDGE***