IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 3124 of 2016 (O&M)
Date of decision : 7.12.2019

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Shri Ram General Insurance Company Ltd.
................Appellant

vs.

Savita Garg and others
.................Respondents

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

Present: Mr. Punit Jain, Advocate for the appellant

Mr. Angad Chahal, Advocate for respondents No. 1 to 3.

Mr. Amit Kumar Walia, Advocate for respondent No.4

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H. S. Madaan, J.

Petitioners – claimants Savita Garg, aged about 44 years – wife, Shifali Garg, aged about 19 years – daughter and Shubham Garg aged about 17 years – minor son of Sunil Kumar, an unfortunate victim of a roadside accident, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988, against respondents i.e. Surjit Kumar owner and driver and Shri Ram General Insurance Company Limited, Jaipur, Rajasthan – insurer of truck bearing registration No. PB-13 AB-2497 (hereinafter referred to as 'the offending vehicle'), claiming compensation to the tune of

Rs.80,00,000/-.

As per version of the claimants, Sunil Kumar deceased was aged about 45 years and was working as an Inspector in Punjab Police, drawing a salary of Rs.57,408/- per mensum, on 6.8.2014, the deceased was coming from Mansa to Sangrur in his car make Swift, bearing registration No. PB 11 AP 3445. He was being followed by his cousin Narinder Kumar in another car bearing registration No. PB 13 AF 8110; that when they reached near Model Town, Sheron on Sunam Mansa road, the offending truck being driven by respondent No.1 Surjit Kumar in a rash and negligent manner and at a high speed, came from opposite side and rammed into car of the deceased. As a result, deceased received multiple grievous injuries, to which he succumbed at the spot. After the accident, respondent no.1 sped away the truck. Formal FIR regarding the accident bearing No. 78 dated 7.8.2014 for offences under Sections 279, 427 and 304 A IPC, was registered at Police Station, Cheema on the statement of Narinder Kumar.

On being put to notice, both the respondents appeared and filed separate written replies contesting the claim petition. In the written reply, submitted on behalf of respondent no.1, he had denied the assertions in the claim petition contending that no such accident had taken place and a wrong FIR has been got registered against him, in that way the claimants are not entitled to get any compensation from the answering respondent. However, such respondent admitted that the truck in question was being owned by him. According to him it was insured with Shri Ram General Insurance Company Limited, Jaipur, Rajasthan, at the relevant time. In the written reply filed on behalf of respondent no.2 – Insurance company, it took various legal objections with regard to maintainability of the claim petition and liability of such respondent to pay the compensation to the claimants. It took up various statutory defence also including the one that respondent No.1 was not holding a valid and effective driving licence at the time of accident. In that way terms and conditions of Insurance policy were violated and the answering respondent stood absolved of its liability to pay the compensation.

Both the respondents prayed for dismissal of the claim petition.

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

1. Whether death of Sunil Kumar took place as a result of motor vehicle accident on 6.8.2014 in the area of Model Town, Sheron, near Cheema due to rash and negligent driving of respondent no.1 Surjit Singh of truck bearing registration No. PB 13 AB 2497? OPA
2. If issue No. 1 is proved, whether the applicants are entitled to compensation, if so, to what amount and from whom? OPA
3. Whether respondent No.1 was holding a valid and effective driving licence at the time of accident? OPR-1.
4. Relief.

Parties were given adequate opportunities to lead their evidence in support of their claims.

In order to prove their case, applicant No.1 – Savita Garg herself stepped into witness box as AW-1 and further examined Narinder Kumar as AW-2 and Jaswant Singh, Salary Clerk, office of Senior Superintendent of Police, Mansa as AW-3.

On the other hand, respondent No.1 tendered in evidence copies of insurance policy, registration certificate of truck in question, fitness certificate, driving licence of respondent No.1 and permit as Exhibits R-2 to R-6. Respondent No.2 tendered in evidence copy of insurance policy as Exhibit R-1. Thereafter evidence of the respondents was closed.

After hearing the arguments, the Motor Accident Claims Tribunal, Sangrur, vide award dated 6.10.2015, decided issue No.1 in favour of the claimants concluding that respondent No.1 had caused the accident, while driving the offending vehicle belonging to him in a rash and negligent manner, resulting into death of the deceased. Whereas issue No.2 was decided holding that petitioner-claimants were entitled to get compensation of Rs.79,56,488/- from both the respondents, their liability being joint and several.

