219

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.3446 of 2017 (O&M)
Date of Decision : 29.04.2019

Baljit Singh and another

Appellants

Versus

Shri Ram General Insurance Co. Ltd. and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Inderjit Sharma, Advocate for the appellants.

Ms. Sheenu Sura, Advocate for respondent No.1-Insurance Company.

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

The award dated 30.05.2016 passed by the Motor Accident Claims Tribunal, Gurdaspur [for brevity 'the Tribunal'] has been assailed by owner and driver of Truck bearing registration No. PB-06Q-9899 [hereinafter referred to as 'offending vehicle'] being aggrieved of recovery rights granted to the insurer of the offending vehicle.

The facts necessary for adjudication of the present appeal are that on 17.11.2014, Satnam Singh alongwith Balwan Singh was travelling on a motorcycle. On their way, the motorcycle was struck by the offending vehicle, as a result of the impact, both the riders of the motorcycle sustained injuries. Satnam Singh succumbed to the injuries. FIR No.82, dated 17.11.2014 was registered at Police Station Tibber.

A claim petition was filed by the widow of the deceased. In the claim proceedings, following four issues were framed:~

> *"1. Whether deceased Satnam Singh son of Late Sh. Makhan Singh has died in the accident caused due to rash and negligent driving of Truck bearing registration No.PB-06-Q-9899 by respondent No.1 Baljit Singh on 17.11.2014 in the area of village Nawan Pind Hundal, on Gurdaspur-Kahnuwan G.T. Road? OPA*
>
> *2. If issue No.1 is proved, whether claimant is entitled to receive compensation, if so to what amount and from whom?OPA*
>
> *3. Whether driver of the offending vehicle was not holding and possessing any legal valid and effective driving license?OPR-3*
>
> *4. Relief."*

Issue No.1 was decided in favour of the claimant. The claimant was held entitled to ₹12,25,000/-. It was ordered that the said amount shall be paid within two months and in case of failure, claimant shall be entitled to interest @ 6% per annum.

Issue No.3 was not pressed by the insurer of the offending vehicle. The Tribunal recorded following findings:~

> *"17. The onus to prove this issue was on the respondents, but no evidence has been led in support of this issue nor the same was pressed at the time of arguments. Therefore, this issue is decided against the respondents and in favour of the claimant"*

Inspite of the fact that issue No.3 was not pressed by the insurer, the insurer was given liberty to recover the compensation from owner and driver of the offending vehicle. Relevant portion of decision is reproduced below:~

> *"19. However, the respondent No.2 is at liberty to recover the amount of compensation from respondent No.1 and respondent No.1-A under rules."*

The grievances raised by learned counsel for the appellants is that the Driving Licence was produced but the insurer failed to prove that there was any breach of conditions of Insurance Policy, yet recovery rights have been granted.

Learned counsel for the insurer though defends the award but could not challenge the fact that issue No.3 was not pressed before the Tribunal. The findings on issue No.3 and conclusion recorded by the Tribunal are contradictory. In view of the fact that issue No.3 was not pressed, the recovery rights granted to the insurer cannot be sustained.

The award dated 30.05.2016 is modified to the extent that owner, driver and insurer of the offending vehicle are jointly and severally liable to pay the compensation to the claimant.

The appeal is allowed.

[AVNEESH JHINGAN]
JUDGE

April 29, 2019

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1. Whether speaking/ reasoned : Yes
2. Whether reportable : No