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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2634 of 2017 (O&M)
Date of decision: 12.09.2019

Reliance General Insurance Co. Ltd. ...Appellant

V/s.

Baljit Kaur and others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Sandeep Kodan, Advocate for the appellant.

Mr. Arvind Rajotia, Advocate
for respondents No. 1 and 2.

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<u>RITU BAHRI, J. (Oral).</u>

The insurance company has come up in appeal against the award of the Motor Accident Claims Tribunal, Patiala (hereinafter referred to as 'Tribunal') dated 15.03.2017 whereby in a claim petition under Section 166 of Motor Vehicles Act, the claimants have been allowed compensation of Rs.7,62,000/- on account of death of Gurpreet Singh who died in a road accident which took place on 14.06.2016.

Brief facts of the case are that on 14.06.2016 Gurpreet Singh @ Gopi accompanied by respondent No. 1 Baljinder Singh @ Mona was returning to village on offending motorcycle. The respondent No. 1 was driving the said motorcycle and deceased Gurpreet Singh was sitting on its pillion seat. The respondent No. 1 was driving the motorcycle at a high speed in rash and negligent manner. At about 9:30 p.m. when they reached near Kamal Filling Station, an unidentified car hit the motorcycle from behind. As an impact of such striking of unidentified car, respondent No. 1

lost control over motorcycle due to high speed and fell on the *Kutcha* portion of the road whereas deceased fell down on concrete road and received multiple injuries on his head and face. The driver of unidentified car ran away from the spot and the registration number of such car could not be noted down. The deceased was shifted to Civil Hospital, Samrala and then he was referred to Government Hospital & Medical College, Sector-32, Chandigarh, but he succumbed to the injuries.

The insurance company is challenging the finding on issue No. 1 that accident had not taken place due to sole negligence of Baljinder Singh, the driver of motorcycle bearing registration No. PB-10-FM-2145. Hence, the insurance company could not be held liable to make payment of the entire compensation. It was a case of contributory negligence by the driver who was also driving the car. Once, the accident was on account of composite negligence of drivers of both vehicles, the liability to make payment of compensation of the insurance company of the motorcycle should not have been 100%.

The Tribunal had framed following issues:-

1. *Whether Gurpreet Singh @ Gopi son of Bagga Singh had died in a motor vehicular accident which took place on account of rash and negligent driving of bullet motorcycle no. PB-10-FM-2145 by respondent no.1? OPA*
2. *Whether the claimants are entitled to compensation, if so to what extent and from whom? OPA*
3. *Whether the respondent no.1 was not holding a legal and valid driving license at the time of alleged accident, if so its effect? OPR*
4. *Whether respondent no. 1 has committed breach of any other condition of the insurance policy?OPR*
5. *Relief."*

The Tribunal returned finding on issue No. 1 that the claimants examined Harpal Singh CW2 who gave his affidavit Ex.CW2/A in chief examination that on 14.06.2016, he was on a separate motorcycle and was following the offending motorcycle. He further deposed that respondent No. 1 was driving the offending motorcycle, whereas the deceased was on its pillion seat and then it was hit from behind by an unidentified car. As an impact of such hitting, the driver of offending motorcycle fell on *Kutcha* side of road, whereas the deceased fell on concrete side of road and received multiple injuries. He further stated that the accident occurred due to rash and negligent driving of offending motorcycle.

Ex.CW2/B is the copy of FIR which was registered on 15.06.2016 by respondent No. 1 Baljinder Singh against driver of unknown car. The insurance company summoned police record of aforementioned FIR and the same was brought by HC Surinder Singh RW1, who deposed that as per police record, the accident occurred due to rash and negligent driving of unknown car solely and there was no negligence on part of driver of motorcycle in question. He has further deposed that the police could not trace out the driver of unknown car and thus, it decided to close the case being untraced. The copy of police file is Ex.RW1/1.

The Tribunal, after examining the above said evidence, returned finding that presence of Harpal Singh CW2 was doubtful as the version narrated by him, does not prove the rash and negligent driving of offending motorcycle as the unknown car hit it from behind. He further admitted in cross examination that his name has not been referred in the FIR nor he got registered any FIR.

The Tribunal had given finding on issue No. 1 that the accident did not take place due to rash and negligent driving of motorcycle or even due to composite negligence of both motorcycle and unidentified car.

With respect to liability, the motorcycle was covered under the 'Package Policy' and could not escape from its liability to make payment of compensation. The insurance company, however, has taken a plea that motorcycle was being plied in contravention of terms of insurance policy and the driver of offending motorcycle was not holding valid and effective driving license. But no evidence was led by insurance company to prove this plea and hence finding on issue No. 2 and 4 was given in favour of the claimants and insurance company was held liable to make payment of compensation.

Learned counsel for the insurance company has vehemently argued that the finding on issue No. 1 has not been correctly given. Even the driver of the motorcycle was also negligent in causing accident and he has referred to the judgment of Supreme Court in ***Khenyei V/s. New India Assurance Company Limited and others*** (2015) 9 Supreme Court Cases 273 to contend that the accident occurred on account of composite negligence, the liability to make compensation should be joint and several.

After hearing learned counsel for the appellant and going through the contents of the award, the finding on issue no. 1 does not require any interference as HC Surinder Singh appeared as RW1 and deposed that as per the record, accident occurred due to rash and negligent driving of car and there was no negligence on the part of the driver in question and the case file has been closed being untraced Ex.RW2/1. There is no information given that the driver of the motorcycle was also negligent in causing the accident. Hence, this finding cannot be reversed by giving finding that in the accident, there was composite negligence of both the drivers. Even the version of eye witness CW2 has been rightly considered to be doubtful as his name has neither been referred in the FIR nor he got registered such FIR.

Even the facts of the ***Khenyei's case (supra)*** are not applicable to the facts of the present case as the award of the Tribunal cannot be reversed as no negligence has been contributed by respondent No. 1 in causing the accident as per HC Surinder Singh RW1.

Hence, appeal is dismissed.

(RITU BAHRI)
JUDGE

12.09.2019
Divyanshi

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No