

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-4340-2015(O&M)

Date of decision:-30.5.2019

The Oriental Insurance Company Limited

...Appellant

Versus

Ram Garib and others

...Respondents

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

Present: Mr.Vinod Choudhari, Advocate
for the appellant.

Mr.A.K. Mishra, Advocate
for respondent No.6.

H.S. MADAAN, J.

On account of death of one Sunil Kumar alias Bhola in a road side accident, which took place on 4.1.2013 at about 12:00 a.m.(night) in the area of village Binola, National Highway – 8, Jaipur-Delhi Road statedly on account of rash and negligent act of respondent No.1 – Mohd. Hira – driver of truck trailer having registration No.HR-38-B-2799(hereinafter referred to as the offending vehicle), his legal representatives, namely, his father – Sh.Ram Garib, aged about 62 years, mother – Smt.Prabhu Devi aged about 57 years, minor sister – Baby Suman and minor brother – Master Krishan Kumar had initially brought a claim petition under Section 163-A of Motor Vehicles Act against the respondents i.e. Mohd. Hira – driver, AB Sea Container Pvt. Ltd. - owner

and Oriental Insurance Company Ltd. - insurer of the offending vehicle, claiming compensation. Subsequently, the claimants got the claim petition amended so as to convert it into one under Section 166 of the Motor Vehicles Act. They had claimed compensation of Rs.20 lakhs along with interest and cost.

As per the version of the claimants, on the fateful day i.e. on 4.1.2013, the deceased Sunil Kumar alias Bhola was on duty as a conductor on truck No.HR-47-H-1677, which was going from Bawana Delhi to Bhiwadi; that when the truck reached near village Binola, National Highway – 8, Jaipur – Delhi Road, then the offending vehicle was parked on the road without indicator and without following the prescribed traffic rules, resultantly, the truck in which Sunil Kumar @ Bhola was travelling struck against the offending truck, as a result, he received multiple and grievous injuries on various parts of his body and become unconscious; that Vijay Kumar son of Kharman, driver brought the deceased to General Hospital, Gurgaon, where he was declared dead.

On getting notice of the claim petition, only respondent No.3 appeared and filed written reply contesting the claim petition, whereas respondents No.1 and 2 did not appear despite service, as such were proceeded against ex-parte.

In the written reply filed on behalf of respondent No.3, it took up various legal objections with regard to claim petition being bad for mis-joinder and non-joinder of necessary parties; that respondent No.1 was not having valid and effective driving licence at the time of alleged accident and that the offending vehicle was not having a valid and

effective route permit and fitness certificate at the time of accident. Furthermore, the answering respondent had submitted that respondents No.1 and 2 had failed to comply with the provisions of Section 134(c) of the Motor Vehicles Act. Refuting the remaining allegations in the claim petition, such respondent prayed for dismissal of the claim petition.

On the pleadings of the parties following issues were framed:

1. Whether the accident in question was caused by respondent no.1 while driving vehicle bearing registration No.HR-38-H-2799 in a rash and negligent manner resulting into death of Sh.Sunil Kumar as alleged? OPP.
2. If issue No.1 is proved, whether the petitioner is entitled to any compensation and if so to what effect and from whom? OPP.
3. Whether the respondent no.3 is liable to make payment of any compensation on account of alleged violation of terms and conditions of insurance policy? OPR.
4. Relief.

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

In support of their case, the claimant No.1 Sh.Ram Garib got recorded his statement as PW3 besides examining Sh.Pawan Kumar Chaudhary as PW1, Sh.Devinder Singh, Ahlmad as PW2, Constable Dinesh Kumar as PW4, Sh.Vijay Kumar as PW5 and Sh.Droga as PW6.

On the other hand, learned counsel for respondent No.3 tendered in evidence insurance policy Ex.R1 to Ex.R3.

Vide Award dated 20.1.2015, learned Motor Accidents

Claims Tribunal, Gurgaon allowed the claim petition and awarded compensation of Rs.8,85,000/- to the claimants along with interest @ 7.5% per annum, payable by respondents No.1 and 3 jointly and severally. The manner in which the compensation is to be apportioned was also given in the award.

Such award left the Insurance Company aggrieved and it has knocked at the door of this Court praying that the appeal be accepted, the award under challenge be set aside.

Notice of the appeal was issued to the respondents. Initially respondents No.3 and 4 appeared through counsel but subsequently, there was no representation on their behalf. Respondent No.6 put in appearance through counsel.

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

Learned counsel for the appellant has argued that it was a case of contributory negligence since the driver of the truck, in which the deceased was travelling as a conductor was also responsible for the accident having banged the truck in the offending vehicle standing on the road. However, the entire liability has wrongly been fastened on the driver, owner and insurance company of the offending vehicle.

Whereas learned counsel appearing for the claimants has contended that the Tribunal has rightly observed that the offending vehicle was wrongly parked in the middle of the road resulting in the accident and it could certainly be not termed as a contributory or composite negligence.

After hearing the learned counsel for the parties and going through the record, I find that the Tribunal has dealt with such aspect in a very detailed and convincing manner observing that there is no evidence on the file to suggest that respondent No.1 had put any sign board or that he had left the indicators of the vehicle on while parking it on the road, which was clearly in contravention to Rule 109 and 138 of the Central Motor Vehicle Rules. Both the rules have been reproduced in para No.10 of the Award. Rule 109 dealing with Parking Light provides that every motor vehicle other than three-wheelers of engine capacity not exceeding 500 cc motorcycles and three-wheeled invalid carriages shall be provided with one white or amber parking-light on each side in the front and in addition to the front lights, two red parking one on each side in the rear shall be provided and the front and rear parking lights shall remain lit even when the vehicle is kept stationary on the road.

