IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-6474-2018(O&M)
Date of decision:-18.7.2019

National Insurance Company Ltd.

...Appellant

Versus

Gurpreet Kaur and others

...Respondents

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

Present: Ms.Radhika Suri, Sr.Advocate with
Mr.M.S. Kanda, Advocate
for the appellant.

Mr.Yogesh Gupta, Advocate
for respondents No.1 to 3.

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H.S. MADAAN, J.

Smt.Gurpreet Kaur, aged about 33 years – wife, Master Harshmeet Singh, aged about 5 years – minor son and Smt.Kulwinder Kaur, aged about 59 years - mother of Parminder 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. Darshan Singh (since dead through his legal heirs, namely, Smt.Gagandeep Kaur – widow, Ms.Manpreet Kaur, Ms.Amritpal Kaur, Ms.Sumandeep Kaur – minor daughters and Master Harmanpreet Singh – minor son) – driver and owner of car bearing registration No.PB11-V-5080(hereinafter referred to as the offending car) as well as National Insurance Company Ltd., Chandigarh – insurer of the said car, claiming compensation to the tune of Rs.75 lakhs.

As per the case of the petitioners/claimants, on 5.12.2016, Parminder Singh was returning home from his office in his car driving it at a slow speed on left side of the road; that when he had reached near New Anaj Mandi at Sirsa Road, Mansa and the time was about 9:00 p.m., then his car was struck by the offending car being driven by Darshan Singh (since dead) at fast speed and in a rash and negligent manner by going on the wrong side of the road; resultantly Parminder Singh sustained serious injuries and died and the driver of offending car had also expired. According to the claimants, Parminder Singh was aged about 32 years and was working as LDC/typist with Punjab State Power Corporation Ltd., DS Division, Mansa having monthly income of Rs.35,000/- and the claimants were dependent upon him for their financial needs. According to the claimants, FIR regarding the accident was not registered since driver of the offending car namely Darshan Singh had also expired in the mishap.

On notice, the legal representatives of respondent No.1 – Darshan Singh had appeared and filed a written statement, in which they had raised various legal objections, to wit that the claimants had no locus standi to file the petition; that the claimants were estopped by their own act and conduct from bringing the petition; that the claimants had not approached the Tribunal with clean hands; that the claim petition was bad for non-joinder of necessary parties; that the claim petition was not maintainable; that no cause of action arose to the claimants to bring the petition; that as per report under Section 174 Cr.P.C. prepared by the police, the accident had happened suddenly and due to a stray cattle coming in front of both the cars as well as due to darkness, as a result of it being a night time and on account of reflection of lights and none of the driver was at fault; that both the drivers had died due to injuries sustained in the accident. On merits, the answering respondents contested the assertion in the claim petition while praying for its dismissal.

In the written statement submitted on behalf of the respondent No.2 – insurance company, it also took up various legal objections including that terms and conditions of the insurance policy had been violated; that the driver of the offending car was not holding a valid driving licence at the time of accident, therefore, the insurance company stood absolved of its liability to indemnify the insured; that as a matter of fact the accident had taken place due to rash and negligent driving of the ill-fated car by Parminder Singh – deceased, who could not control his car and at the most it was a case of contributory negligence. On merits, material assertions in the claim petition were denied, while coming with a prayer for dismissal of the petition.

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

After hearing arguments, vide Award dated 7.5.2018, learned Motor Accident Claims Tribunal, Chandigarh allowed the claim petition and awarded compensation of Rs.63,35,536/- to the claimants along with interest @ 6% per annum from the date of filing of the petition till date of realization, payable by both the respondents jointly and severally. 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 3 put in appearance through counsel.

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

The Tribunal considering the facts and circumstances of the case and analyzing the evidence brought on the file by the parties has decided issue No.1 in favour of the claimants and against the respondents holding that the accident in question had taken place on account of rash and negligent driving of the offending car by Darshan Singh – deceased. However, I find that the verdict given by the Tribunal is not fully correct. As it comes out from the record, it was a case of head on collision. No FIR with regard to the accident was recorded. Though according to the claimants, it was for the reason that Darshan Singh driver of the offending car had expired. I do not find this explanation to be fully convincing. Nevertheless as the things stand, a DDR No.19 dated 6.12.2016 was recorded with Police Station City, Mansa on the basis of statement of Gurjeet Singh son of Babu Singh, resident of village Laliawali, a younger brother of deceased Darshan Singh, wherein he had stated that on

5.12.2016, his brother Darshan Singh had gone to Bhikhi in his car (taxi) and was returning home from there in the evening; that he had received a telephonic call from some unidentified person from mobile phone of Darshan Singh, that an accident had taken place between the car of Darshan Singh with Verna car near Mansa Dana Mandi at about 9:30 p.m. on Sirsa - Mansa road, in which Darshan Singh had received injuries and on receipt of that information, he immediately reached Government Hospital, Mansa along with Malkiat Singh son of Gurdev Singh and some other persons at about 10:00 p.m. finding that Darshan Singh had died due to the injuries; that the driver of Verna car had also died, then he met family members of the driver of Verna Car namely Ramandeep Singh son of Ram Krishan Singh, resident of Mansa and Manpreet Singh son of not known etc., who informed him about the driver of Verna car being Parminder Singh posted in the Electricity Department as a Clerk; that both the parties had inquired about the accident and it transpired that the accident had taken place all of a sudden on Sirsa Mansa Road due to a stray animal coming on the road in front of the vehicles and due to heavy lights of the vehicles, as such nobody was at fault and the parties did not wish to take any action.

