IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3828-2017(O&M) with
XOBJC-181-CII-2017
Date of decision:-12.2.2019

National Insurance Company Ltd.

...Appellant

Versus

Smt.Bimla and others

...Respondents

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

Argued by: Mr.O.P. Sharma, Advocate
for the appellant.

Mr.Sandeep Kotla, Advocate
for respondents No.1 and 2/Cross-objectors.

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<u>H.S. MADAAN, J.</u>

Briefly stated, facts of the case are that on 30.11.2015, Bijender @ Vijender (since deceased) along with his conductor/cleaner Hari Singh was returning from Kanpur after loading the canter having registration No.DL-ILT-6787; that the deceased Bijender @ Vijender was driving the said canter during the course of employment and instructions of its owner; that at about 3:00 p.m. when the canter reached a little ahead of Bichhwan crossing towards Kurawali, in the meanwhile a truck having registration No.HR55J-6415 (hereinafter referred to as the offending truck) being driven by Ram Ratan – respondent No.1 in a rash and negligent manner at a high speed in violation of traffic rules came from the opposite direction and by going on wrong side of road hit the canter being driven by Bijender @ Vijender, as a result Bijender @ Vijender and Hari Singh received multiple grievous injuries; that the injured were removed to District Hospital, Mainpuri, where Bijender @ Vijender succumbed to the injuries suffered by him in the road side accident and was declared dead, whereas Hari Singh was referred to Agra for further treatment; that formal FIR with regard to the accident bearing No.303 dated 1.12.2015 for the offences under Sections 279, 338, 427, 304-A IPC was registered against respondent No.1 – Ram Ratan, driver and owner of the offending truck.

The parents of the deceased Bijender @ Vijender i.e. Smt.Bimla – mother and Sh.Ran Singh - father had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Ram Ratan – driver-cum-owner and National Insurance Company - insurer of the offending truck.

Inter alia, in the petition, they contended that the deceased was aged about 28 years and was working as a driver of heavy goods vehicle earning an amount of Rs.20,000/- per month besides Rs.300/- as perks being daily allowance; that the claimants being parents of deceased were dependent upon his earnings. They prayed that compensation of Rs.66 lacs be granted to them.

Notice of the claim petition was given to respondents. Respondent No.1 did not appear, as such he was proceeded *ex parte*.

Whereas respondent No.2 – insurance company appeared and filed written statement contesting the claim petition raising various preliminary objections contending that no cause of action arose to the claimants to bring the claim petition; that the claimants do not have locus standi to file the petition; that the driving licence possessed by respondent No.1 was invalid and ineffective; that the claim petition is not maintainable and the same is bad for non-joinder of the necessary parties; that the terms and conditions of the insurance policy were violated absolving the insurance company to pay any compensation. On merits, the insurance company denied the material assertions in the claim petition, whereas repeating the pleas taken in the preliminary objections contending that the petitioners in collusion with respondent No.1 had got a false FIR registered and as a matter of fact the truck in question was not involved in the accident and the claimants are not entitled to any compensation. Such respondent prayed for dismissal of the claim petition.

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

1. Whether accident dated 30.11.2015 resulting in death of Bijender @ Vijender S/o Ran Singh occurred on account of rash and negligent driving of vehicle HR-55J-6415 by respondent No.1? OPP.
2. Whether the claimants are entitled to compensation as prayed, if so, to what extent and from whom? OPP.
3. Whether the driver of offending vehicle was not holding a valid and effective driving licence on the date of accident and the vehicle was

being driven in violation of the terms and conditions of the insurance policy? OPR2.

4. Relief.

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

In support of their case, the claimant Smt.Bimla got her statement recorded as PW1 besides examining Rambir as PW2.

On the other hand, respondent No.2 tendered photocopy of insurance policy as Ex.R1.

After hearing arguments, the Tribunal decided issues No.1 and 2 in favour of the claimants and issue No.3 was decided against the respondent No.2. Resultantly, the claim petition was accepted by the Tribunal vide Award dated 7.3.2017 and compensation of Rs.14,49,000/- was awarded to the claimants payable by both the respondents jointly and severally along with interest @ 7.5% per annum.

Feeling aggrieved by the said award, the respondent No.2 – insurance company had filed an appeal before this Court, notice of which was given to respondents. Respondents No.1 and 2 have put in appearance through counsel and filed cross-objections seeking enhancement of compensation.

