IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-609-2016(O&M)
Date of decision:-13.3.2019

Bajaj Allianz General Insurance Company Ltd.
...Appellant

Versus

Vandana Sharma and others
...Respondents

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

Present: Mr.Ashwani Talwar, Advocate
for the appellant.

None for respondents No.1 to 3.

Mr.Anil Sharma, Advocate
for respondent No.4.

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H.S. MADAAN, J.

This appeal is directed against award dated 28.9.2015 passed by learned Motor Accident Claims Tribunal, Chandigarh vide which compensation of Rs.26,12,730/- was awarded to the claimants payable by the respondent No.5.

Briefly stated, the facts of the case are that one Rakesh Sharma, husband of petitioner/claimant No.1 Vandana Sharma, father of petitioner/claimant No.2 Jatin Sharma (minor) and son of petitioner/claimant No.3 Muni Lal, aged about 45 years and was employed as General Manager with M/s Sangam Caterers Pvt. Ltd., Sector 35-B, Chandigarh getting salary of Rs.25,000/- per month; that he was an income tax payee; that on 28.6.2010 at about 5:00 a.m., the deceased was returning from his work place Atwal Palace, Khanna to his residence at Chandigarh by travelling in his friend's car bearing registration No.HR49-A-8898; that when he had reached near Sundervan Landran, a Mahindra tractor trolley having registration No.PB27-A-4850 driven in a rash and negligent manner by its driver Kuldeep Singh came from Sirhind side had hit the car being driven by the deceased, resultantly Rakesh Sharma – deceased suffered grievous injuries and the car was badly damaged; that he was removed to Guru Harkirshan Hospital, Sohana by one Sh.Gopal Singh, however, the injuries proved to be fatal and Rakesh Sharma expired; that formal FIR No.61 dated 2.7.2010 regarding the accident was recorded with Police Station Sohana, SAS Nagar(Mohali).

The legal representatives of the deceased had filed a claim petition under Motor Vehicles Act claiming compensation of Rs.1 crore impleading Kuldeep Singh – driver of the tractor trolley make Mahindra having registration No.PB27-A-4850 (hereinafter referred to as the offending vehicle) as respondent No.1, Sh.Swarn Singh – owner of the offending vehicle as respondent No.2 (since Sh.Swarn Singh – respondent No.2 had expired, his legal representatives were brought on record); Insurance company of the offending vehicle as respondent No.3 (the particulars of that Insurance Company were not given, rather were mentioned that those were to be disclosed by registered owner of the tractor trolley, however, no such particulars are entered in the heading of the award even); Sh.Rakesh Sharma, owner of Maruti Zen car having registration No.HR49-A-8898 as respondent No.4, M/s Bajaj Allianz General Insurance Company Ltd., Panchkula, insurer of that Maruti Zen car as respondent No.5 and State of Punjab through its Secretary Transport, Punjab Civil Secretarial, Chandigarh as respondent No.6.

Notice of the claim petition was given to the respondents. Respondents No.1, 4, 5 and 6 had appeared through counsel, whereas legal representatives of respondent No.2 were proceeded against *ex parte* and particulars of respondent No.3 – insurance company of the offending vehicle in question was not given, therefore notice could not be issued to such respondent – insurance company.

In the written reply submitted on behalf of the respondent No.1, he has taken up preliminary objections challenging the maintainability of the claim petition submitting that the deceased himself was guilty of rash and negligent driving of the Maruti Zen car and had hit foot rest at the centre of tractor, while coming from the opposite side at high speed in a zig-zag manner; that the answering respondent was driving the tractor trolley on his left hand side, rather on extreme *KACCHA* side and was not responsible for the accident. On merits, such respondent refuted the material assertions in the claim petition while reiterating the pleas taken in the preliminary objections submitting that a false FIR was got registered against him; that the matter had been taken up with higher authorities and police was taking appropriate action to cancel the FIR against the answering respondent. According to such respondent, after the accident the deceased had been taken to the hospital by the persons working in Zimidara Dharam Kanda situated near the spot and not by Sh.Gopal Singh. In the end, such respondent prayed for dismissal of the claim petition.