There are three provisos to that rule. Whereas Rule 138 deals with Signals and additional safety measures for motor vehicles specifying that the driver of a motor vehicle shall make such signals and on such occasions as are specified in the regulations made under Section 118 and that the driver of motorcycle shall, in addition to the safety measures mentioned in sub-section (1) of Section 128, comply with the requirements of Rule 123.

Rule 15 of the Rules of the Road Regulations, 1989 has also been referred to which deals with parking of the vehicle providing that every driver of a motor vehicle parking on any road shall park in such a way that it does not cause or is not likely to cause danger, obstruction or

undue inconvenience to other road users and if the manner of parking is indicated by any sign board or making marking on the road side, he shall park his vehicle in such a manner.

The Tribunal has further noticed that under Section 201 of the Motor Vehicles Act, a penalty for causing obstruction to free flow of traffic. The conclusion drawn by the Tribunal with regard to issue No.1 is contained in para No.11, which for ready reference is reproduced as under:

11. In view of the depositions of the eye witnesses PW5 Vijay Kumar and PW6 Droga who filed their affidavits Ex.PW5/A and Ex.PW6/A and also in view of the FIR Ex.P4, I am of the view that the offending vehicle was wrongly parked in the middle of the road during the night time. Moreover it was winter season during which in the night hours it is usually very foggy. Clearly the vehicle was karked in a negligent manner without proper sign board and parking lights on. This was clearly in contravention of the rules and regulations discussed above. Moreover as deposed by PW4 after completion of investigation challan was presented against respondent no.1 in the criminal court on 18.3.2013. Therefore I hold that the accident took place on account of rash and negligent driving of respondent no.1 who was driving the offending vehicle. This issue is accordingly decided in favour of the claimants.

Thus, viewed from any angle, it does not come out to be a

case of contributory or composite negligence. Therefore, such argument of learned counsel for the appellant is rejected.

Learned counsel for the appellants has further contended that owner and insurance company of the ill-fated truck were not impleaded as party by the claimants, therefore the claim petition is bad for non-joinder of necessary parties. However, I find that since the Tribunal has rightly come to the conclusion that the accident in question had taken place on account of fault of driver of the truck trailer, who had wrongly parked it in the middle of the road without switching on the parking lights or giving any indication that such truck trailer was standing there and driver of the ill-fated truck has not been found to have contributed to the accident by his rash and negligent driving. The claimants having not impleaded the owner or insurance company of the truck does not make any difference.

Coming to the next contention of learned counsel for the appellant that at the relevant time, the driver did not possess any valid and effective driving licence, resulting in violation of terms and conditions of the insurance policy and the insurance company should have been absolved of its liability to pay compensation.

However, I find little merit in this contention. Specific issue No.3 had been struck by the Tribunal as to whether the respondent No.3 was liable to make payment of any compensation on account of alleged violation of terms and conditions of the insurance policy. The onus of proving this issue was upon the respondents, to be more precise upon respondent No.3 since it was such respondent, who had raised this plea in its written reply, whereas remaining two respondents had not put in

appearance before the Tribunal. However, the Tribunal while dealing with this issue has observed in para No.18 as under:

18. Now the question arises who is liable to pay the compensation. Learned counsel for the respondent No.3 – insurance company argued that despite sending notices to the owner and the driver Ex.R1 and Ex.R2 the respondent no.1 and 2 did not produce the Permit. It is settled law that the burden to prove any violation of the terms and conditions of the insurance policy is upon the insurance company. No postal receipt has been exhibited by the respondent no.3 – insurance company. It therefore cannot be said that the respondent no.3 has discharged its onus. Therefore, I am of the view that it is not proved in this case that there is any violation of the terms and conditions of the insurance policy. Therefore, it is held that all the respondents are jointly and severally liable to pay the compensation amount. Hence, issue No.2 is decided in favour of the claimants and issue no.3 is decided against the respondent no.3 – insurance company.

I find that adequate reasoning has been given by the Tribunal for coming to the conclusion that respondent No.3 had failed to prove that there was any violation of the terms and conditions of the insurance policy, as such all the three respondents are jointly and severally liable to pay the compensation. No ground is there to upset such finding.

The last argument advanced by learned counsel for the

appellant was that compensation awarded is on the higher side.

I find that the Tribunal was justified in taking the monthly income of deceased to be Rs.5,000/- per month and observing that he was aged below 40 years had awarded addition of 50% towards future prospects. However, I find that the amount so added towards future prospects is on higher side since in view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, in such an eventuality 40% of the amount is to be added towards future prospects instead of 50%. Doing that the monthly income of the deceased is taken as Rs.5000 + 2000 = Rs.7,000/-.

Keeping in view the fact that the deceased was a bachelor 50% is to be deducted as personal and living expenses in terms of the ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77**. Doing that the dependency of claimants comes out to Rs.3,500/- per month, annual dependency comes out to Rs.3,500 x 12 = Rs.42,000/-.

The Tribunal has used multiplier of 18, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs.42,000 x 18 = 7,56,000/-.

The Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses and a sum of Rs.50,000/- on account of loss of love and affection. However, 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 and Rs.15,000/- as funeral expenses, total

Rs.30,000/-. The total compensation comes out to Rs. 7,56,000 + 30,000 = 7,86,000/-.

The Tribunal has wrongly awarded compensation of Rs.8,85,000/-. The same is reduced to Rs.7,86,000/-. The claimants 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.7,86,000/-. Other terms and conditions in the original award shall remain the same. Amount if paid in excess be refunded by the claimants at the earliest.

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

30.5.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No