IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1463-2017(O&M)
Date of decision:-20.11.2019

Oriental Insurance Company Ltd.

...Appellant

Versus

Baby Rani and others

...Respondents

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

Present: Mr.Vinod Chaudhri, Advocate
for the appellant.

Mr.Neeraj Gupta, Advocate
for respondents No.1 to 4.

Mr.Suneel Ranga, Advocate
for respondent No.6.

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H.S. MADAAN, J.

Briefly stated, the facts of the case are that one Dilbag Singh son of Sh.Bachna Ram, aged about 40 years, statedly working as a Salesman at Khurania Filling Station, Dhand Road, Kaithal and earning Rs.7,000/- per month had died in a road side accident inasmuch while he was travelling in truck/tanker bearing registration No.HR-67A-0072 make Tata, which was statedly being driven in a rash and negligent manner by respondent No.1 – Ram Jawari. The said vehicle was meant to deliver petrol/diesel at Khurania Filling Station, Dhand Road, Kaithal and when it had just crossed Satsang Bhawan Munak, Tehsil Gharaunda, District Karnal, respondent No.1 – Ram Jawari had suddenly applied brakes,

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2019.11.26 17:49
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resultantly front tyre of the tanker got burst; the driver lost control over the vehicle, which turned turtle on the road; diesel and petrol stored in the tanker caught fire due to sparks emanating from engine; the tanker was also damaged. Dilbag Singh suffered burn injuries, to which he succumbed.

The legal heirs/legal representatives of deceased, namely his widow - Baby Rani, aged 35 years, son – Vishal aged 21 years, another son, who was minor at that time – Master Abhishek and mother – Taro Devi, aged 65 years had filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 against the respondents i.e. Ram Jawari – driver, Gaje Singh – owner and Oriental Insurance Company Ltd. - insurer of the tanker, claiming compensation to the tune of Rs.40 lacs.

On being put to notice, all the three respondents had appeared and offered a contest. Issues on merits were framed and the parties were afforded adequate opportunities to lead evidence.

On conclusion of trial, after hearing arguments, the Motor Accidents Claims Tribunal, Kaithal (hereinafter referred to as the Tribunal) vide award dated 25.11.2016 awarded compensation of Rs.9,70,000/- with interest at the rate of Rs.9% per annum from the date of filing of the petition, payable by respondents No.1 to 3 jointly and severally. The detailed directions with regard to mode, manner of payment and apportionment are given in the award.

This award left the insurance company aggrieved and it has approached this Court by way of filing the present appeal praying that the same be accepted, the impugned award be set aside and the appellant –

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2019.11.26 17:49
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insurance company be absolved of its liability to pay compensation to the claimant.

Notice of the appeal was given to respondents and respondents No.1 to 4 and 6 have appeared through counsel.

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

The first and foremost argument advanced by learned counsel for the appellant – insurance company was that claim petition under Section 166 of the Motor Vehicles Act is not maintainable since deceased was gratuitous passenger. Learned counsel for the appellant has referred to ***M/s National Insurance Co. Ltd. Versus Baljit Kaur and others, 2004(1) RCR(Civil)722***.

Whereas learned counsel for the respondents/claimants has vehemently controverted such assertion stating that the deceased was employee of Khurania Filling Station, Dhand Road, Kaithal, where the petrol/diesel was to be delivered and he had been authorized by the owner of the petrol pump to travel in the tanker, as such he could not be said to be a gratuitous passenger. Learned counsel for the respondents/claimants has referred to authority ***National Insurance Company Ltd., Chandigarh Versus Ram Chander and another, 2007(2) RCR(Civil) 51*** by a Division Bench of this Court wherein it was observed that when the claimants were carrying their goods in a truck and they were injured when the truck turned turtle due to rash and negligent driving , the insurance company is liable under amended provisions of Section 147 of the Motor Vehicles Act, 1988.

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2019.11.26 17:49
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Learned counsel for the claimants has drawn my attention to the testimony of PW3 Nishant Khurania, the sole Proprietor of Khurania Filling Station, Dhand Road, Kaithal, who in his affidavit Ex.PW3/A has contended that Dilbagh Singh deceased was employee of the Filling Station and on 1.8.2014 he had died in a motor vehicular accident while travelling in truck/tanker bearing No.HR-67A-0072 and that the deceased had been asked to travel in the vehicle for safe delivery of goods i.e. petrol and diesel at the filling station. He had further stated that Dilbag Singh was drawing salary of Rs.7,000/- per month.

It being so, it cannot be said that the deceased was a gratuitous passenger and claim petition under Section 166 of the Motor Vehicles Act by his legal heirs/legal representatives is not maintainable. The Tribunal has dealt with such aspect in detail in very proper and appropriate manner.

Now coming to the quantum of compensation awarded. A perusal of the impugned award goes to show that relying upon testimony of PW3 Sh.Nishant Khurania, the sole Proprietor of Khurania Filling Station, Dhand Road, Kaithal and PW4 Sh.Rakesh Garg, Accountant of that concern and considering salary certificate Ex.PW3/B, monthly income of the deceased was taken to be Rs.7,000/- from his employment as Salesman with Khurania Filling Station, Dhand Road, Kaithal. That was done properly and no defect therewith can be found.

However, the Tribunal has not added any amount towards future prospects. In view of ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** when the

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2019.11.26 17:49
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deceased was aged below 40 years and in permanent employment an addition of 50% is to be made. In that way, monthly income of the deceased should have been taken as Rs.10,500/-(7,000 + 3500).

The Tribunal has made deduction of 1/4th of the amount towards personal and living expenses of the deceased. That was so done properly considering the number of dependent family members. The Tribunal has rightly applied multiplier of 15 in view of ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77*** . The Tribunal has further awarded a sum of Rs.25,000/- towards funeral expenses and awarded total compensation of Rs.9,70,000/- to the claimants.

The amount so awarded is somewhat on lower side since no addition of the income of the deceased has been made towards future prospects and only the amount towards funeral expenses has been granted when in view of ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors.***(supra), the claimants deserve to be granted 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/-.

There is no scope for reduction of the compensation amount.

The appeal is found to be without any merit and is dismissed accordingly.

20.11.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No

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2019.11.26 17:49
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