IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2441-2018 (O&M)
Decided on : 16.12.2019

United India Insurance Co. Ltd.

. . . Appellant(s)

Versus

Om Parkash and others

. . . Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Ms. Vandana Malhotra, Advocate for the appellant(s).

Mr. Ashwani Arora, Advocate for respondents No.1 & 2.

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MANJARI NEHRU KAUL, J.

CM-9125-CII-2018

In view of the averments made in the application, which is supported by an affidavit, the delay of 04 days in filing the appeal is hereby condoned.

CM stands disposed off.

CM-9126-CII-2018

Allowed as prayed for.

FAO-2441-2018 (O&M)

The instant appeal has been preferred by the Insurance Company against the impugned award dated 17.11.2017, passed by the Ld. Motor Accidents claims Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal'), whereby, compensation of Rs. 10.42 lakhs has been awarded to respondents No.1 & 2 i.e. the husband and the son of the deceased, who died in a motor vehicular accident, which happened on 24.12.2016.

Brief facts necessary for adjudication of the case are that on 24th December, 2016, deceased Krishna Devi was pillion riding a motorcycle bearing registration No. PB-11AZ-7867, which was being driven by respondent No.3 Davinder Kumar i.e. her son. It was alleged that the motorcycle in question was hit by an unknown car which came from the opposite direction, as a result of which, both the deceased Krishna Devi along with respondent No.3 – Davinder Kumar fell on the road and sustained injuries. Krishna Devi, however, succumbed to her injuries. It was alleged that the accident in question had occurred due to the composite negligence of respondent No.3 i.e. the motorcyclist and the driver of the unknown car. Thereafter, an FIR was registered against the driver of the unknown car by respondent No.3. Claimants in their petition under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'MV Act'), filed before the Tribunal claimed compensation to the tune of Rs. 30.00 lakhs along with interest @ 12% per annum.

In the written statement filed before the Tribunal, respondents No.1 & 2 denied the averments made in the petition and submitted that the accident had happened solely due to the negligence of the driver of the unknown car, who after hitting the motorcycle had fled. The appellant – Insurance Company (respondent No.3 therein) in the written statement filed before the Tribunal submitted that the driver of the motorcycle was not holding a valid driving licence at the time of the accident in question and thus, the vehicle was being driven in violation of the terms & conditions of the insurance policy. Hence, the insurance company was not liable to indemnify the insured.

The Tribunal on considering the evidence on record concluded that the accident in question stood proved and had occurred due to the rash and negligent act of the drivers of both the offending car as well as the motorcycle. Accordingly, the claimants were held entitled to compensation in the sum of Rs.10.42 lakhs, and the respondents were jointly and severely held liable to pay the same to the claimants.

Learned counsel for the appellant-Insurance Company has challenged the impugned award primarily on the following grounds:-

(i) That there were contradictory versions regarding the manner in which the accident had occurred. In the FIR, it was recorded that the accident had occurred when the offending car was trying to overtake a vehicle and had hit the motorcycle being ridden by respondent No.3 as a result of which both he and the deceased had fallen down on the road. However, in the other version, it had been brought forth that respondent No.3 Davinder Kumar was riding the motorcycle in question at a fast speed and after overtaking another motorcycle, he struck the same against an unknown car, which was coming from the opposite direction.

It was thus urged that it was very evident that a false version had been introduced to make it out to be a case of composite negligence.

(ii) The second challenge is *qua* the quantum of compensation. It has been urged that the Tribunal has wrongly directed the company to pay 100% claim to respondents No.1 & 2, whereas, as per apportionment, the appellant-Insurance Company was only liable to pay 50% of the awarded compensation, as the FIR in question had been registered against the driver of an unknown car and there was no negligence on the part of the motorcyclist. Therefore, the appellant-Insurance Company was not liable to pay any compensation to claimants/respondents No.1 & 2.

(iii) That while awarding the compensation the notional income of the deceased was erroneously taken to be Rs.9,000/- per month, without there being any conclusive proof of her income, whereas, it should have been as per the Govt. notification *qua* minimum wages on the date of the accident, which would come to Rs.7,459/- p.m..

(iv) Not only this, it was further urged that a wrong multiplier of 9 was applied, even though, there was uncertainty about the age of the deceased.

I have heard learned counsel for the parties and reappraised the evidence and other material available on record.

I do not find any merit in the submissions and contentions of the learned counsel for the appellant-Insurance Company, that it was a case of contributory negligence and not of composite negligence. A perusal of the testimony of PW-2/Ajay, an eyewitness to the accident, leaves no manner of doubt that the accident in question had occurred due to the negligence of both the drivers of the offending vehicles i.e. driver of the unknown car and respondent No.3 – Davinder Kumar, driver of the motorcycle. The contention of the learned counsel for the appellant-Insurance Company that the Insurance Company at best could have been burdened with only 50% of the liability assessed as compensation is bereft of merit, as it is a case of composite negligence.

In case of composite negligence, the claimants can recover the compensation awarded from any of the tortfeasers and the tortfeaser who makes the payment is free to recover/realise the amount paid from the other tortfeaser.

Coming to the next challenge *qua* the quantum of compensation awarded, the same is also devoid of any merit and does not warrant any interference. The Tribunal has rightly applied the multiplier of 9 after taking the age of the deceased as 59 years at the time of the accident. The reliance placed by the appellant-Insurance Company on the postmortem report, wherein, the age of the deceased has been mentioned as 63 years, cannot be taken to be an authentic proof *qua* the age of the deceased. Further, the notional income @ Rs.9000/- has been correctly assessed by the Tribunal.

Consequently, finding no merit, the instant appeal stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

December 16, 2019

J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No