IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1252-2012(O&M)
Date of decision:-15.10.2019

The New India Assurance Company Ltd.

...Appellant

Versus

Gulab Devi and others

...Respondents

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

Present: Mr.Rajesh Kumar Sharma, Advocate
for the appellant.

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H.S. MADAAN, J.

CM-5289-CII-2012

Heard.

For the reasons mentioned in the application, the same is allowed and delay of 195 days in filing of the appeal stands condoned.

FAO-1252-2012

Briefly stated, the facts of the case are that petitioners/claimants Smt.Gulab Devi wife of Sh.Sultan Singh – mother, Billu – brother and Suman minor daughter of Sultan Singh – sister of Kapil, an unfortunate victim of a road side accident had brought a claim petition under Section 166 of the Motor Vehicles Act against the respondents i.e. Mahesh Kumar – driver-cum-owner and New India Assurance Company Ltd. - insurer of jeep bearing registration No.HR-

44A-5209(hereinafter referred to as the offending vehicle), claiming compensation to the tune of Rs.25 lakhs with interest.

As per the version of the petitioners/claimants on 13.12.2009 at about 11:50 a.m., the deceased Kapil was going from bus stand Balaha Kalan to Narnaul on Singhana road, while travelling in the offending vehicle; it was being driven by respondent No.1 – Mahesh Kumar in a rash and negligent manner at a very high speed; the passengers travelling in the said jeep had asked Mahesh Kumar – respondent No.1 to drive it slowly and in a careful manner but he did not pay any heed; when the jeep had reached near Hamidpur, a truck was going ahead to it towards Narnaul side; respondent No.1 driver of the offending jeep tried to overtake the truck but at the same time a tractor trolley came from the opposite side; Mahesh Kumar (respondent No.1) took an abrupt turn to avoid the jeep hitting the tractor trolley, in the process, Kapil fell down from the jeep and after coming in contact with the tractor-trolley; he suffered considerable grievous injuries on his person, which proved fatal and he died at the spot; the accident was witnessed by one Kuldeep and other persons; the dead body of Kapil was taken to General Hospital, Narnaul where postmortem examination was conducted; formal FIR No.304 dated 13.12.2009 for the offences under Sections 279 and 304-A IPC was registered against respondent No.1 – Mahesh Kumar with Police Station Sadar, Narnaul.

According to the claimants, deceased Kapil had received several State level awards being a student and was a State level hockey player; that he was earning Rs.10,000/- per month by giving coaching to the children; all the petitioners were dependent upon income of the deceased.

On notice, both the respondents appeared and filed separate written statements contesting the claim petition. In the written statement submitted by respondent No.1 – driver-cum-owner of the offending vehicle, he denied all the assertions in the claim petition contending that no such accident had taken place and his jeep was not involved in any alleged accident. According to him, a false criminal case had been got registered by the claimants against him in collusion with the police. However, according to him the jeep in question was duly insured with respondent No.2 – insurance company at the relevant time. Refuting the remaining averments in the claim petition, such respondent prayed for dismissal of the claim petition.

In the written statement filed by respondent No.2 insurance company, it has had also taken up various preliminary objections with respect to maintainability and cause of action etc. to bring the claim petition. It had taken various statutory defences further contending that as per version of the FIR, the offending vehicle was overloaded with passengers and deceased Kapil was hanging on the outer body of the jeep and that the truck, which was going ahead of the jeep when suddenly applied brakes in middle of the road, respondent No.1 had to apply the emergency brake in order to avoid the accident due to which the hand grip of Kapil got lost and he himself fell down from the jeep by coming in contact with the trolley, which was coming from the opposite side, resultantly, he received injuries and died; that driver of the jeep was not holding any valid driving licence at the time of accident and no intimation regarding the accident was given to the answering respondent by the insured; further the jeep in question was being plied in violation of the terms and conditions of the insurance policy as well as against the provisions of the Motor Vehicles Act, therefore, respondent – insurance company was not liable to pay any compensation. Such respondent also prayed for dismissal of the claim petition.

