IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-702-2014(O&M)
Date of decision:-26.8.2019

United India Insurance Company Ltd.
...Appellant

Versus

Nirmal and others
...Respondents

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

Present: Mr.D.R. Bansal, Advocate for the appellant.

Mr.Harsh Mehla, Advocate for respondent No.4.

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H.S. MADAAN, J.

On account of death of Sh.Narinjan Masih in a motor vehicular accident, which took place on 3.9.2010 at about 11:00 a.m. in the area of a little ahead of Sita Ram Petrol Pump, near Kahnuwan Chowk, Gurdaspur, statedly on account of rash and negligent driving of milk tanker bearing registration No.PAT-4033 (hereinafter referred to as the offending vehicle) by respondent No.1 – Narinder Singh, his wife Ms.Nirmal and his son Naresh Masih had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 impleading Narinder Singh – driver, Chairman, Milkfed, Milk Plant, Gurdaspur – owner as well as State of Punjab through District Collector, Gurdaspur besides United India Insurance Company Ltd., Gurdaspur - insurer of the offending vehicle as respondents, claiming compensation to the tune of Rs.25 lakhs along with interest.

On being put to notice, all the four respondents had appeared and contested the claim petition.

Vide Award dated 31.7.2013, learned Motor Accidents Claims Tribunal, Gurdaspur allowed the claim petition and awarded compensation of Rs.5,00,000/- along with interest @ 8% per annum from the date of filing of the claim petition till realization to the claimants payable by all the respondents jointly and severally.

The respondent No.4 – insurance company being of the view that the compensation awarded by Motor Accidents Claims Tribunal, Gurdaspur was on higher side has approached this Court by way of filing an appeal, notice of which was given to respondents. However, only respondents No.4 and 5 had put in appearance through counsel. Subsequently, there was no representation on behalf of respondent No.5 even.

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

The Tribunal on the basis of evidence adduced before it had returned a finding that accident in which Narinjan Masih lost his life had taken place on account of rash and negligent driving of the offending vehicle by Narinder Singh – respondent No.1. There is no reason to upset the said finding since there is sufficient material available on record to reach this conclusion. It being so, Narinder Singh being driver, Chairman, Milkfed, Gurdaspur and State of Punjab being owners and United India

Insurance Company Ltd., Gurdaspur – insurer of the offending vehicle were rightly held to be jointly and severally liable to pay the compensation to the claimants. Since no violation of terms and conditions of the insurance policy came out to be there, as such respondent No.4 was held jointly liable with all the three respondents required to indemnify the insured regarding discharge of liability to pay compensation to the claimants under the award.

With regard to the quantum of compensation, the Tribunal took the age of deceased as 59 years considering such age entered in the postmortem report. His monthly income was assessed to be Rs.6,000/- though not relying upon the version of the claimants that he was earning Rs.20,000/- per month by sale and purchase of animals. 1/3rd of the amount was deducted towards personal expenses of the deceased, that was rightly done in light of the judgment ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77*** .

In view of the judgment ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009*** , a benefit of addition of 10% of the amount towards future prospects should have been given but it was not so done by the Tribunal. However, since the claimants have not filed any cross appeal or cross-objections, I do not find it proper to grant such benefit to them.

The Tribunal has used multiplier of 10 when in terms of ratio of authority ***Sarla Verma's*** (supra) when the deceased was in the age group of 56 to 60 years, multiplier of 9 should be applied. The amount granted by the Tribunal under conventional heads is only Rs.20,000/-.

However, in terms of 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/-.

Nevertheless, the compensation of Rs.5 lakhs awarded is just and equitable and no ground is there to interfere with the same.

Learned counsel for the appellant has contended that before the Tribunal, the appellant – insurance company had filed an application under Order 11 Rule 14 CPC for issuance of directions to the claimants, owner and driver for producing fitness certificate, route permit and copy of RC etc. of the offending vehicle but those were not produced, therefore, the insurance company should not have been made liable or at least right of recovery from the insured/driver should have been granted to it.

Whereas counsel for the respondent No.4 vehemently contests such contention contending that onus of proving issue No.5 *"Whether the alleged vehicle was plying in contravention of the terms of the policy"* was upon the insurance company. The insurance company did not bring enough evidence to discharge that onus and now it cannot shift burden to the owner – insured in that regard so as to escape liability to pay compensation.

After hearing learned counsel for the parties, I find that the submission made by learned counsel for the appellant – insurance company in that regard is without any force. Once the onus of proving that the offending vehicle was being plied in contravention of terms of the insurance policy had been placed upon the insurance company, it was for such company to bring evidence to discharge that onus. Merely because it had moved an application for production of documents, which were allegedly not produced by the claimants or the insured does not absolve insurance company of its responsibility to bring positive evidence. The insurance company could have summoned evidence from other quarters/departments. Some application for admission, denial of documents could have been moved. During the course of investigation, the investigating agency takes into possession the documents relating to the vehicle involved in the accident. The insurance company could well have summoned that record but as it comes out, no effort in that regard was made and evidence of respondent – insurance company was closed after tendering insurance policy as Ex.R1. Now insurance company cannot turn around and raise a plea that either it should not be saddled with liability to pay compensation or recovery rights be granted to it from the co-respondents.

No other argument was advanced.

The appeal stands dismissed with costs.

26.8.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No