Issue No.3 was decided in favour of respondent no.1 and against respondent No.2. Resultantly, the claim petition was accepted and compensation of Rs.79,56,488/- was awarded to the claimants payable by both the respondents, jointly and severally with interest @ 7.5% per annum from the date of filing of claim petition till realization. Out of the compensation amount, a sum of Rs.1 lac was awarded on account of loss of consortium was given to petitioner -claimant No.1 being widow of the deceased and remaining amount to be apportioned among all the three claimants in the ratio of 50:25:25. It was further directed that share of petitioners No. 1 and 2 shall be deposited in their bank accounts and amount of share of petitioner no.3 in compensation shall be deposited in his name in the shape of FDR and applicant No.1 shall certify before the Tribunal qua receipt of share of petitioner No.3 in the amount of compensation and deposit of the same in the shape of FDR. The claim petition was accepted with costs.

The respondent – Insurance company felt aggrieved by the award and has approached this Court by way of filing an appeal, notice of which was given to the respondents, who have put in appearance through counsel.

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

The first and foremost argument advanced by learned counsel for the appellant – Insurance company was that it was a case of contributory negligence, in as much as, it was a case of head on collision and deceased, who was driving the car was also at fault, the said fact was not taken into consideration by the Tribunal and wrongly fasten the entire liability upon the truck driver.

However, learned counsel appearing for the claimants has contended that this plea is without any basis. Both the respondents in the written statements filed by them have denied the involvement of the truck in question in the accident and had not taken any plea of contributory negligence. When the claimants had examined Narinder Kumar eye witness as AW-2, who had deposed in consonance of the prosecution story vide his affidavit Exhibit AW 2/A, no suggestion was given to him that deceased was also at fault in happening of the accident. The FIR with regard to the accident had been registered against the truck driver. Respondent No.1 was challaned and has faced trial. Therefore, no case for contributory negligence is made out.

After hearing learned counsel for the parties, I find that the contention of learned counsel for the appellant is not acceptable for various reasons. Most of them have been narrated by learned counsel for the respondents claimants during his arguments. In addition to that respondent No.1 did not opt to appear in the witness box to get his statement recorded and to depose on oath that he was not responsible for the accident or at least stated that some of the fault was on the part of deceased car driver. Rather both the counsel for the respondents had tendered documents and then closed their evidence. It being so, it cannot be said that the deceased had died in an accident which had taken place on account of rash and negligent driving of the offending truck as well as rash and negligent driving of the car by the deceased. Merely because it was a case of head on collision, does not mean that it is to be taken that there was contributory negligence.

In support of his contentions, counsel for the appellant had referred to judgment ***<u>Bijoy Kumar Dugar vs. Bidyadhar Dutta and others 2006 (2) RCR (Civil) 590,</u>*** by the Apex Court, wherein it was observed that when there is head on collision between car and bus and car driver had died, drivers of both the vehicles should be held responsible to have contributed equally to accident when there is head on collision. This judgment is not applicable in the present case due to different facts and circumstances. Here there is nothing to show that the offending truck was also damaged. The Apex Court had observed that the finding in that regard is a finding of fact. Here no such fault on the part of the deceased comes out to be there. Therefore, the abovesaid authority does not come to the help of the appellant.

With regard to the compensation awarded, the Tribunal has kept in view monthly income of the deceased as Rs.53,788/- on the basis of salary certificate Exhibit A-7 and testimony of AW-3 Jaswant Singh, Clerk from the office of Senior Superintendent of Police, Mansa. His age was taken to be 45 years. 30% addition was made towards the future prospects. In that way assessing his monthly income as Rs.69,924/- and annual income as Rs.8,39,088/-. 1/3rd of the amount was deducted towards his personal and living expenses, calculating the dependency of the claimants to be Rs. 8,39,088 – 2,79,696 = Rs.5,59,392/- per annum. Multiplier of 14 was used and the total compensation was worked out to Rs.78,31,488/-.

However, from this amount, income tax payable was not deducted. Even if it is taken that income tax @ 10% was payable, then the remaining amount comes to Rs.78,31,488 – 7,83,148 = 70,48,340/-.

On this amount, in terms of ratio of authority ***National Insurance Company Limited vs. Pranay Sethi and others. 2017 (4) RCR (Civil) 1009,*** the claimants are entitled to get Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses and Rs.40,000/- to the widow on account of loss of consortium. The Tribunal has wrongly granted Rs.1 lac on account of loss of consortium and Rs.25,000/- on account of funeral expenditure.

Thus by adding the amount of Rs.70,000/- towards conventional heads, the total compensation payable to the claimants comes out to Rs.70,48,340 + 70,000 = Rs.71,18,340/-.

The Tribunal has awarded a compensation of Rs.79,56,488/- to the claimants. Therefore, present appeal is accepted partly and the compensation amount is reduced to Rs.71,18,340/- with proportionate interest. The excess amount, if paid to the claimants, be refunded to the appellant – Insurance company by them, otherwise, the appellant – Insurance company would be entitled to recover it by moving an execution application before the concerned Tribunal.

(H.S. Madaan)
Judge

7.12.2019
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Whether speaking / reasoned Yes / No
Whether reportable Yes / No

BANITA CHUGH
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