IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-7749-2015(O&M)
Date of decision:-21.5.2019

Vijay Nagar and others

...Appellants

Versus

Ram Bahadur and another

...Respondents

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

Present: Mr.Ram Bilas Gupta, Advocate
for the appellants.

Mr.Punit Jain, Advocate
for respondent No.2 – insurance company.

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H.S. MADAAN, J.

Briefly stated, facts of the case as per version of the petitioners/claimants are that on 15.9.2013 Sh.Vinod Nagar son of petitioners No.1 and 2 Sh.Vijay Nagar and Sh.Samantra, husband of petitioner No.3 – Jyoti and father of minor son - Master Vansh, along with Sh.Satya Prakash was coming from Lucknow to Faridabad in a car bearing registration No.HR-29/AC/9677, which was being driven by him at a moderate speed; that at about 3:30 a.m. when the said car reached on Yamuna Express way near village Kirpalpur, District Aligarh (U.P.), a truck bearing registration No.UP-74-T/0980 (hereinafter referred to as the offending vehicle) being driven by respondent No.1 – Ram Bahadur was going ahead of their car; that respondent No.1 had suddenly applied brakes of the offending vehicle in question, as a result of which the car being driven by Vinod Nagar having Satya Prakash as occupant struck against the truck from behind; that the truck dragged the car to some distance; that Vinod Nagar had suffered grievous injuries all over his body and he succumbed to those injuries, whereas Satya Prakash had also suffered injuries; that respondent No.1 Ram Bahadur ran away from the spot after the accident leaving the offending vehicle behind; that the postmortem examination on the dead body of Vinod Nagar was conducted at Kailash Hospital, Greater Noida, District Gautam Budh Nagar; that an FIR No.383 dated 20.9.2013 for the offences under Sections 279, 337, 338, 304-A IPC was registered on the statement of Sh.Rajender Nagar. As per the case of the claimants, the deceased Vinod Nagar was aged about 24 years at the time of accident; he was engaged in the business of shuttering at village Tigaon and used to earn Rs.25,000/- per month; that they were dependent upon his earnings.

The petitioners/claimants had filed a claim petition under Section 166 of the Motor Vehicles Act against respondents i.e. Ram Bahadur – driver-cum-owner and M/s Shri Ram General Insurance Company Limited – insurer of the offending vehicle, claiming compensation to the tune of Rs.25 lacs with interest and cost.

On being put to notice, respondent No.1 did not appear despite service, as such was proceeded against ex-parte vide order dated 5.3.2014.Whereas respondent No.2 had appeared and filed written reply contesting the material assertions in the claim petition with regard to date, time, place and manner of accident, occupation, age and income of the deceased further coming up with a plea that no such accident took place with the offending vehicle and a false FIR had been got registered involving the offending vehicle against respondent No.1. According to the answering respondent, the insured/driver of the offending vehicle had violated the terms and conditions of the insurance policy and also did not inform the insurance company regarding the accident thereby violating the provisions of Section 134(c) of the Act. According to the answering respondent, the offending vehicle was being plied without any route permit and fitness certificate and respondent No.1 was not having any effective and valid driving licence, in that way, the answering respondent was not liable to indemnify the insured. According to the case of such respondent, the accident, if any, had taken place solely due to the negligence of the deceased, who was driving the car rashly and negligently and without caring for the traffic moving on the road and a false case has been registered involving the offending vehicle in question and respondent No.1 as its driver.

In the end, such respondent prayed for dismissal of the petition.

On the pleadings of the parties, following issues were framed:

1. Whether the accident in question took place on account of rash and negligent driving on the part of respondent no.1 while driving offending vehicle bearing no.UP-74T-0980 resulting the death of Vinod? OPP.
2. If issue No.1 is proved, whether petitioners are entitled to

compensation. If so, how much and from whom? OPP.

3. Whether respondent no.1 was not holding a valid and effective driving licence and has violated the terms and conditions of insurance policy? OPR3
4. Relief.

Both the parties led evidence in support of their respective claims.

In order to prove their case, petitioners got examined petitioner No.3 – Smt.Jyoti as PW1 and Sh.Satya Parkash as PW2 besides tendering documents Ex.P1 to Ex.P6.

On the other hand, the respondent No.2 tendered in evidence documents Ex.R1 to Ex.R3.

After hearing arguments, the Tribunal while allowing the petition vide award dated 13.7.2015 granted compensation of Rs.8,20,000/- along with interest @ 9% per annum from the date of filing of the petition till realization payable by respondent No.1. The insurance company was held liable towards third party and it first satisfy the award. However, recovery rights were granted to the insurance company for the reason that respondent No.1 had failed to produce permit of the offending vehicle as well as the driving licence to show that he had not violated the terms and conditions of the insurance policy.

Feeling that the compensation awarded to them was on lower side, the claimants have filed the present appeal, notice of which was given to respondents. However, only respondent No.2 – Insurance Company put in appearance through counsel.

