IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-6037-2010 (O&M)
Date of decision: 12.09.2019

Bajaj Allianz Insurance Company Ltd.

...Appellant

Versus

Smt. Meena Devi and others

...Respondents

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

Present: Ms. Vandana Malhotra, Advocate for the appellant.

Mr. Ravinder Hooda, Advocate
for respondent Nos.1 to 3.

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H.S. MADAAN, J.

Briefly stated facts of the case are that on 14.11.2009 at about 2.00 PM, deceased Rishi Pal along with Narinder Singh son of Nafe Singh was returning home from Sampla on his motorcycle; when he had reached near Goel Filling Station, Rohtak and tried to overtake the tractor bearing registration No.HR-12-K-4386 (hereinafter referred to as the offending tractor), the tractor driver abruptly took a right turn without giving any signal, resulting in the accident. Rishi Pal fell on the road and suffered multiple grievous injuries, to which, he had succumbed. Smt. Meena Devi, aged about 38 years-widow, Master Vivek aged about 10 years-minor son, Baby Asha aged about 08 years-minor daughter of Rishi Pal had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against the respondents i.e.

Surender-driver, Krishan-owner and Bajaj Allianz Insurance Company Ltd., New Delhi-insurer of the offending tractor in question, claiming compensation. As per case of claimants, deceased was earning Rs.93,000/- p.a. by running a gas agency in the name and style of M/s Industrial Gas Agency and Rs.60,000/- p.a. from a vocation of agriculture.

On being put to notice, all the three respondents appeared, filed written statements, contesting the claim petition. In the joint written statement filed by respondent Nos. 1 & 2, they denied the assertions in the claim petition, contending that the accident had taken place due to sole rash and negligent driving of motorcycle by deceased Rishi Pal, since he was driving the motorcycle at a very high speed without following traffic rules and when he tried to overtake the tractor driven by respondent No.1, he lost his control over the motorcycle, resulting in the accident.

Respondent No.3-Insurance Company in the written statement filed by it also offered denial to the material assertions in the claim petition, contending that no liability could be fastened upon it for payment of compensation. It had taken various legal objections and raised statutory defence also.

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

1. Whether the accident in question resulting into the death of Rishi Pal son of Shiv Lal took place due to rash and negligent driving of tractor No.HR-12K-4386 by the respondent No.1? OPP.
2. If issue No.1 is proved, to what amount of compensation, the petitioners are entitled to and from whom? OPP.

3. Whether there are willful violations of the terms and conditions of the insurance policy, if so, to what effect? OPR-3.
4. Relief.

Parties were afforded adequate opportunities to lead evidence. After hearing arguments, Motor Accidents Claims Tribunal, Rohtak (for short ' the tribunal'), vide award dated 01.09.2010, decided issue No.1 in favour of petitioners/claimants and against the respondents. Issue No.3 was decided against respondent No.3-insurance company. Issue No.2 was decided in favour of the claimants and against the respondents and as a result of verdict on the issues, the claim petition was partly accepted and compensation of Rs.11 lacs was awarded to the claimants, payable by all the respondents jointly and severally. The direction with regard to apportionment and payment were given in the award.

Appellant-Insurance Company felt aggrieved by the said award and has approached this Court, by way of filing the present 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.

Learned counsel for the appellant has contended that it was a case of contributory negligence, inasmuch as the deceased while driving his motorcycle had tried to overtake the tractor, which was being driven at a moderate speed and in a proper manner. Resultantly, due to fault of the deceased, his motorcycle had hit the tractor, resulting in the accident. Therefore, the deceased had also contributed to the accident, which should be taken at least 50% and the compensation awarded be reduced by half. Whereas, learned counsel for the claimants has vehemently contested this contention, stating that the tribunal on appreciation of evidence adduced by the parties and in view of the facts and circumstances of the case has returned a clear finding that the accident had taken place due to rash and negligent driving of tractor by respondent No.1-Surender and the plea taken by the respondents that it was a case of contributory negligence was rejected. After hearing the counsel, I find that there is no reason to differ with the verdict given by the tribunal that respondent No.1 tractor driver was author of the accident by rash and negligent driving of the tractor and the deceased-motorcycle driver was not at fault in happening of the accident. For ready reference, the findings given by the tribunal on issue No.1 are reproduced as under:-

