

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No. 6319 of 2018 (O&M)

Date of decision : November 26, 2019

SBI General Insurance Company Ltd.

.....Appellant

Versus

Kuldeep Singh and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Varun Sharma, Advocate for
Mr. Satpal Dhamija, Advocate
for the appellant.

LISA GILL, J.

Present appeal has been filed by SBI General Insurance Company Ltd., primarily challenging the liability to the extent of 50% imposed upon it vide award dated 07.07.2018 passed by the learned Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as the 'Tribunal'). No serious challenge has been raised qua the quantum of compensation.

Brief facts necessary for adjudication of the case are that the claimants/respondents No. 1 to 4 filed a petition under Sections 166 and 140 of the Motor Vehicles Act seeking compensation on account of death of Jagjeet Singh on 03.04.2015 in a motor vehicle accident caused due to driving of the offending vehicle, i.e. truck bearing registration No. GJ12-Z-9871 by respondent No. 6 in a rash and negligent manner. The claimants are the parents, widow and minor daughter of the deceased – Jagjeet Singh.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place on 03.04.2015 due to the rash and negligent driving of the truck bearing registration No. GJ12-Z-

9871 (insured with the appellant) by respondent No. 6 as well as the rash and negligent act of the deceased - Jagjeet Singh himself ,who was driving truck bearing registration No. HR65-4990. It is held by the learned Tribunal that the deceased was guilty of contributory negligence to the extent of 50%. Liability to the extent of 50% was fastened upon the driver of the truck bearing registration No. GJ12-Z-9871. Learned Tribunal awarded compensation of ₹19,74,000/- to the claimants detailed as hereunder:-

<i>Sr. No.</i>	<i>Head</i>	<i>Calculation</i>
1.	Loss of dependancy (₹1,12,000x17)	₹19,04,000/-
2.	Funeral and last rites etc. expenses	₹15,000/-
3.	Loss of Estate (petitioner No. 2-mother)	₹15,000/-
4.	Loss of consortium (petitioner No. 3-widow)	₹40,000/-
	Total	₹19,74,000/-

As mentioned in the foregoing paras, liability qua truck bearing registration No. GJ12-Z-9871 was fastened to the extent of 50%. It is further held by the learned Tribunal that the driver and owner of the said vehicle were liable to pay the compensation amount to the extent of 50%, however, the appellant - insurance company was directed to deposit the said compensation alongwith interest with a right to recover the same from the respondent – Husenbhai Mover mentioned to be the driver and owner of the offending vehicle in para 28 of the award.

Learned counsel for the appellant – insurance company argues that the FIR in this case was registered against the deceased himself. FIR was registered on the statement of Abbas Alarakha – respondent No. 6 i.e. the owner of the truck bearing registration No. GJ12-Z-9871 (offending vehicle in this case). The appellant - insurance company is the insurer of the truck bearing registration No. GJ12-Z-9871. The deceased, it is

submitted, was driving truck bearing registration No. HR65-4990 and was solely at fault. Therefore, learned Tribunal has erred in imposing liability to pay 50% of the compensation upon the appellant. Learned counsel further submits that the respondent – owner of truck bearing registration No. GJ12-Z-9871 was in fact given up by the appellant being unnecessary and his name was got deleted from the array of respondents, as per the statement of the counsel on 06.07.2018 before the learned Tribunal. In this view of the matter, it is contended, that the insurance company on its own could not have been proceeded against. It is, thus, prayed that this appeal be allowed and the insurance company be exonerated of its liability.

I have heard learned counsel for the appellant and have gone through the available file.

Insofar as question of giving up the owner of the offending vehicle bearing registration No. GJ12-Z-9871 is concerned, it is apparent from a perusal of the record that the said respondent was proceeded exparte on 08.07.2015 as he did not appear before the learned Tribunal despite being duly served. Statement made by the counsel for the claimants reads as under:-

“ Without prejudice to the rights of the claimants I do not press the application for deleting the name of the respondent No. 1-A from the array of respondents and the same may be dismissed as withdrawn.”

However, in a peculiar manner, the learned Tribunal vide order dated 06.07.2018 has recorded that respondent No. 1(a) i.e. the owner in question is deleted from the array of parties, despite the application having been withdrawn on 03.02.2017 itself.

Learned counsel for the appellant is unable to point out any

other statement of the counsel except the one recorded on 03.02.2017. Thus, I do not find any merit in the argument raised by learned counsel for the appellant in this respect.

It is a matter of record that the accident occurred due to a head-on collision between both the trucks. It is borne out from the record that the driver side cabin of both the trucks was damaged and the glass thereof shattered. PW2 Jasbir Singh has admitted the suggestion of learned counsel for the insurance company that the accident took place due to the fault of both the truck drivers. The occurrence of the accident itself has been denied in the written statement filed on behalf of the insurance company. Reply to para 14 of the petition is categorical in this respect. It is further stated in the additional plea in the written statement that in case the Tribunal came to the conclusion that the accident in question had indeed occurred and truck bearing registration No. GJ12-Z-9871 was involved, it should be held that the occurrence had taken place due to the sole negligence of the deceased himself and that still further if the learned Tribunal came to the conclusion that the driver of the truck bearing registration No. GJ12-Z-9871 was also negligent, it should be treated to be a case of contributory negligence.

The finding of the learned Tribunal to the effect that the drivers of both the vehicles were equally liable and responsible for the accident in question is fortified by the evidence on record, which indicates damage to both the vehicles in equal proportions. Keeping in view the facts and circumstances of the case, liability has been correctly apportioned to the extent of 50% each. Furthermore, learned Tribunal has correctly directed the appellant - insurance company to firstly deposit the amount in question with a right to recover the same.

Learned counsel for the appellant is unable to point out any

illegality, infirmity or perversity in the impugned award dated 07.07.2018 which calls for any interference by this Court at the instance of the appellant.

No other argument has been addressed.

Appeal is, accordingly, dismissed with no order as to costs.

November 26, 2019
rts

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No