IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-7299-2017(O&M)
Date of decision:-19.9.2019

Shri Ram General Insurance Company Ltd.
...Appellant

Versus

Kishan and others
...Respondents

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

Present: Mr.Sanjeev Goyal, Advocate
for the appellant.

Mr.S.K. Yadav, Advocate
for respondents No.1 to 4.

Mr.Jai Singh Yadav Advocate
for respondent No.6.

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H.S. MADAAN, J.

Petitioners/claimants Kishan aged about 31 years – son, Teena aged about 28 years – daughter, Jyoti aged about 24 years – daughter and Sanjay, aged about 23 years – son of Kanta Devi, an unfortunate victim of a road side accident had brought a claim petition under Section 163-A of the Motor Vehicles Act against the respondents i.e. Birender Singh – driver, Raghubir Singh – owner and Shri Ram General Insurance Company Ltd. - insurer of the motorcycle bearing registration No.HR36-G-4891 (hereinafter referred to as the offending vehicle), claiming compensation on account of death of their mother

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Kanta Devi in a motor vehicular accident, which took place on 26.2.2012 due to use of the offending vehicle.

On being put to notice, only respondents No.2 and 3 had appeared and contested the claim petition, whereas respondent No.1 had not appeared despite service and was proceeded against ex-parte.

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

On conclusion of trial, Motor Accidents Claims Tribunal, Rewari (hereinafter referred to as the Tribunal) vide award dated 31.7.2017 accepted the claim petition partly and awarded a compensation of Rs.3,67,494/- to the claimants No.2 to 4 with interest at the rate of 9% per annum from the date of filing of the claim petition till realization, payable by respondents No.2 and 3 jointly and severally. The amount of compensation was ordered to be apportioned amongst the claimants in equal shares. The claim petition qua petitioner No.1 was rejected.

This award left the respondent No.3 - 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 and respondents No.1 to 4 and 6 have appeared through counsel.

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

The first and foremost argument advanced by learned counsel

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for the insurance company was that the Tribunal had wrongly and illegally held that the alleged accident in which Kanta Devi has lost her life had taken place involving the offending vehicle when claimants/respondents No.1 to 4 had failed to prove so on record by leading enough cogent and convincing evidence and the Tribunal merely relied upon DDR Ex.PA in that regard ignoring the fact that the accident had taken place on 26.2.2012, deceased had died on 29.2.2012 and DDR was lodged on 7.3.2012, therefore unexplained delay in lodging of DDR caused dent in the story.

Whereas learned counsel for the claimants has vehemently contested such contentions contending that the Tribunal was justified in reaching at the conclusion that the accident in which Kanta Devi had lost her life had taken place on 26.2.2012 due to use of the offending vehicle.

After hearing learned counsel for the parties, I find that no fault can be found with the finding returned by the Tribunal that accident in which Kanta Devi had suffered injuries to which she had succumbed had taken place on account of use of motorcycle in question and further delay of about 10 days in lodging of DDR could not treated as doubtful circumstance so as to reject the claim petition because after struggling for her life in Artemis Hospital, Gurgaon, Kanta Devi injured had breathed her last on 29.2.2012 as is evident from the statement of PW2 Sarita Rani, Senior Executive in Artemis Hospital. Thus delay in this case is not of much significance and from the evidence available on the record, it can safely be taken that the offending vehicle was involved in the accident.

According to learned counsel for the appellant – insurance

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company, the compensation awarded is on higher side and it has not been calculated as per structured formula. Though learned counsel for the respondents/claimants has controverted this fact but I find that such submission made by learned counsel for the insurance company carries some merit. As per the own case of the claimants at the time of her death in the accident Kanta Devi was aged about 48 years. In absence of any evidence adduced by the claimants with regard to the deceased being engaged in any avocation or having any source of income, she was taken to be a home maker, managing the entire house, look after the members of the family rendering valuable services to the family. Her notional income was taken to be Rs.3,000/- per month and annual income to be Rs.36,000/-. The compensation under Section 163-A of Motor Vehicle Act is to be calculated as per structured formula. In terms of the said formula, when the deceased was above 45 years of age but not exceeding 50 years the multiplier of 13 is to be used. Doing that, the compensation comes out to Rs.4,68,000/-(36,000 x 13). As has been provided in the schedule the amount of compensation so arrived shall be deducted 1/3rd towards personal expenses, which the victim incurred towards maintaining herself had she been alive. Doing that the remaining amount towards dependency of the claimants comes out to Rs.3,12,000/- (4,68,000 – 1,56,000). On this amount, the claimants are entitled to get Rs.2,000/- on account of funeral expenses and Rs.2,500/- towards loss of estate. Thus the total compensation comes out to Rs.3,16,500(312000 +2,000 +2500).

The Tribunal has awarded a sum of Rs.74,994/- as medical

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expenses on the basis of evidence adduced by the claimant. However, the schedule in question clearly provides that the medical expenses incurred on treatment of the deceased while he/she had received injuries supported by bills/vouchers not exceeding one time payment of Rs.15,000/- are to be granted. Therefore, only Rs.15,000/- could be allowed instead of Rs.74,994/-. Therefore, the total compensation comes out to Rs.3,31,500/(316500+15000).

The Tribunal has awarded a sum of Rs.3,67,494/- whereas the compensation to which the claimants are found entitled is worked out to Rs.3,31,500/-. The interest awarded to the claimant @ 9% per annum is on somewhat higher side. The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization on the amount of Rs.3,31,500/-. Other terms and conditions in the original award shall remain the same. Amount if paid in excess be refunded by the claimants at the earliest. The amount shall be apportioned amongst the claimants No.2 to 4 in equal shares.

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

19.9.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No

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