IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1415-2018(O&M)
Date of decision:-25.2.2019

The New India Assurance Company Ltd.

...Appellant

Versus

Harpreet Kaur and others

...Respondents

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

Present: Mr.Vinod Gupta, Advocate
for the appellant.

Mr.Sanjeev Kodan, Advocate
for respondents No.1 to 5.

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

Smt.Harpreet Kaur aged about 28 years – wife, Baby Prabhleen Kaur, aged about 9 years, Baby Jasleen Kaur, aged about 7 years, Baby Gurnoor Kaur, aged about 5 years – minor daughters and Mrs.Sukhdev Kaur aged about 50 years – mother of Iqbal Singh, who lost his life in a motor vehicular accident, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Hardeep Singh Bhatia – driver and owner and The New India Assurance Company Ltd. having its Branch at Chandigarh – insurer of truck having registration No.MH40-AK-7295 (hereinafter referred to as the offending truck) claiming compensation to the tune of Rs.50 lacs.

As per the case of the petitioners/claimants, deceased Iqbal

Singh son of Sh.Darshan Singh, resident of village Ghureli Balloh, District Bathinda, Punjab was aged about 34 years and was working as a truck driver, earning Rs.30,000/- per month; that on 4.10.2016 the deceased was driving truck bearing registration No.PB23-E-8348 coming from Tata, Jamshedpur, Jharkhand and going towards Gobindgarh; that Jaspal Singh was sitting with him in that truck; that at about 12:00 a.m., after crossing the Chatupali Ghaati when the truck reached Kothar Pul, National Highway 33, Ramgarh, Jharkhand then the offending truck being driven by respondent No.1 – Hardeep Singh Bhatia in a rash and negligent manner without blowing horn, at a very fast speed overtook the truck of deceased and then without giving any indicator took left turn, resulting in happening of the accident, in which the deceased suffered multiple injuries; though he was removed to Government Hospital, Hajari Bagh, Jharkhand but he succumbed to the injuries there on 5.10.2016; that the police officials of Police Station Ramgarh, Jharkhand in connivance with respondent No.1 did not correctly record the FIR No.336 dated 5.10.2016 for the offences under Sections 279, 304-A IPC as per the version of Jaspal Singh.

Notice of the claim petition was given to the respondents. Respondent No.1 Hardeep Singh Bhatia failed to appear despite service, as such was proceeded against *ex parte*. Whereas respondent No.2 – insurance company put in appearance and filed written reply contesting the claim petition controverting the material assertions in the claim petition raising legal objections challenging the maintainability of the claim petition in the present form submitting that the liability of the insurance company would arise only if driver of the offending vehicle was holding a valid and effective driving licence at the time of the accident and the vehicle was being driven as per provisions of the Motor Vehicles Act. The answering respondent contended that the compensation claimed was highly excessive and exaggerated. In the end, such respondent prayed for dismissal of the claim petition.

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

1. Whether Iqbal Singh has died in a road side accident due to rash and negligent driving of vehicle bearing registration no.MH40-AK-7295 by respondent No.1? OPP.
2. Whether the claimants are entitled to compensation, if so to what amount and from whom? OPP.
3. Whether respondent no.1 was not having a valid and effective driving licence at the time of accident? OPR-2.
4. Relief.

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

In support of their case, the claimant No.1 had got her statement recorded as PW2 besides examining Jaspal Singh as PW1.

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

After hearing arguments, the Tribunal decided issue No.1 in favour of claimants and against the respondents, issue No.2 in favour of the claimants and against the respondents, issue No.3 against the insurance company. Resultantly while allowing the petition vide award dated 7.12.2017, the Tribunal granted compensation of Rs.16,52,680/- along with interest @ 7.5% per annum from the date of filing of the petition till realization. The manner in which the compensation is to be apportioned was also given in the award.

Such award left the Insurance Company aggrieved and it has knocked at the door of this Court praying that the appeal be accepted, the award under challenge be set aside.

Notice of the appeal was issued to the respondents. Respondents No.1 to 5 put in appearance through counsel.

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

Learned counsel for the appellant insurance company has contended that the accident had taken place due to rash and negligent driving of the deceased; that the FIR was registered on the basis of statement of Jaspal Singh and challan has been presented against Iqbal Singh – deceased, who was found to be negligent in driving his truck; that issue No.1 was wrongly decided by the Tribunal in favour of the claimants and against the respondents; that the insurance company is not liable to pay any amount to the claimants as compensation.

