IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-9723-2014(O&M)
Date of decision:-3.9.2019

Iffco Tokio General Insurance Company Ltd.

...Appellant

Versus

Gurmeet Kaur and others

...Respondents

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

Present: Mr.Paul S.Saini, Advocate
for the appellant.

Mr.Vivek Suri, Advocate
for respondents No.1 to 4.

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H.S. MADAAN, J.

Petitioners/claimants Gurmeet Kaur – widow, Daljit Kaur – daughter, Davinder Pal – son and Mayawati – mother of Parminder Singh, an unfortunate victim of a road side accident had brought a claim petition under Section 166 of the Motor Vehicles Act against respondents i.e. Harbans Singh – owner, Gurvinder Singh – driver and Iffco Tokio General Insurance Co. Ltd., Chandigarh – insurer of truck bearing registration No.HR-58A-8597 (hereinafter referred to as the offending vehicle), claiming compensation to the tune of Rs.75 lakhs.

As per the version of the claimants, on 27.2.2013, deceased Parminder Singh was going from Sanaur to Patiala on his motorcycle; at about 8:30 p.m. when he reached near Shiv Mandir, then the offending vehicle being driven by respondent No.2 – Gurvinder Singh in a rash and negligent manner and at a very high speed came from behind and struck against the motorcycle, resultantly, Parminder Singh and motorcycle fell down; tyre of the offending vehicle passed over the deceased, in the process, his head got crushed and he died at the spot; the accident was witnessed by Jagtar Singh son of Amarjit Singh and Gurdeep Singh.

On getting notice, the respondents had put in appearance and offered a contest.

Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

After hearing arguments, vide Award dated 7.7.2014, learned Motor Accidents Claims Tribunal, Patiala allowed the claim petition partly and awarded compensation of Rs.51,97,500/- to the claimants along with interest @ 9% per annum from the date of filing of the petition till realization of the amount, payable by all the respondents jointly and severally.

Such award left the Insurance Company aggrieved and it has knocked at the door of this Court praying that the appeal be accepted, the award under challenge be set aside.

Notice of the appeal was issued to the respondents and respondents No.1 to 4 have put in appearance through counsel.

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

The first and foremost argument advanced on behalf of the appellant – insurance company was that the offending vehicle was not involved in the accident; that in FIR which was got recorded with respect to the accident, particulars of the vehicle causing the accident and name of its driver are not mentioned and it was later on when statement of alleged eye witness Gurdeep Singh was recorded on 28.2.2013, the registration number of the truck in question was given; that there has been collusion between claimants and respondents No.1 and 2 so as to facilitate the grant of compensation to the claimants; that as a matter of fact the claim is fraudulent and procured on a concocted evidence and furthermore Gurvinder Singh – respondent No.2 has involved in several claim petitions on false facts in league with the claimants and such aspect was ignored by the Tribunal, therefore the wrong be set right by way of acceptance of the appeal and claim petition be dismissed.

However, learned counsel appearing for the respondents/claimants has stoutly controverted such contentions of learned counsel for the appellant contending that merely for the reason that the details of the vehicle, which had caused the accident and name of its driver do not figure in the FIR, that does not go to show that the truck in question had been introduced later on, as a result of collusion between the claimants and respondents No.1 and 2 to help the claimants in getting compensation and there was no such collusion or connivance between claimants and respondents No.1 and 2 and the Tribunal has rightly accepted the claim petition and granted compensation.

After hearing learned counsel for the parties, I find that the submissions made by learned counsel for the appellant – insurance company are totally devoid of merit. FIR is not a substantive piece of evidence and its only purpose is to set the criminal machinery in motion. FIR is often lodged in hurry and it may not contain the minute and precise details of the incident. The FIR can be got registered by a person, who may not be an eye-witness of the incident. It is only during investigation of the case that police can come to know about the culprit and criminal, who had committed the crime. Merely for the reason that accused is not named in the FIR does not result in causing any dent in the prosecution story.