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

After hearing arguments, the Motor Accidents Claims Tribunal, Narnaul (hereinafter referred to as the Tribunal) accepted the claim petition vide award dated 6.4.2011 and awarded compensation of Rs.5,86,000/- with interest at the rate of 12% per annum from the date of accident till the realization of the amount to be apportioned among all the three claimants equally, payable by both the respondents jointly and severally.

This award left the 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 claimant.

Notice of the appeal was given to respondents but there is no representation on their behalf.

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

The Tribunal on the basis of the evidence adduced by the parties and considering the facts and circumstances of the case had come to the conclusion that respondent No.1 was author of the accident by his rash and negligent driving of the offending jeep. Though on behalf of the respondents, a plea had been raised that as per contents of the FIR, the deceased was hanging out of the jeep and was himself negligent but then the Tribunal has considered the deposition of eye-witness PW2 Pappu Kumar, who was also travelling in the offending vehicle along with the deceased, who had clearly stated that at the time of accident, deceased was sitting on the rear seat of the offending vehicle and that as soon as the respondent No.1 taken an abrupt turn in order to save his jeep due to that, the deceased was about to fall down outside but in the meantime, he came into the contact with an incoming trolley due to which he fell down and suffered grievous/fatal injuries on his person, resultantly he died at the spot. The Tribunal has rightly found the version given by PW2 Pappu Kumar to be creditworthy. Such version tested by cross-examination is to be given preference over contents of the FIR. The FIR is not a substantive piece of evidence and its only purpose is to set the criminal machinery in motion. FIR is often lodged in hurry and it may not contain the minute and precise details of the incident. The FIR can be got registered by a person, who may not be an eye-witness of the same. It is only during investigation of the case that police can come to know about the culprit and criminal, who had committed the crime.

Therefore, such argument advanced by learned counsel for the insurance company now does not have much bearing.

The Tribunal has also dealt with the aspect of jeep a private vehicle insured as such but carrying passengers including the deceased stating that it being so, the insurance company is not liable. The Tribunal in para No.14 has dealt with that aspect in detail rejecting that contention observing that even a gratuitous passenger travelling in a private vehicle would fall within the meaning of third party and would be covered by the statutory policy under Section 147 of the Act, referring to judgment ***Rani Gupta & Ors. Versus United India Insurance Co. Ltd. & Ors. 2010(1) Law Herald (Acc.) 455*** and ***Mrs. Rosy Joshi and others Versus Joginder Singh and others 2005(2) RCR(Civil)58*** by this Court. Therefore, I do not see any reason to disagree with the Tribunal on that point. Therefore, this contention of learned counsel for the insurance company is rejected.

Learned counsel for the insurance company has further attacked the impugned award with regard to quantum of compensation stating that the compensation awarded was on higher side. However, I do not find any merit in that contention also. The Tribunal considering the minimum wages prevailing in State of Haryana for unskilled workers in terms of order issued by Deputy Commissioner, Narnaul dated 17.5.2009, assessed income of the deceased to be Rs.4,000/- per month. The deceased was stated to be a very good sportsman with a bright future. Therefore, the income so assessed cannot be taken on higher side. Though the Tribunal has deducted 1/3rd of the income towards personal and living expenses of the deceased. Since the deceased was a bachelor, the deduction should have been 50%. But the Tribunal has not added any amount towards future prospects, which keeping in view the age of the deceased should have been to the extent of 40%. Therefore, that does not make any difference. The amount awarded under conventional heads i.e. Rs.5,000/- as funeral expenses and Rs.5,000/- on account of loss of estate is also on lower side. As per settled law, Rs.15,000/- as funeral expenses and Rs.15,000/- towards loss of estate can be granted. The Tribunal has rightly applied multiplier of 18. The compensation calculated as Rs.5,86,000/- is certainly not on higher side and does not call for any reduction. Since the claimants have not filed any cross appeal or cross-objections, I do not find it proper to grant such benefits to them but certainly there is no ground for reduction of the awarded amount.

The appeal stands dismissed accordingly.

15.10.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No