IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1678-2017(O&M)
Date of decision:-16.12.2019

New India Assurance Company Ltd.

...Appellant

Versus

Master Arshad alias Asad and others

...Respondents

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

Present: Mr.R.C. Kapoor, Advocate
for the appellant.

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

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H.S. MADAAN, J.

Petitioners/claimants Master Arshad alias Asad, aged about 9 years – minor son, Ms.Suhana, aged about 7 years – minor daughter, Smt.Rehana, aged about 35 years – wife and Smt.Hasat alias Hashmat, aged about 60 years – mother of Sh.Imramudin alias Ikramudin, an unfortunate victim of a road side accident had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against the respondents i.e. Vipin – driver, Sanjiv Kumar – owner and New India Assurance Company – insurer of truck bearing registration No.DL-1/GC-4218(hereinafter referred to as the offending truck), claiming compensation to the tune of Rs.50 lakhs along with interest.

As per case of the claimants on 16.3.2016 Sh.Imramudin alias Ikramudin deceased along with Sharukh was coming from Noida to Karnal for loading the eggs in truck bearing registration No.UP-15/AT-0548; the truck was being driven by deceased Sh.Imramudin alias Ikramudin at a moderate speed on left hand side of the road observing all the traffic rules; Sharukh was there in the truck as a helper/cleaner; on 17.3.2016 at about 4:30 a.m. when the truck reached near the fly-over of Samalkha within the area of P.S. Samalkha (Panipat), then the offending truck was standing/parked in the middle of the road without giving any signal/indication or barricade behind it; resultantly, the truck driven by deceased Sh.Imramudin alias Ikramudin struck against the offending truck and Sh.Imramudin alias Ikramudin suffered multiple serious and grievous injuries on vital parts of the body, to which he succumbed later on; his truck was also extensively damaged. After the accident, the dead body of the Sh.Imramudin alias Ikramudin was brought to General Hospital, Karnal where postmortem examination was conducted on the next day. The matter was reported to the local police and an FIR No.123 of 2016 for the offences under Sections 283, 304-A IPC was registered against respondent No.1 with Police Station Samalkha, Panipat.

As per the version of the claimants, deceased Sh.Imramudin alias Ikramudin was aged 34 years at the time of his death in the accident; he was a skilled driver and was earning Rs.30,000/- per month; he used to spend his income on his family; an amount of Rs.1,00,000/- was spent by them(claimants) on the transportation of dead body, cremation and last rites; and they were fully dependent upon income of the deceased.

On getting notice, all the three respondents had appeared.

Respondents No.1 and 2 had filed a joint written statement, whereas respondent No.3 came up with a separate written statement.

In the joint written statement filed by respondents No.1 and 2, they took various preliminary objections contending that the claim petition was false and frivolous based upon a false FIR; as a matter of fact, no accident had taken place with the vehicle belonging to answering respondent No.2 being driven by respondent No.1 and a false case was got registered against respondent No.1 in collusion with the police; that the claim petition was not maintainable against the answering respondents and was bad for non-joinder and mis-joinder of the necessary parties. Even otherwise, if the Tribunal came to the conclusion that the accident took place as alleged in the claim petition and claimants were entitled to compensation, in that eventuality, respondent No.3 – insurance company was liable to pay the compensation since the truck in question was insured with such insurance company at the time of alleged accident. It was further contended that respondent No.1 had been holding a valid and genuine driving licence. On merits, such respondents denied the material assertions and reiterated the pleas taken in the preliminary objections, in the end praying for dismissal of the claim petition.

In the written statement filed on behalf of respondent No.3 – insurance company, it took various legal objections and statutory defences. It denied that any such accident as alleged by the claimants had taken place, rather according to such respondent, respondent No.1 was not holding a valid and effective driving licence at the time of accident and terms and conditions of the insurance policy were violated, for that reason the insurance company should be absolved of its liability to pay compensation. It also prayed for dismissal of the claim petition.

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

After hearing arguments, while partly allowing the claim petition vide award dated 22.12.2016, the Motor Accidents Claims Tribunal, Karnal (hereinafter referred to as the Tribunal) awarded a compensation of Rs.24,69,000/- with interest at the rate of 9% per annum from the date of filing of the claim petition till its realization to the claimants, payable by all the respondents jointly and severally. The detailed directions with regard to mode and manner of deposit of compensation, its apportionment and release are given in the impugned award.

This award left the respondent No.3 - 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 – insurance company be absolved of its liability to pay compensation to the claimants.

Notice of the appeal was given to respondents. However, only 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 by learned counsel for the insurance company was that it was a case of contributory negligence inasmuch as the deceased driving the ill-fated truck should have taken the proper precaution of observing the traffic in front while driving his truck and he failed to observe the truck standing on the road side within time, resultantly banged his truck against the truck standing on the road. Therefore, it can be taken that the driver of the truck standing on the road was not responsible for the accident and either it should be taken that the accident had taken place due to own fault of the deceased driver or at the most it was a case of contributory negligence. The deceased himself was at fault in happening of the accident and the compensation amount should be reduced to the extent of contributory negligence of the deceased.

