IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3817-2017(O&M)
Date of decision:-2.5.2019

The New India Assurance Company Ltd.
...Appellant

Versus

Smt.Promila and others
...Respondents

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

Present: Mr.Neeraj Khanna, Advocate and
Mr.Deepak Suri, Advocate
for the appellant.

Respondents No.1 to 5 ex parte.

None for respondent No.6.

Mr.Harkesh Kumar, AAG, Haryana
for respondents No.7 to 9.

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H.S. MADAAN, J.

Briefly stated, the facts of the case, as per version of the claimants are that on 24.9.2014, Darshan Singh son of Sh.Jaipal Singh was driving motorcycle bearing registration No.HR07K-3191 make Super Splendor going from Shahbad towards village Baram; that his brother Gulab Singh was following him on his separate motorcycle bearing registration No.HR-07S-8986 make Bajaj Platina; that Darshan Singh was driving his motorcycle at a moderate speed on left side of the road observing traffic rules; that when the two brothers on separate motorcycles reached in front of Khalsa Khanewal High School, Shahbad and time was about 1:30 p.m., then a bus having registration No.HR-63-C-2880 (hereinafter referred to as the offending vehicle) came from Ambala side being driven by respondent No.1 – Mandeep Singh at a very high speed in a rash and negligent manner and it struck against the motorcycle of Darshan Singh, who fell down and suffered multiple and grievous injuries; that Darshan Singh succumbed to the injuries suffered by him; that formal FIR No.367 dated 24.9.2014 for the offences under Sections 279 and 304-A IPC was registered on the statement of Gulab Singh against respondent No.1 – Mandeep Singh.

As per the case of the claimants, Darshan Singh deceased was aged about 38 years and engaged in avocation of agriculture and dairy farming and was earning Rs.25,000/- per month and the claimants were dependent upon his earnings.

The claimants including his wife – Smt.Promila aged 36 years, minor daughter - Ritu aged about 17 years, minor son - Ankur aged about 13 years, minor daughter - Muskan aged about 11 years and mother – Smt.Shettlo Devi aged about 57 years had filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 impleading Mandeep Singh – driver (respondent No.1), General Manager, Haryana Roadways, Jhajjar Depot, Secretary Transport Department as also State of Haryana through Collector, Kurukshetra – owners (respondents No.2 to 4) and The New India Assurance Company Ltd. - insurer of the offending vehicle claiming compensation to the tune of Rs.50 lacs along with interest on account of death of Darshan Singh in a road side accident.

On getting notice all the respondents had appeared.

Respondents No.1 and 5 had filed separate written statements, whereas respondents No.2 to 4 filed joint written statement. All of them controverted the assertions in the claim petitions. Respondent No.5 – insurance company had taken up a plea that the offending vehicle in question was being driven in contravention of terms and conditions of the insurance policy, as such insurance company was not liable to pay any compensation to the claimants, further submitting that if the Tribunal come to the conclusion that the accident in question had taken place, in that eventuality, its so happened due to sole negligence of the deceased himself, who was driving the motorcycle in a rash and negligent manner without observing the traffic rules. All the respondents had prayed for dismissal of the claim petition.

On the pleadings of the parties, following issues were framed:-

1. Whether the accident resulting into death of Darshan Singh took place due to rash and negligent driving of respondent No.1, while driving Bus No.HR-63C-2880? OPP.
2. If issue No.1 is proved to what amount of compensation and from whom the claimants are entitled to?OPP.
3. Whether there was violation of the terms and conditions of the insurance policy and respondent No.5 is not liable to pay any compensation? OPR-5.
4. Relief.

Both the parties led evidence in support of their respective claims.

In support of their case, the claimant No.1 Smt.Promila got recorded her statement as PW2 besides examining Sh.Gulab Singh as PW1.

On the other hand, the respondent No.1 tendered in evidence copy of driving licence as Ex.R5, whereas the Government Pleader produced insurance policy as Ex.R1, attested copy of route permit of buses along with fleet list of buses of Haryana Roadways, Jhajjar as Ex.R2, copy of RC as Ex.R3 and copy of driving licence as Ex.R4. Respondent No.5 – insurance company had examined Sh.Rajesh Narang, Clerk, Office of Licensing Authority – cum – Secretary, RTA Jhajjar at Bahadurgarh as RW1 and Sh.Devender Sharma, Jr.Assistant, RTO Office, Mathura as RW2.

After hearing arguments, the Tribunal decided issue No.1 in favour of the claimants, issue No.2 in favour of claimants, issue No.3 against respondent No.5. Resultantly, while allowing the claim petition, the petitioners/claimants were awarded compensation of Rs.21,75,250/- payable by all the respondents jointly and severally. The manner in which the compensation is to be apportioned was also given in the award.

This award left the respondent No.5 - 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.6 and 7 to 9 put in appearance through counsel, whereas remaining respondents did not appear despite service.

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 respondent No.1 bus driver was not having a legal and valid driving licence at the time of accident and the licence claimed by him purported to have been issued by Licensing Authority, Mathura was a fake one, though it had been renewed, for that reason there took place violation of terms and conditions of the insurance policy and insurance company was absolved of its liability to indemnify the insured with regard to its liability to pay compensation to the claimants.