> "9. *In order to prove this issue, the petitioner has examined PW-2 Narender, who was accompanying the victim on the motorcycle. This witness has supported the version given in the petition. FIR Ex.P-13 has also been proved. On the other hand, the driver of tractor has appeared as RW1 and has stated that he was driving the vehicle moderately and he does not know as to when the motorcycle had hit the tractor and the motorcyclist had fallen down. On the basis of this statement, the counsel for the insurance company who has not been allowed to contest on merits, has tried to argue that this is the case of contributory negligence. In support, he has referred to A.P.S.R.T.C. & Anr. Vs. K. Hemalatha & Ors. IV (2008) ACC-454 and Bhakra Beas Management Board Vs. Kanta Aggarwal & Ors. IV (2008) ACC-764 (SC) and Municipal Corporation of Great Bombay Vs. Hari Tukaram Katake & Ors. 1 (2008) ACC-325. In that case, there was allegation of over taking and it was found that there was contributory negligence to the extent of 15:85.*
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> *10. I have heard the argument and I find that as per the case of the petitioners, the driver of tractor abruptly turned towards right side when the motorcyclist was over taking it and caused the accident. In such circumstances, there is no question of*

> *contributory negligence because tractor is a slow driven vehicle and the motorcycle or any other light vehicle would naturally overtake the tractor. In this view of the matter, I find that the negligence by respondent No. l is fully proved and his stand in the evidence that he does not know as to how the motorcyclist hit the tractor, rather goes to suggest that he was negligently driving the vehicle. As such, this issue is decided in favour of the petitioners."*

Therefore, the submission made by learned counsel for the appellant with regard to it being a case of contributory negligence is rejected.

Another argument put-forward by learned counsel for the appellant was that the tractor was being driven in contravention of terms & conditions of the insurance policy, therefore, the appellant/insurance company is not liable to pay any compensation. However, I find this argument to be devoid of any merit. The tribunal has discussed this aspect while disposing of issue No.3, coming to a clear conclusion that no condition of the insurance policy was shown to have been violated, therefore, the insurance company was liable to indemnify the owner. I do not see any reason to disagree with the tribunal in that regard.

As regards the quantum of compensation, as discussed earlier, keeping in view the age of deceased taken as 39 years, his income tax returns filed by him Ex.P1 to Ex.P3 showing that he was having gross income of Rs.1,10,000/- + Rs.40,000/- as agricultural income in the year 2006-07 and considering the copy of jamabandi Ex.P4 and copy of PAN card Ex.P5 and receipts with regard to deposit of amount in respect of gas agency, the tribunal had assessed the income of deceased to be Rs.9000/- per month, observing that gas agency was still running having been taken over by one of the petitioners, namely Meena Devi and agricultural land was there, which could be given on lease. The tribunal has taken rather a very strict view in the matter and has not been unduly indulgent towards claimants while assessing the income of deceased. Furthermore, an addition of 40% of the income could be made in view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, but that was not done. The multiplier of 15 was rightly used, in the light of judgment **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77.**

The claimants could be awarded Rs.70,000/- under conventional heads but only a sum of Rs.10,000/- was awarded to claimant Meena Devi on account of loss of consortium. The total compensation worked out to be Rs. 11 lacs can certainly be not taken to be on higher side. There is no scope for reduction of the same. Since, no violations of any terms & conditions of the insurance policy comes out to be there, the insurance company is certainly not entitled to get recovery rights as against the insured. The appeal being without any merit stands dismissed. Since the main case has been decided, the application for vacation of interim stay has become infructuous and is dismissed accordingly.

12.09.2019 **(H.S. MADAAN)**

sumit.k **JUDGE**

Whether speaking/reasoned : Yes No

Whether Reportable : Yes No