This contention was strongly contested by learned counsel appearing for the respondents. According to learned counsel for the respondents, the insurance company had not taken any such plea in the written statement and no evidence was adduced in that regard. Therefore, it cannot be taken to be a case of contributory negligence.

After hearing learned counsel for the parties and going through the record, I find that the submissions made by learned counsel for the insurance company that it was a case of contributory negligence cannot be accepted. The petitioners/claimants had led enough oral as well as documentary evidence to show that the accident had taken place on account of wrong parking of the offending truck on the road without giving any indication that it was parked there. As such, it cannot be taken that the traffic on the road could get any idea about the truck standing o the road ahead. The accident had taken place at about 4:30 a.m. in the early morning hours, when sun is yet to set in and the light is quite dim.

There is nothing to show that it was a well lit area. The petitioners/claimants have examined PW2 Talib, who had provided the eye-witness account of the accident. Such witness had submitted his affidavit Ex.PW2/A in which he had fully supported the case of the claimants contending that the accident had taken place on account of negligent act of respondent No.1 by wrong parking of the offending truck in the middle of the road.

Learned counsel for the insurance company has contended that PW2 Talib had stated in his cross-examination that he was sleeping at the time of the accident, therefore, he cannot be taken to be an eye-witness. But I am not convinced by this contention. Statement of a witness is to be seen in whole. It cannot be dissected and a line or two picked up out of context to give a different manner. Even otherwise, FIR regarding the accident had been got registered against driver of the offending truck. In the FIR the registration number of the offending truck as well as name of its driver are specifically mentioned. In ***Girdhari Lal Versus Radhey Shyam and others, 1994(1) ACJ 168***, it was observed that when a driver is tried on account of rash driving that leads to a prima facie conclusion that the accident occurred due to rash and negligent driving. Respondent No.1 did not summon up the courage to step into the witness box and to state that he was not negligent and he had put the brick pieces, stones, branches of the trees or any other things to indicate to the coming traffic that the truck was standing on the road. Similarly, respondent No.2 - owner of the truck did not get his statement recorded. Therefore, the evidence adduced by the claimants has gone unrebutted.

As regards the authority recorded by learned counsel for the insurance company i.e. ***Raj Rani and others Versus Oriental Insurance Co. Ltd. and others, 2009 ACJ 2003*** by the Apex Court wherein while dealing with an eventuality when a truck was parked in middle of the road without parking lights on and the car driver was driving at normal speed of 40 kmph,owing to lights of another vehicle coming from opposite direction, sighted the truck only at last minute and could not avoid the accident resulting in his death, the High Court held that drivers of both the vehicle were equally negligent and such finding was upheld by the Apex Court.

In my view this judgment does not help the case of the appellant much. Whether or not it was a case of contributory negligence is a finding of fact, which is to be given keeping in view the facts and circumstances of the case and the evidence adduced by the parties and there cannot be any hard and fast rule that when a vehicle hits another vehicle parked on the road, it is to be taken as a case of contributory negligence. The judgment referred to by learned counsel for the insurance company does not help him in advancing his case. Therefore, the plea of contributory negligence put forward by learned counsel for the insurance company is found to be without any merit and is rejected.

The next argument put forward by learned counsel for the appellant was that the compensation amount awarded is on higher side.

I have minutely perused the record with the assistance of learned counsel for the parties and I find that the Tribunal taking age of the deceased to be 34-35 years and his avocation as a truck driver had taken his monthly income to be Rs.10,000/ rejecting the contention of claimants that he was earning Rs.30,000/- per month from that avocation. No fault can be found with the approach of the Tribunal in doing so. However, the Tribunal has made an addition of 50% amount towards future prospects, when in view of the judgment ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** only 40% of the amount should have been added towards future prospects. Doing that the monthly income of the deceased is taken as Rs.10,000 + 4,000 = Rs.14,000/-.

The Tribunal has rightly made deduction of 1/4th amount towards personal and living expenses of the deceased in view of ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77 .*** Doing that the dependency of claimants comes out to Rs.10,500/- per month, annual dependency comes out to Rs. 10,500 x 12 = Rs.1,26,000/-.

The Tribunal has used multiplier of 16, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs. 1,26,000 x 16 = 20,16,000/-.

The Tribunal has awarded a sum of Rs.1 lakh towards loss of consortium to the claimant/petitioner No.3, who is widow of deceased, Rs.1 lac each as love and affection and Rs.25,000/- towards funeral expenses. 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 comes out to Rs. 20,16,000 + 70,000 = 20,86,000/-.

The Tribunal has wrongly awarded compensation of Rs.24,69,000/-. The same is reduced to Rs.20,86,000/-. The claimant 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.20,86,000/-. Other terms and conditions in the original award shall remain the same.

Since the amount has been reduced, the directions with regard to release of compensation amount to the claimants in cash and with regard to fixed deposit shall stand modified proportionately.

If the amount of compensation has already been paid by the Insurance company, the claimants shall refund the same to the Insurance Company otherwise the Insurance Company shall be entitled to recover the difference in amount from the claimants as per law by way of filing an execution application before the Tribunal.

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

16.12.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No