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

Learned counsel for the appellant – insurance company has contended that the Tribunal has taken the income of deceased to be on higher side, though disbelieving the version of the claimants that the deceased was driver by profession but even then his income was assessed as daily wager to be Rs.8,000/- per month in the year 2015-16; though in terms of Haryana Government Labour Department notification dated 21.10.2015 , the minimum wages in respect of an unskilled labourer were Rs.7,600/-.

Whereas learned counsel for the respondents/claimants has submitted that the claimants had proved on record that the deceased was a trained driver, therefore, his income as a skilled labourer should have been taken, which in terms of Haryana Government Labour Department notification dated 21.10.2015 was Rs.8,797.95 say Rs.8,798/-.

After hearing the rival contentions, I find that the Tribunal by misappraisal of the evidence wrongly taken the deceased to be a daily wager. An important fact was lost sight of that when the accident took place then the deceased was driving a canter, which goes to show that he was a trained driver. This fact is further fortified when we see that the claimants have placed on record the photocopy of driving licence of the deceased as Ex.P4. A perusal of the driving licence goes to show that the deceased was authorized to drive LTV/HTC on 17.11.2014. PW1 Smt.Bimla mother of the deceased had categorically stated that the deceased was driver by profession of heavy goods vehicle and was employed as a driver on canter bearing registration No.DL-ILT-6787 owned by Kitchen Craft Catering Company, Delhi. Though the claimants had placed on record certificate Mark A issued by Kitchen Craft Catering Company, Delhi to the effect that Bijender @ Vijender was working as driver with them getting salary of Rs.20,000/- per month and Rs.200/- per night but that certificate was not relied upon for the reason that it was not properly proved since the Proprietor of the concern, who had issued the certificate had not stepped into the witness-box to prove that document. May it be so, but then the facts and circumstances of the case do point out that the deceased was a trained driver possessing a driving licence to drive LTV/HTV vehicles. The Tribunal clearly fell in error in disbelieving the avocation of the deceased to be driver for the reason that no diploma or training certificate of deceased had been placed on file. Once copy of the driving licence had been placed on record, such diploma or training certificate was not required to be produced. The deceased was wrongly taken to be a daily wager. He should have been taken to be a skilled person and his monthly income of Rs.8,798/- in terms of the Haryana Government Labour Department notification referred supra.

As such, I take the avocation of deceased to be a driver and his monthly income to be Rs.8,798/-. The Tribunal has made addition of Rs.50% of the monthly income towards the future prospects. In terms of the authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009***, when in case the deceased was self-employed or on a fixed salary, an addition of 40% is to be made towards future prospects. Since it is not proved on file that the deceased had a permanent job, therefore, an addition of 50% was wrongly made towards future prospects. Making addition of 40%, the monthly income of deceased comes out to Rs.12,317/-(8798 + 3519).

Since the deceased was a bachelor, in terms of ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport***

Corporation and Anr., 2009(3) RCR(Civil)77 , 50% deduction is to be made towards personal expenses of the deceased.

Doing that the monthly dependency of the claimants comes out to Rs.6,158/- (12,317 ÷ 2), annual dependency comes to be Rs.73,896/- (6,158 x 12).

The Tribunal has taken age of the deceased to be 28 years, 7 months and 20 days at the time of accident considering his date of birth mentioned in the driving licence. The Tribunal has used multiplier of 17. In view of the ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr.(supra)***, it has been properly applied. The total compensation comes out to Rs.12,56,232/-(73,896 x 17).

The Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses, Rs.1 lac each to claimants on account of loss of love and affection i.e. Rs.2,25,000/-. However, in terms of the authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** the claimants are entitled to get a sum of Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses. Thus the total amount of compensation comes to Rs.13,26,232/- (12,56,232 + 15,000 + 40,000 + 15,000).

Therefore, the appeal filed by the Insurance company is allowed partly and compensation awarded to claimant is reduced from Rs.14,49,000 to Rs.13,26,232/-. The interest granted and other terms and conditions for payment of compensation shall remain the same as given in the award.

In view of the above discussion, cross-objections filed on behalf of the claimants being devoid of merit stand dismissed.

12.2.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No