208(1)

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.9308 of 2014 (O&M)
Date of Decision: 27.02.2019

HDFC ERGO General Insurance Co. Ltd.

Appellants

Versus

Abdul Mazid and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

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

Mr. Munfaid Khan, Advocate
for respondents No.1 and 2.

None for respondents No.3 and 4.

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<u>AVNEESH JHINGAN, J (Oral):</u>

The award dated 04.08.2014 passed by the Motor Accident Claims Tribunal, Palwal [for brevity 'the Tribunal'] has been assailed by the insurer of three-wheeler bearing registration No. HR-73-1477 [hereinafter referred to as 'offending vehicle'] being aggrieved of quantum of compensation awarded as well as liability to pay the compensation.

Brief facts of the case are that on 13.01.2012, Abeed @ Boby alongwith some other persons was travelling in the offending vehicle for going to Kosi Kalan. The offending vehicle was being driven in a rash and negligent manner. Inspite of various requests of the occupants of the offending vehicle to drive the offending vehicle carefully, the driver of the offending vehicle did not pay any heed to their requests. When they reached near Indian Gas Agency, NH-II, Hodal, a pig came on the road and respondent No.1 lost his control over the offending vehicle. The offending vehicle turned turtle, as a result, the occupants sustained injuries. Abeed, aged 22 years, sustained injuries and died in General Hospital, Palwal. FIR No. 16, dated 13.01.2012 was registered at Police Station Hodal, Palwal.

A claim petition was filed under Section 166 of the Act. The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to the rash and negligent driving of the offending vehicle. The insurer was held liable to pay the compensation but was granted recovery rights on the ground that the driver was not holding a valid Driving Licence at the time of accident.

The Tribunal assessed monthly earning of the deceased as ₹35,000/- relying upon the minimum wages prevalent in the State at relevant time; 50% future prospects were awarded; ½ deduction for self-expenses was made as the deceased was bachelor and multiplier of '18' was applied considering that deceased was 22 years old at the time of accident. The Tribunal awarded ₹8,20,000/- alongwith interest @ 7.5% per annum. The amount awarded included ₹10,000/- for last rites and transportation.

Learned counsel for the appellant/insurer argues that the accident was not caused due to rash and negligent driving of the offending vehicle, rather, as a pig came in front of the offending vehicle, the driver lost control, hence insurance company is not liable to pay the compensation. She further contends that 50% future prospects have wrongly been awarded instead of 40%. She relies upon decisions of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157*** and ***Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480.***

Learned counsel for the claimants defends the award and contends that rash and negligent driving of the offending vehicle was duly proved. Reliance is placed upon the fact that driver of the offending vehicle was facing criminal trial, moreover, the driver never appeared in the witness box to rebut the pleadings made by the claimants. He further argues that the amounts awarded under the conventional heads are on the lower side and no amount for loss of estate has been awarded.

The contentions raised by learned counsel that there was no rash and negligent driving of offending vehicle lacks, merit. It has come on record that the offending vehicle was being driven at a high speed, as a result of high speed when pig came on the road, the driver of the offending vehicle lost his control. Charge-sheet was filed against the driver of offending vehicle and he faced trial. The filing of charge-sheet is prima-facie proof of rash and negligent driving. The Supreme Court in ***Mangla Rama Vs. Oriental Insurance Co. Ltd. and others, 2018 AIR (SC) 1900,*** held as under:-

> *"Suffice it to observe that the exposition in the judgments already adverted to by us, filing of charge sheet against respondent No.2 prima facie points towards his complicity in driving the vehicle negligently and rashly. Further, even when the accused were to be acquitted in the criminal case, this Court opined that the same may be of no effect on the assessment of the liability required in respect of motor accident cases by the Tribunal."*

The contention of learned counsel for the insurer that there was no rash and negligent driving of driver of offending vehicle, hence only the owner and driver are liable to pay the compensation, has to be considered from another angle. The Tribunal has already granted recovery rights to the insurer, the owner and driver have chosen not to file appeal, therefore, no grievance survives for the appellant to challenge the liability to pay the compensation.

After considering the contentions raised by the counsel for the parties with regard to quantum of compensation, no interference is called for.

The Tribunal erred in awarding 50% future prospects instead of 40%. The deceased was below 40 years of age and was in the category of self-employed or a person having fixed wages. As per decisions of the Supreme Court in ***Pranay Sethi's*** case (supra) and ***Hem Raj's*** case (supra), 40% future prospects are to be awarded. On the other hand, claimants are entitled to ₹15,000/- each for funeral expenses and for loss of estate. Even if the future prospects are reduced and the conventional heads are awarded as per the decision of the Supreme Court, there would not be any major difference in the quantum of compensation.

No interference is called for in the impugned award.

The appeal is dismissed.

[AVNEESH JHINGAN]
JUDGE

February 27, 2019
pankaj baweja

1. Whether speaking/ reasoned : Yes
2. Whether reportable : Yes