In this case after registration of the FIR, the matter was investigated and the investigating agency found that the accident had been caused by respondent No.2 – Gurvinder Singh by rash and negligent driving of the offending truck and for that reason he was booked and sent up to face trial in the Court as is clear from the testimony of RW1 Sh.Rakesh Mittal, Ahlmad to the Court of Chief Judicial Magistrate, Patiala. It is difficult to believe that the investigating agency would have challaned respondent No.2 without there being sufficient evidence to connect him with the accident. If we start doubting the investigation without any justifiable reason that would not be proper and appropriate and there would be no end in propagation of that doubt. Another thing to be seen is as to why respondent No.2 – Gurvinder Singh would get himself involved in this case wrongly i.e. getting himself arrested, released on bail and then repeatedly appearing in the Court with imminent risk of conviction and then the judgment being challenged further in the higher Courts by either of the parties. For the reason that Gurvinder Singh is involved in other criminal cases relating to road mishaps and is respondent in several claim petitions, may give rise to some doubt about his credibility but that by itself is not enough to arrive at the conclusion that the present claim petition is a result of collusion between the claimants and respondents No.1 and 2 and as a matter of fact the offending vehicle in question has been wrongly introduced in this case. If the insurance company was so sure about such alleged collusion between the claimants and respondents No.1 and 2 so as to get frivolous claims causing financial loss to the insurance company, nothing prevented the insurance company from reporting the matter to the police, getting an FIR lodged against guilty persons bringing them to book and getting them tried by the Court of competent jurisdiction. Admittedly, the insurance company has not taken any such steps, which travels against its case that there is a scam involving false introduction of vehicles in the criminal cases as well as in the claim petitions just to fleece the insurance company of money in execution of awards so obtained from Motor Accidents Claims Tribunals.

The Tribunal has dealt in detail with all the objections now put forward in the appeal i.e. to say as mentioned in the grounds of appeal and as per submissions made by learned counsel for the appellant. The finding recorded by the Tribunal on issue No.1 that Parminder Singh son of late Sh.Bal Krishan died in the accident, which took place on 27.2.2013 at about 8:30 p.m. caused by respondent No.2 – Gurvinder Singh while driving the offending vehicle in a rash and negligent manner is fully justified and does not call for any interference. The deposition of CW2 Gurdeep Singh, who had provided eye-witness account of the accident comes out to be worthy of reliance. Although Gurvinder Singh was examined as RW but he in his cross-examination admitted that a criminal case has been registered against him regarding the accident for which he was facing trial. The deposition of CW2 found corroboration from postmortem report Ex.CW1/B showing that Parminder Singh had died in a road side accident.

Now coming to the quantum part. The Tribunal had taken the age of deceased to be 38 years at the time of his death noticing his date of birth as entered in his identity card Ex.CW1/C as 11.12.1974 and the accident had taken place on 27.2.2013. The deceased was working as a constable with Punjab Police. CW3 Balwinder Singh, Clerk in the office of SSP, Patiala had brought salary record of deceased Parminder Singh producing his salary certificate Ex.CW3/A stating that the deceased was drawing salary of Rs.26,455/- per month and after deduction Rs.21,452/- per month. The Tribunal had deducted an amount of Rs.1,500/- per month on account of income tax taking his monthly salary to be Rs.25,000/-. 50% of the amount was added towards future prospects. No fault can be found with the Tribunal in doing so since in judgment ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009***, it is mentioned that while determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects is to be made where the deceased had a permanent job and was below the age of 40 years. Therefore, no error was committed by the Tribunal in doing so. In that way, assessing monthly income of deceased to be Rs.37,500/-, keeping in view the number of dependents being four, $1/4^{th}$ of the amount was deducted towards personal and living expenses of the deceased, leaving the dependency of claimants to be $3/4^{th}$ of the monthly salary. Multiplier of 15 was rightly applied, assessing the compensation as Rs.50,62,500/-.

The Tribunal has further awarded a sum of Rs.1 lakh to the claimant No.1 towards loss of consortium, Rs.25,000/- towards funeral expenses and another sum of Rs.10,000/- towards loss of love and affection making total compensation of Rs.51,97,500/-. However, in view of the 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/-. The total compensation thus comes out to Rs.50,62,500 + 70,000 = 51,32,500/-.

The Tribunal has wrongly awarded compensation of Rs.51,97,500/-. The same is reduced to Rs.51,32,500/-. The interest granted @ 9% per annum is also on the higher side. The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization on the amount of Rs.51,32,500/-. Other terms and conditions in the original award shall remain the same. The share of the claimants shall be reduced proportionately. Amount if paid in excess be refunded by the claimants to the appellant – insurance company at the earliest.

With such modification, the appeal is allowed partly with costs.

3.9.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No