In the written reply submitted on behalf of respondent No.4, he had raised preliminary objections contending that the claim petition was bad for misjoinder of necessary parties since he is registered owner of Maruti Zen car having registration No.HR49-A-8898, which was borrowed by the deceased on friendly basis and was being used by him at the time of accident; that the accident was caused due to rash and negligent driving of the offending vehicle.

In the written reply filed on behalf of respondent No.5, it raised preliminary objections that the car No.HR49-A-8898 was insured with answering respondent No.5 w.e.f. 14.12.2009 to 13.12.2010; that the driver of the vehicle was not holding a valid and proper driving licence and the vehicle was being driven in violation of the terms and conditions of the insurance policy, therefore, the insurance company was not liable to indemnify the owner. Such respondent challenged the locus standi of the claimants to file the claim petition stating that they had done so in connivance with the respondents No.1 to 4 to extract compensation; that at the relevant time, the driver of the car No.HR49-A-8898 was driving it at a very slow speed and in a cautious manner observing all traffic rules and regulations; that the police machinery had prosecuted the driver of the offending vehicle, showing that the accident took place due to rash and negligent driving of the offending vehicle and not by driver of the car; that the legislature never intended to provide compensation to the person responsible for the accident. On merits, the material facts were denied. In the end, such respondent prayed for dismissal of the claim petition.

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

1. Whether deceased Rakesh Sharma died as a result of injuries suffered in a motor vehicular accident, which was caused due to rash and negligent driving of tractor trolley No.PB27-A-4850 which was being driven by respondent No.1? OPP.
2. Whether claimants are entitled to compensation on account of death of deceased Rakesh Sharma in a motor vehicular accident? OPP.
3. Whether the present claim petition is not maintainable? OPR.
4. Whether the claim petition is bad for mis-joinder of necessary parties? OPR.
5. Whether the respondent No.1 was not having a valid driving licence at the time of accident? OPR.
6. Relief.

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

In support of their case, the claimants No.1 and 3 have got their statements recorded as PW1 and PW2 besides examining Ashwani Kumar as PW3, Gopal Singh as PW4. Thereafter, after tendering some documents, evidence of the petitioners/claimants stood closed.

On the other hand, respondent No.5 insurance company has examined Sh.Sumit Trehan as RW1, whereas respondent No.1 Kuldeep Singh got his statement recorded as RW2.

After hearing arguments, the Tribunal decided issue No.1 in favour of the claimants and against the respondents, issue No.2 in favour of the claimants against the respondents, issue No.3 to 5 against the respondents and in favour of the claimants. Resultantly, the claim petition was allowed and compensation was awarded to the claimants, as mentioned above.

Respondent No.5 - M/s Bajaj Allianz General Insurance Company Ltd., Panchkula is aggrieved by the said award and has approached this Court by way of filing an appeal praying that the same be accepted, the award in question be set aside and the claim petition qua the appellant be dismissed.

Notice of the appeal was issued to the respondents. Respondents No.1 to 3 and 4 had put in appearance through counsel, however subsequently counsel for respondents No.1 to 3 did not appear.