On the other hand, learned State counsel has countered this argument vehemently stating that respondent No.1 was recruited as a bus driver in Haryana Roadways after satisfying that he held a valid and effective driving licence and insurance company had failed to show that respondent No.1 was not having a legal and valid driving licence at the time of accident, therefore, such contention of learned counsel for the appellant is not tenable.

After hearing the rival contentions, I find that though insurance company has taken an objection in the written statement to the effect that the bus driver was not having a valid and effective driving licence at the time of accident, however, no specific issue in that regard was framed by the Tribunal. Though an issue was struck to the effect that '*Whether there was violation of the terms and conditions of the insurance* *policy and respondent No.5 is not liable to pay any compensation?',* the onus of proving that issue was on respondent No.5 – insurance company. The insurance company has failed to discharge the said onus. The counsel for respondent No.1 had tendered in evidence copy of driving licence of respondent No.1 as Ex.R5 and then closed evidence of such respondent. The insurance company had examined Sh.Rajesh Narang, Clerk, Office of Secretary RTA, Jhajjar as RW1, who had brought the summoned record stating that the driving licence Ex.R1 was renewed by Licensing Authority-cum-Secretary RTA, Jhajjar at Bahadurgarh w.e.f. 21.8.2007 to 23.8.2010 and thereafter from 18.8.2010 to 17.8.2013 and then from 13.8.2013 to 17.8.2016. He added that the licence was originally issued by Licensing Authority, Mathura vide DL No.1081/MTR/1999. He proved copy of licence register as Ex.R2 and Ex.R3. In his cross-examination, he stated that their authority had renewed the licence after obtaining NOC from the issuing authority and they found that the said licence was genuine one issued by Mathura Authority. The Insurance Company had examined Sh.Devender Sharma, Junior Assistant, RTO Office, Mathura as RW2, who had brought the summoned record with regard to licence in question stating that as per record no driving licence was issued in favour of Mandeep son of Ramesh Kumar and licence in question was not issued by their authority but in his cross-examination, he stated that whenever an authority renews any driving licence issued by any authority, NOC is required. He further admitted it as correct that when the licensing authority is satisfied only thereafter the licence is renewed. He further stated that he had not brought the record pertaining to driving licence

No.1081/MTR/1999.

Under the circumstances, the Tribunal was justified in coming to the conclusion that driving licence of respondent No.1 Ex.R1, Ex.R4 and Ex.R5 could not be held to be fake and respondent No.5-insurance company could not be absolved of its liability to indemnify the insured. I do not see any reason to upset such finding recorded by the Tribunal. Therefore, the argument advanced by learned counsel for the appellant in that regard does not cut much ice and cannot be accepted. Learned State counsel has referred to judgment ***Pepsu Road Transport Corporation Versus National Insurance Company, 2013(4) RCR(Civil) 273***, wherein the Apex Court observed that when an accident is caused by driver, who possesses fake driving licence, the insurance company is liable to pay the compensation and not the owner of the vehicle. It was further observed that when an owner hires a driver, he has to satisfy that the driver had valid driving licence and the owner cannot be go to the extent to verify the genuineness of the driving licence with the licensing authority and that if such a driver causes accident, then insurer and not the insured will be liable. This judgment also is quite helpful tot he case of the respondents.

The other contention of learned counsel for the appellant – insurance company was that the Tribunal has awarded compensation under conventional heads, which is on higher side and more amount has been awarded towards future prospects than the settled norms.

I have gone through the award. The deceased in this case was aged about 38 years. The Tribunal has taken his monthly income to be

Rs.8,100/- considering the amount paid to daily wager during the relevant period. The Tribunal has allowed 50% of the monthly earning of deceased towards future prospects in light of ratio of authority ***Rajesh and others Versus Rajbir Singh and others (2013) 9 SCC 54***. However, in the subsequent judgment by the Constitutional Bench of the Apex Court i.e. ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** it was observed that when the deceased was aged below 40 years and was self employed or on a fixed salary, in such an eventuality addition of 40% of the established income is warranted. In this case only 40% of the monthly income of the deceased can be added towards future prospects and not 50%. Doing that the monthly income of the deceased comes out to Rs.8,100 + 3,240 = Rs.11,340/-.

In terms of the ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77*** where the number of dependent family members 4 to 6, deduction towards self-expenses is to be taken as 1/4th. Doing that the dependency of claimants comes out to Rs.8,505/- per month, annual dependency comes out to Rs.8,505 x 12 = Rs.1,02,060.

The Tribunal has used multiplier of 15, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs. 1,02,060 x 15 = 15,30,900/-.

The Tribunal has awarded a sum of Rs.1,00,000/- each for loss of love and affection, Rs.25,000/- as funeral expenses, Rs.10,000/- as transportation charges. In view of citation ***National Insurance Company Limited Versus Pranay Sethi and Ors.***(supra), no amount is to be awarded for loss of love and affection. 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. 15,30,900 + 70,000 = 16,00,900/-.

The Tribunal has wrongly awarded compensation of Rs.21,75,250/-. The same is reduced to Rs.16,00,900/- payable by all the respondents jointly and severally. 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.16,00,900/-. The directions regarding deposit of shares and other terms and conditions shall remain the same.

The appellant – 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 Motor Accidents Claims Tribunal, Kurukshetra.

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

2.5.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No