As per the police proceedings it was found that the accident had taken place all of a sudden between Verna car and Indigo car on 5.12.2016 at about 9:00 p.m. due to a stray animal coming on the road in front of vehicles and due to heavy head lights of the vehicles.

Learned counsel for the appellant insurance company has argued that the claimants are relying upon this DDR but they had not summoned Gurjeet Singh, on whose instance the said report had been recorded to examine him as a witness. However, I do not find much merit in this contention. Admittedly Gurjeet Singh was not an eye-witness of the accident and summoning him just to get the DDR proved would not have served much purpose. The claimants have examined Ramandeep Singh as PW2, who in the affidavit furnished by him has provided eye-witness account of the accident, which is in consonance with the version of the claimants in the claim petition. Learned counsel for the appellant has submitted that presence at the spot of Ramandeep Singh at the relevant time is doubtful inasmuch as he had not lodged any report with the police regarding the accident and he being a relative of the deceased has come forward to depose falsely in favour of the claimants against the respondents in order to help the claimants in getting compensation.

Whereas learned counsel for the claimants has vehemently controverted such contentions contending that presence at the spot of Ramandeep Singh stands fully established and even in the DDR his name finds mentioned. If for any reason the police had not recorded his statement, that does not leads to the inference that he was not present at the spot and had not seen the mishap.

After hearing learned counsel for the parties, I find that from the perusal of statement of PW2 Ramandeep Singh, it comes out that in cross-examination by the insurance company Ramandeep Singh had categorically stated that he was present at the spot at the time of accident. Though he had admitted that deceased Parminder Singh was his friend but merely due to that reason his deposition cannot be discarded. He had stood the test of cross-examination well. Therefore, his deposition cannot be rejected outrightly. However, at the same time, it cannot be taken as gospel truth and accepted as it is. This Court is definitely required to separate chaff from the grain i.e. truth from the falsehood. After going though statement of PW2 Ramandeep Singh, it comes out that just to ensure that the entire blame for the accident was put on Darshan Singh deceased, he had stated that the offending car driven by Darshan Singh had gone on the wrong side of the road and then hit the car of deceased Parminder Singh, whereas in the DDR along with police proceedings there is no such mention. But as the things stand, the two cars were involved in the accident. Both the cars were coming from opposite directions. It was a head on collision. Even if it is taken that the accident had happened on account of a stray animal suddenly appearing on the road and on account of glare of lights, the drivers being unable to see clearly and control their respective cars but then both the car drivers cannot be given clean chit in the manner saying that they were not at fault in happening of the accident. The car drivers should have been cautious and careful, while driving their respective cars, alive to such like situation that might have arisen, as a result of some human being, animal or article suddenly appearing in front of the car on the road and then to apply the brakes in time. The very fact that they were unable to control their cars well in time and the two cars had hit each other head on goes to show that both of them contributed to the happening of the accident and it was certainly a case of contributory negligence. The Tribunal failed to consider that aspect and in a mechanical manner gave the verdict that only

Darshan Singh was responsible for the accident by his rash and negligent driving when as a matter of fact it was a clear case of contributory negligence. Both the car drivers being equally responsible for the same. Therefore, finding recorded by the Tribunal on issue No.1 is modified holding that it was a case of contributory negligence.

Now coming to the verdict given by the Tribunal on issue No.2. The Tribunal has taken the age of deceased Parminder Singh to be 32 years and in view of statement of PW3 Krishan Chand LDC, who had proved salary certificate Ex.P7 of the deceased for November, 2016, his gross salary was taken to be Rs.33,988/- per month. As the deceased was working with PSPCL, Mansa, he was in permanent employment. Towards future prospects 50% of the amount has been added, which has been correctly done in view of judgment ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009***. Making deduction of 1/3rd of the amount towards personal expenses and after making deduction towards TDS and correctly applying multiplier of 16 and then under conventional heads an amount of 70,000/- was awarded, in that way the total compensation was calculated to be Rs.63,35,536/-. No fault can be found with such calculation.

But since in view of detailed discussion above, it has been held that it was a case of contributory negligence and deceased was also at fault in happening of accident, the claimants are entitled to get 50% of the amount payable by the respondents jointly and severally along with interest @ 6% per annum from the date of filing of the claim petition till actual realization. Other terms and conditions in the original award shall remain the same except for proportionate reduction in the shares of the claimants. Amount if paid in excess be refunded by the claimants at the earliest.

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

18.7.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No