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

Learned counsel for the appellant insurance company has contended that the deceased Rakesh Sharma was driving the car himself and was a third party qua tractor trolley in question, as such, the liability to pay compensation should have been fastened only upon the owner and driver of the tractor trolley, however, the Tribunal has held in para No.9 of the award that since the car driven by the deceased Rakesh Sharma was insured with the appellant – insurance company vide insurance policy Ex.R3, a comprehensive policy, the claimants could claim compensation from the appellant also, which finding is wholly untenable; that Rakesh Sharma was not a paid driver of the car in question but was working elsewhere as a General Manager; that the owner of the car, who is respondent No.6 has stated that the deceased had borrowed the car in question, therefore, in terms of the law laid down by the Apex Court in ***New India Assurance Company Ltd. Versus Sadanand Mukhi, 2009(1) RCR(Civil)817***, the driver stepped into the shoes of owner of the vehicle, as such the deceased was travelling in the car as owner and was driving the same and even if it was a comprehensive/package policy, the driver is not covered since he is not a third party qua the car in question and no compensation was payable to the claimants by the appellant – insurance company; that the authority relied upon by the Tribunal ***National Insurance Co. Ltd. Versus Balakrishnan & another 2013 ACJ 199*** is not applicable since Rakesh Sharma was admittedly not a passenger of the car or an employee of the owner of the car but was a borrower of the car, who was himself driving it and under the circumstances, it cannot be presumed as a case of composite negligence even; that the Tribunal has returned a categoric finding on issue No.1 that the accident took place solely on account of rash and negligent driving of the offending tractor trolley, therefore, no liability could be fastened on the owner of the car or its insurer, the present appellant; that the Tribunal seems to have been swayed away by the fact that the tractor trolley was not insured but that would not couch the Tribunal with power to fasten liability on insurer of the car, which was being driven by the deceased himself. On the point of quantum also, the contentions had been raised stating that the compensation awarded is on very high side.

In support of his arguments, learned counsel for the appellant

– insurance company has referred to judgment passed in Civil Appeal No.9100 of 2018 by the Hon'ble Apex Court titled ***National Insurance Co. Ltd Versus Ashalata Bhowmik and Ors. 2018(4) RCR(Civil) 211***, wherein it was observed that the deceased was owner-cum-driver of the vehicle in question and the accident had occurred due to rash and negligent driving of the vehicle by the deceased; that no other vehicle was involved in the accident and the deceased himself was responsible for the same; that the deceased being owner of the offending vehicle was not a third party within the meaning of the Act and he was victim of his own action or rash and negligent driving, therefore a claimant cannot maintain a claim on the basis of own fault or negligence and argued that even when he himself may have caused the accident on account of his own rash and negligent driving, he can nevertheless may the insurance company to pay the same.

Learned counsel for the appellant has further referred to ***National Insurance Company Ltd. Versus Balakrishnan and another, 2013 AIR(SC)473***, ***Jagtar Singh and Jagdev Singh Versus Sanjeev Kumar and others, 2018(69) Orrisa Cri. R.560***, ***New India Assurance Company Ltd. Versus Sadanand Mukhi and others, 2009(1) RCR(Civil) 817***, ***Bhagyalakshmi and others Versus United Insurance Co. Ltd., 2010(2) RCR(Civil) 384***, ***Ningamma and Anr. Versus United India Insurance Co. Ltd., 2009(3) RCR(Civil)435***, ***Oriental Insurance Co. Ltd. Versus Rajni Devi & Ors. 2008(4) RCR(Civil) 905***, ***Oriental Insurance Co. Ltd. Versus Jhuma Saha and others, 2007(1) RCR(Civil) 761***, ***United India Insurance Co. Ltd. Shimla Versus Tilak Singh and others,***

2006(3) RCR(Civil) 168, ***Dhanraj Versus New India Assurance Co. Ltd. and another, 2004(4) RCR(Civil) 786***, FAO-2839 of 2011 decided on 17.8.2017 by Co-ordinate Bench of Court having title ***Surender Versus Mahabir Singh and another***, FAO No.926 of 2017 decided on 18.1.2019 by Co-ordinate Bench of Court having title ***National Insurance Company Ltd. Versus Paramjit Singh and others***, FAO No.5947 of 2012 decided on 24.10.2016 by Co-ordinate Bench of Court having title ***National Insurance Company Ltd. Versus Hari Mohan and another*** and ***National Insurance Co. Ltd. Versus Ashalata Bhowmik and Ors.***(supra).

Learned counsel for the appellant has argued that keeping in view the facts and circumstances of the case the legal representatives of the deceased are entitled to get compensation of Rs.50,000/- under no fault liability and at best to Rs.2 lacs from the appellant – insurance company since negligence of deceased car driver in happening of the accident was not there as observed by the Tribunal.

