IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5025-2017(O&M)
Date of decision:-25.7.2019

Iffco Tokio General Insurance Co. Ltd.

...Appellant

Versus

Krishna Devi and others

...Respondents

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

Present: Mr.Ajay Singla, Advocate
for the appellant.

Mr.Vinod K. Kanwal, Advocate for
Mr.Ashit Malik, Advocate
for respondents No.1 to 4.

Mr.Chander Kant Thakur, Advocate
for respondent No.5.

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H.S. MADAAN, J.

Smt.Krishna Devi – wife, Ayush – son, Shweta -daughter and Smt.Om Kali Devi – mother of Baljeet son of Jai Narain, an unfortunate victim of a road side accident had brought a claim petition under Sections 166 and 140 of the Motor Vehicles Act, 1988 against respondents i.e. Ashok Kumar – driver-cum-owner and Iffco Tokio General Insurance Company Ltd. – insurer of the canter bearing registration No.HR62-4968(hereinafter referred to as the offending vehicle), claiming compensation to the tune of Rs.40 lakhs.

As per the case of the petitioners/claimants, on 2.5.2014 at about 8:00 a.m., Baljeet Singh was going from his village Sitamal to Karnal driving motorcycle No.HR99RQ(T) 1434 at a moderate speed on the left hand side of the road; that Sher Jung son of Nafe Singh was following Baljeet Singh on his separate motorcycle; that then the offending vehicle being driven by respondent No.1 – Ashok Kumar in a rash and negligent manner at a fast speed without blowing horn came and struck against the motorcycle of Baljeet Singh from behind, resultantly Baljeet Singh along with his motorcycle fell down and was run over by the offending vehicle; that in the process, Baljeet Singh suffered multiple and grievous injuries; that after the accident he was firstly taken to Kalpana Chawla Government Medical College and Hospital, Karnal from where keeping in view his serious condition, he was referred to PGI, Chandigarh, where he succumbed to the injuries; that an FIR No.131 dated 2.5.2014 for the offences under Sections 279, 337, 338, 304-A IPC was registered with Police Station Taraori with regard to the accident against respondent No.1 – Ashok Kumar.

According to the claimants, deceased Baljeet Singh was aged about 44 years and he was owner-cum-driver of a truck and from that avocation, he was earning Rs.25,000/- per month and they were fully dependant upon his earnings.

On getting notice, both the respondents had put in appearance and filed separate written statement contesting the claim petition.

In the written statement filed on behalf of respondent No.1, he had raised various legal pleas on merits contending that the accident had taken place with some other vehicle and not with the vehicle of the answering respondent and the police had wrongly registered case against him. According to the answering respondent, the vehicle in question was duly insured with respondent No.2 – insurance company at the relevant time and the insurer has to indemnify the insured. In the end, such respondent prayed for dismissal of the claim petition.

In the written statement filed on behalf of respondent No.2 – insurance company, it had also raked up various legal objections, to wit, the claim petition was bad for misjoinder and non-joinder of the necessary parties and no cause of action had arisen to the claimants to bring the claim petition; that the driver, owner and insurer of motorcycle No.HR99RQ(T) 1434 were necessary parties and those had not been impleaded; that the claimants did not have any locus standi to bring the claim petition; that respondent No.1 was not holding any valid and effective driving licence at the time of accident, which amounted to breach of terms and conditions of the insurance policy; therefore, the insurance company was not liable to pay any compensation; that no accident as alleged in the claim petition petition had taken place and that in any case there was contributory negligence on the part of deceased motorcycle driver and the claim petition had been filed by claimants in collusion with respondent No.1. In the end, such respondent also prayed for dismissal of the claim petition.

Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

After hearing arguments, vide Award dated 28.3.2017, learned Motor Accident Claims Tribunal, Karnal allowed the claim petition partly and awarded compensation of Rs.17,49,200/- to the claimants along with interest @ 9% per annum from the date of filing of the petition till actual deposit, payable by both the respondents jointly and severally. The manner in which the compensation is to be apportioned is 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, who put in appearance through counsel.

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

The Tribunal on the basis of facts and circumstances of the case and evidence available on the record had decided issue No.1 in favour of the claimants and against respondent No.1 holding that respondent No.1 Ashok Kumar was author of the accident by his rash and negligent driving of the offending vehicle and plea of contributory negligence raised on behalf of respondent No.2 was rejected by giving valid reasons. I do not see any reason to interfere with such finding.

Now coming to finding on issue No.2, the Tribunal had taken age of deceased to be 44 years. Though the contention raised by claimants that the deceased was earning Rs.25,000/- per month from avocation of truck driver was rejected, however, he was taken to be skilled worker and his monthly income was assessed to be Rs.9,000/-. The Tribunal did not do anything wrong in doing so and this inference drawn is duly supported by valid and convincing reasoning. However, the Tribunal has added 30% of the income so assessed towards future prospects. But in view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** when the deceased was in age group of 40 to 50 years then at addition of 25% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs.9,000 + 2,250 = Rs.11,250/-.

The Tribunal has rightly deducted 1/4th of the amount towards personal expenses in view of ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77*** . Doing that the dependency of claimants comes out to Rs.8,438/- per month, annual dependency comes out to Rs.8438 x 12 = Rs.1,01,256/-.

The Tribunal has used multiplier of 14, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs. 1,01,256 x 14 = 14,17,584/-.

The Tribunal has further awarded a sum of Rs.1,00,000/- to claimant No.1 towards loss of consortium, Rs.25,000/- towards funeral expenses, Rs.1,50,000/-(Rs.50,000/- each) to claimants No.2 to 4 for loss of love and affection. However, in view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors.***(supra), 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. 14,17,584 + 70,000 = 14,87,584/-.

Learned counsel for the appellant has contended that the insured had purchased the policy at 5:30 p.m. in the evening on the day of accident itself, as such there was malafide intention on his part and insurance company is not liable to pay any compensation. The Tribunal has already dealt with that aspect in a very appropriate manner in para Nos.17 and 18 of the award rejecting this argument. The insurance company should have been vigilant enough while insuring the vehicle and it cannot wriggle out of the liability in such a manner towards the third parties, who had nothing to do with the insurance policy taken by the insured from respondent – insurance company. However, the insurance company may avail of its remedy against the insured as per law in separate proceedings, if so advised.

The Tribunal has wrongly awarded compensation of Rs.17,49,200/-. The same is reduced to Rs.14,87,584/-. 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.14,87,584/. Other terms and conditions in the original award shall remain the same. The share of the claimants shall be reduced proportionately. Amount if paid in excess be refunded by the claimants at the earliest.

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

25.7.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No