IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-8961-2014 (O&M)
Date of decision: 14.10.2019

Reliance General Insurance Company Ltd.

...Appellant

Versus

Mohinder Singh and others

...Respondents

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

Present: Mr. Arun Sharma, Advocate for the appellant.

Mr. Sandeep Vermani, Advocate
for respondents No. 4 & 5.

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H.S. MADAAN, J.

Briefly stated facts of the case are that on 02.01.2013 at about 9.30 am, Beero Devi-deceased along with her husband Mohinder Singh and nephew Vijay Kumar were going from their Village Sabga to Shahbad in a tractor trolley belonging to respondent No.2 Krishan Lal and driven by respondent No.1 Virender Singh. Beero Devi was sitting on left mudguard of the tractor whereas her husband and nephew were sitting on the right mudguard of the tractor. While the tractor trolley proceeded from Naraingarh Majra to Saha-Shahbad road, Virender Singh started driving it in a very rash and negligent manner. At about 10.00 am, when the said tractor trolley reached just ahead of Dinarpur bus stand on Saha-Shahbad road towards Shahbad side near Galaxy Global College, respondent No.1 Virender Singh observing vehicles coming from opposite side being driven in a rash and negligent manner abruptly turned the tractor trolley and applied brakes tightly to avoid the accident. Resultantly Beero Devi fell down on the road and rear side of tractor trolley passed over her abdomen. Virender Singh stopped the tractor trolley. Husband and nephew of Beero Devi took her in a private vehicle so as to take her to hospital, however, she died on the way. Post mortem examination on the dead body was conducted at General Hospital, Ambala Cantt. on the next day. Formal FIR regarding the accident was registered. Mohinder Singh, aged about 55 years-husband, Sanjiv Kumar, aged about 30 years and Raj Kumar, aged about 24 years-sons of Smt. Beero Devi had brought a claim petition under Section 163-A of the Motor Vehicles Act (for short 'the Act') against respondents i.e. Virender Singh-driver, Krishan Lal-owner and Reliance General Insurance Company Ltd., having branch office at Ambala City-insurer of tractor trolley bearing registration No.HR-54-A-8854, claiming compensation.

On getting notice, all the three respondents put in appearance and contested the claim petition. On conclusion of trial, Motor Accidents Claims Tribunal, Ambala (for brevity 'the Tribunal') vide award dated 03.03.2014, accepted the claim petition and awarded compensation of Rs.3,37,000/- to the claimants with the observations that respondent No.3 insurance company would firstly pay the compensation to the claimants and then have the right to recover the amount deposited by it with interest from the owner/driver thereof. The compensation amount was ordered to be apportioned in equal shares amongst all the claimants. They were further granted interest @ 7.5% p.a. from the date of filing of claim petition till actual realization. The recovery rights have been granted to the insurance company, keeping in view the fact that the passenger cannot travel on a tractor and the Motor Vehicles Act does not envisage taking of insurance policy for a traveller other than a driver of a tractor or to cover third party risk. In that way, the liability to pay compensation was essentially of respondent Nos.1 & 2. Since the vehicle was insured with insurance company, it was directed to pay the compensation amount and then recover it from owner and driver of the vehicle. The Tribunal has discussed that aspect in detail and referring to judgments **Kusum Lata and others Vs. Satbir and others, 2011 ACJ 926 (SC)** and **National Insurance Company Ltd vs. Swaran Singh and others 2004 ACJ 1 (SC),** has directed that respondent No.3 insurance company with whom the offending tractor trolley was insured would firstly pay the compensation to the claimants and then shall have the right to recover that amount from owner/driver of the said vehicle. No fault can be found with such direction issued by the Tribunal.

As regards the plea taken by the appellant-insurance company that the deceased was a gratuitous passenger and was herself negligent, therefore, the insurance company is not liable to pay any compensation to the claimants; the Tribunal has dealt with all these aspects in detail and in the light of judgment. Since the petition was filed by the claimants under Section 163-A of the Act, it was required to be decided as per structured formula but it seems that it has not been so done strictly.

Considering the age of deceased to be 50 years, the value of services rendered by her was taken to be Rs.3000/- per month. 1/3rd of the amount was deduced in consideration of personal expenses and annual dependency was worked to Rs.24,000/-. Multiplier of 13 was rightly used. In that way, the compensation was worked out to Rs.3,12,000/-. However, the Tribunal fell in error in awarding Rs.15,000/- towards loss of consortium and Rs.10,000/- towards funeral expenses when under the conventional heads, Rs.5000/- could be awarded on account of loss of consortium, Rs.2000/- as funeral expenses and Rs.2500/- towards loss of estate, total amount being Rs.9500/- Therefore, the total compensation comes out to Rs.3,21,500/- The Tribunal has awarded compensation of Rs.3,37,000/-, which is reduced to Rs.3,21,500/-, payable with interest @ 7.5 p.a. from the date of filing of claim petition till actual realization. The liability to pay this amount would be joint and several. The excess amount be refunded by the claimants and in case, it is not so done, the the insurance company would be entitled to recover that amount by way of filing an execution application. The recovery rights granted to the insurance company in the original award would remain intact.

The appeal stands partly allowed.

14.10.2019 **(H.S. MADAAN)**
sumit.k **JUDGE**

Whether speaking/reasoned : Yes No
Whether Reportable : Yes No