Learned counsel for the respondent No.4 has contended that it was a comprehensive/package policy where additional premium had been paid to cover risk to owner driver, as is clear from the perusal of insurance policy Ex.P4. He has further contended that as is clear from the cross-examination of RW1 Sh.Sumit Trehan, who had appeared as a witness on behalf of the insurance company in which he had categorically admitted it as correct that the policy in question was a private car package policy and they had charged Rs.100/- premium for covering the risk of owner-driver; the witness had further stated that he was aware about the contents of the policy and that in the comprehensive policy, the risk of passengers is covered and it is inbuilt. Therefore, the insurance company cannot deny its liability.

He has further pressed into service judgment by a Co-ordinate Bench of this Court passed in FAO-3493 of 2012 titled ***Bajaj Allianz General Insurance Company Ltd. Versus Jasmer Singh and another*** decided on 17.9.2014 wherein it was held as under:

> 21. It needs to be emphasized that learned counsel for the appellant-Insurance Company could not dispute liability of the Insurance Company in case the vehicle was being driven by the owner himself as premium of ₹ 50/- for the personal accident claim was paid. If that be so, why not the same principle should apply in case the victim is driving the vehicle under the authority of the owner. The deposit of premium for personal accident claim in the package/comprehensive policy in my view cannot be limited only to the owner as the words used in the policy to cover personal accident is described as 'owner driver'. Any other interpretation to these plain words would be restricting the authorized driving to the owner himself and such a consequence is manifestly illegal. Such an interpretation would in fact amount to a contract to pay premium for the life insurance which cannot be so as the premium has been paid for the policy issued under the Act.
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> 22. In ***Ningamma and another's case (supra)*** the claim was made under Section 163-A of the Act. The policy of insurance was **"Act only Policy"** and not a comprehensive/package policy. The victim was travelling on Hero Honda motorcycle which he had borrowed from the real owner. Hon'ble Supreme Court held that the deceased cannot be held to be employee of the owner of the motorcycle although he was authorized to drive the said vehicle by its owner, and, therefore, he would step into the shoes of the owner of the motorbike. I am of the view that if the borrower of the vehicle steps

into the shoes of owner, the terms of the policy which is comprehensive/package policy would include the personal accident claim of the person driving the vehicle provided he holds a valid licence.

23. From the above discussion, I find that the view expressed by this Court in ***Umesh Kumari's case (supra)*** and ***Monika's case (supra)*** is more in consonance with the principle held by Hon'ble Supreme Court in ***Ningamma's and Sinitha's cases (supra)*** and also the purpose and object of the policy of insurance towards personal accidents. The contention, therefore, raised by the learned appellant's counsel to challenge the Award on this ground cannot be sustained.

After considering the arguments advanced by learned counsel for the parties, perusing the authorities referred to by them and going through the record, I find that the Tribunal did not commit any error in fastening the appellant Insurance company with liability to pay compensation. It has to be taken into view that Section 166 of the Motor Vehicles Act is a piece of welfare legislation. It was enacted by the Parliament to provide relief to the persons, who suffered injuries in the motor vehicular accident as well as to the legal representatives of the victims, who unfortunately lost their lives in such mishaps. Strict rules of evidence and procedure are not applicable there. The Tribunal has to adopt a liberal approach while deciding such type of petitions and not to adopt hypertechnical approach. The appellant cannot wriggle out of the admissions made by its witness RW1 – Sh.Sumit Trehan in his cross-examination and terms and conditions of the insurance policy so as to deny its liability to pay compensation to the claimants.

The finding recorded by the Tribunal is well reasoned and cannot be said to be arbitrary or erroneous contrary to the evidence available on record. The compensation awarded is just and adequate and cannot be termed to be excessive. Therefore, there is no ground to set aside the award. No illegality or infirmity in the award could be pointed out by the learned counsel for the appellant.

As regards the authorities referred to by learned counsel for the appellant, those do not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

Finding no merit in the appeal, the same stands dismissed accordingly.

13.3.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No