Whereas learned counsel for the respondents/claimants has controverted such contentions submitting that it was duly proved on record that respondent No.1 was author of the accident by his rash and negligent driving of the offending truck, therefore, the Tribunal was justified in returning verdict in that regard in favour of the claimants and against the respondents and no fault can be found with the same.

After hearing the rival contentions, I find that the claimants had led enough oral and documentary evidence to prove that rash and negligent driving of the offending truck by respondent No.1 – Hardeep Singh Bhatia was direct and proximate cause of the accident in which deceased Iqbal Singh had suffered injuries, to which he had succumbed later on. The oral evidence adduced by claimants comprised of testimony of PW1 Jaspal Singh, who had given the ocular version of the accident contending that he was working as helper with Iqbal Singh – deceased and on the fateful day while deceased was driving the ill-fated truck, he was sitting therein; that they were coming to Gobindgarh from Tata, Jamshedpur, Jharkhand; that at about 12:00 a.m., the offending truck being driven by respondent No.1 in a rash and negligent manner without blowing any horn coming at a fast speed firstly overtook their truck and then without giving any indicator took left turn, as a result of which the accident took place, resulting in causing injuries to deceased, to which he had succumbed later on at hospital. Though he was cross-examined at length but his testimony could not be shattered on any material point. His presence at the spot was found to be natural and probable. It was he, who had set the criminal machinery in motion by reporting the matter to the police.

Though as per case of the claimants and as per explanation rendered by Jaspal Singh himself, the police had not recorded his version correctly. The Tribunal has taken into consideration all the factors including the one that there was some difference between version given by PW1 Jaspal Singh before the Tribunal and as given in his statement to the police forming basis for registration of the FIR, but has then concluded that even in the FIR specific act, as regards respondent No.1 driving the truck in question in a rash and negligent manner, is there. Furthermore, certified copy of FIR Ex.P12 and certified copies of zimni order of the Court of Chief Judicial Magistrate, Ramgarh Ex.P11 corroborate the case as regards the factum and manner of accident. The evidence adduced by the claimants had gone unchallenged and unrebutted. Respondent No.1 – Hardeep Singh Bhatia did not opt to put in appearance before the Tribunal and offer a contest. The respondent No.2 – insurance company had not led any evidence in rebuttal and rather closed its evidence after tendering the insurance policy. Therefore, the Tribunal had rightly decided issue No.1 in favour of the claimants and against the respondents coming to the conclusion that due to rash and negligent driving of the offending truck by respondent No.1, he was responsible for the accident, in which the deceased had suffered injuries, to which he had succumbed later on.

Though learned counsel for the insurance company has contended that the police after investigation had found Iqbal Singh to be responsible for the accident and had prepared challan against them, but then the insurance company has not led any evidence before the Tribunal in that regard. Merely by stating so would not help the insurance company in any manner. Even otherwise, the law is well settled that the finding of criminal Court is not binding upon the Civil Court even MACT, which is to come to its own conclusion considering the evidence adduced before it.

The contention of learned counsel for the appellant – insurance company is that the truck driven by the deceased was following the offending truck driven by respondent No.1 and had hit the offending truck from behind as such the deceased himself was responsible for the accident. However, as observed by the Tribunal considering the entire sequence of events on the basis of evidence adduced before it, the offending truck being driven in a rash and negligent manner by respondent No.1 firstly overtook ill-fated truck driven by the deceased and then without giving any indication abruptly turned towards left hand side. Respondent No.1 – driver, if at all wanted to turn his truck towards left hand side, should have ensured that there was sufficient distance between his truck and the other vehicles following that truck and should have given an indication with regard to his intention to turn towards left hand side before taking the actual turn and his not doing so clearly shows his lack of care and caution towards his legal duty and deceased could not be held responsible for the accident.

In support of his arguments, learned counsel for the respondents No.1 to 5 has pressed into service authority ***Mannat Johal and others Versus Darshan Singh and others, 2018(4) RCR(Civil) 166***. He has further referred to judgments passed by Co-ordinate Benches of this Court in case bearing FAO-7775-2017 titled ***Iffco-Tokio General Insurance Company Ltd. Versus Rekha Mehta and others*** decided on 19.2.2018 and FAO-5946-2010 titled ***Smt.Rajbala Versus Surender Singh and others*** decided on 10.9.2014.

The findings recorded by the Tribunal are well reasoned and cannot be said to be arbitrary or erroneous contrary to the evidence available on record. Therefore, there is no ground to set aside the award.

Finding no merit in the appeal, the same stands dismissed accordingly.

25.2.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No