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

The Tribunal taking the age of the deceased to be 24 years took his monthly income to be Rs.5,000/-, the minimum wages fixed by the State Government; not believing the version of the claimants that he was doing business of shuttering at village Tigaon and used to earn Rs.25,000/- per month, on account of lack of evidence. The claimants had failed to bring on record any cogent and convincing evidence to prove such assertions. Admittedly the deceased was not an income tax payee, therefore, the Tribunal was justified in taking his monthly income to be Rs.5,000/- considering the minimum wages paid by the State Government to the workers.

The Tribunal has added 50% of the amount towards future prospects. However, in view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** in such an eventuality 40% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs.5,000 + 2,000 = Rs.7,000/-.

In terms of the ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77*** the Tribunal has rightly deducted 1/4th of the amount towards self expenses. Doing that the dependency of claimants comes out to Rs.5,250/- per month, annual dependency comes out to Rs.5,250 x 12 = Rs.63,000/-.

The Tribunal has used multiplier of 18, which under the circumstances is found to be proper. Doing that the compensation comes out to Rs.63,000 x 18 = 11,34,000/-.

The Tribunal has awarded a sum of Rs.1,00,000/- to petitioner No.3 towards loss of estate and loss of consortium and Rs.1,00,000/- each to petitioners No.1, 2 and 4 towards loss of love and affection and Rs.25,000/- towards funeral expenses.

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/-.

Thus, the total compensation comes out to Rs.12,04,000/- (11,34,000 + 70,000).

The Tribunal while deciding issue No.1 has come to the conclusion that it was a case of contributory negligence. However, I find that such conclusion drawn by the Tribunal is not correct. It is to be taken note of that the accident had taken place at Yamuna Express way, where the vehicles move at fast speed. The Tribunal has come to the conclusion that it was a case of contributory negligence for the reason that the deceased should have kept the car at a proper distance from the vehicle going ahead. No doubt every vehicle driver going on the road is expected to keep safe distance from the other vehicles going ahead. But under what circumstances and for what reason much distance could not be maintained between the two vehicles, how much was the traffic on the road at that time, width of the road etc. are the factors to be considered to determine the culpability of the vehicle driver for happening of an accident. Under the circumstances, the Tribunal was not justified in coming to the conclusion that it was a case of contributory negligence.

Learned counsel for the insurance company has referred to authority ***Nishan Singh and Ors. Versus Oriental Insurance Company Ltd. through Regional Manager & Ors., 2018(2) RCR(Civil)891*** by the Apex Court. In that authority while interpreting regulation 23 of Rules of Road Regulation, 1989, which provides that the driver of a motor vehicle moving behind another vehicle shall keep at a sufficient distance from that other vehicle to avoid collision if the vehicle in front should suddenly slow down or stop. The Apex Court had observed that 'sufficient distance' has not been defined in Regulations or elsewhere and that the thumb rule of sufficient distance is at least safe distance of two to three seconds gap in ideal conditions to avert collision and to allow following driver time to respond.

There cannot be any dispute with such observations made by the Apex Court but as already observed what is the sufficient evidence depends upon each case. In the instant case, the deceased could not possibly be held to be rash and negligent in driving the ill-fated car and the same being direct and proximate cause of the accident. The claimants have led sufficient evidence to establish that respondent No.1 - Ram Bahadur was author of the accident by rash and negligent driving of the offending vehicle, which was direct and proximate cause of the mishap. PW2 Satya Prakash had categorically stated so in his cross-examination. His credibility could not be shattered on any material point. FIR No.383

dated 20.9.2013 under Sections 279, 337, 338, 304-A IPC was registered against respondent No.1 with Police Station Tappal with regard to the present accident. The registration number of the offending vehicle is mentioned in the FIR. It is not the case of respondents that some stray animal had suddenly appeared before the offending vehicle or for any other justifiable reasons, the driver of the offending vehicle had to apply the brakes suddenly. There is no evidence in rebuttal. Respondent No.1 had not opted to appear and offer a contest. Counsel for respondent No.2 had closed its evidence after tendering documents. Therefore, the finding arrived at by the Tribunal that it was a case of contributory negligence is based upon conjectures and surmises, which is not sustainable. Thus, the finding on issue No.1 is reversed and it is decided in favour of the claimants and against the respondents.

Since issue No.1 is decided in favour of the claimants, no cut is to be imposed on the total compensation i.e. Rs.12,04,000/-.

The Tribunal has awarded a total sum of Rs.8,20,000/- as compensation along with interest @ 9% per annum from the date of filing of the petition till realization.

In that way, the enhanced amount comes to Rs.3,84,000/- (12,04,000 - 8,20,000). The appellants/claimants shall be entitled to recover the enhanced amount from respondent No.1 with interest at the rate i.e. 7.5% per annum from the date of filing appeal till actual payment. The insurance company was held liable towards third party and it first satisfy the award. The direction by the Tribunal with regard to recovery rights of insurance company shall remain intact. The other terms and conditions given in the relief clause shall apply to the enhanced amount as well.

With such modification, the appeal is allowed partly.

21.5.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No