IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-326-2021
Date of decision : March 31, 2021

THE ORIENTAL INSURANCE COMPANY LIMITED .....Appellant

Versus

SHAKUNTALA DEVI AND ANOTHER ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.D.P. Gupta, Advocate for the appellant.

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LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

This appeal has been filed by the insurance company challenging award dated 16.03.2020, passed by learned Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as 'the Tribunal').

Brief facts necessary for adjudication are that petition under Section 166 of the Motor Vehicles Act, 1988, was filed by respondent No.1 claiming compensation on account of death of her son Sardara, who is claimed to have died in a motor vehicle accident, which took place on 26.04.2016, due to rash and negligent driving of the offending car bearing registration No. HR-01AB-3542, by its driver – respondent No. 2. Claim petition was filed seeking compensation to the tune of Rs.40 lakhs. Deceased was claimed to be a mason and earning a sum of Rs.15,000/- per month. Petition was contested by the respondents.

Following issues were framed by the learned Tribunal on the basis of the pleading of the parties:-

1. Whether the accident resulting into death of Sardara, took place due to rash and negligence driving of respondent No. 1, while driving car bearing registration No. HR-01AB-3542?OPP

2. If issue No. 1 is proved, to what amount of compensation and from whom, the claimants are entitled to? OPP
3. Whether there was violation of the terms and conditions of the insurance policy and respondent No. 2 is not liable to pay any compensation?OPR-3
4. Relief.

Learned Tribunal on considering the evidence on record concluded that Sardara died due to injuries received by him in the motor vehicle accident, which took place on 26.04.2016, due to rash and negligent driving of the offending car bearing registration No. HR-01AB-3542, by its driver – respondent No. 2. Learned Tribunal while considering the deceased to be an unskilled labourer, assessed his income as Rs.7600/- per month and awarded a sum of Rs.8,28,000/- as compensation to the claimants, which is detailed as under:-

1.	Annual income	91,200/-
2.	Future prospects 25% i.e. 91,200+22,800=	1,14,000/-
3.	50% deduction towards personal living and expenses i.e. 1,14,000/2=	57,000/-
4.	Multiplier adopted	14
5.	Loss of estate	15,000/-
6.	Funeral expenses	15,000/-
7.	Total compensation	8,28,000/-

Learned counsel for the appellant vehemently argues that identity of the offending vehicle is not established in this case. It is submitted that cancellation report was submitted by the police authorities in FIR No. 55 dated 26.04.2016 (Ex.P4). Learned counsel further refers to mechanical report dated 28.05.2016 (Ex.P9) of the vehicle to submit that as per the said report no dent was found at the time of the inspection of the car, which proved that the said car was not involved in the accident. Thus, liability of the accident cannot be foisted on the appellant. It is further submitted that multiplier of 14 has been wrongly applied. As the claimant-mother was about 70 years of age, therefore multiplier of 5 should have been applied. It is thus prayed that present appeal be allowed.

I have heard learned counsel for the appellant and have gone through the file as well as copy of mechanical report and other documents (which form part of the record before the learned Tribunal), referred to during the course of hearing.

Admittedly, claimant – respondent filed a petition under Section 166 of the Act seeking compensation on account of death of her son, namely Sardara, in a motor vehicle accident, which took place on 26.04.2016. Documentary evidence was led by the appellant to prove her case. Eye witness of the accident Suraj Bhan has testified as PW2. Learned counsel for the appellant is unable to deny that FIR (Ex.P4) was registered on the same date as the accident i.e. on 26.04.2016. PW2 Suraj Bhan has specifically mentioned that he was travelling alongwith his brother Sardara (deceased) on the motorcycle being driven by the deceased. PW2 has given the details of the accident in question in a clear and succinct manner. Registration number of the car is specifically mentioned in the FIR. PW2 has clearly stated in no uncertain terms that the accident in question took place solely due to the rash and negligent driving of the offending vehicle. PW2 in his cross examination has stated that driver of the vehicle had fled from the spot. Learned Tribunal has taken note of the fact cancellation report in the FIR was submitted mainly on the basis of mechanical report (Ex.P9), wherein it is reported that no dent etc. was found on the offending vehicle and has rightly observed that this report was prepared on 28.05.2016 whereas accident had taken place on 26.04.2016, therefore, possibility of the car having been repaired within a gap of about one month and two days cannot be ruled out.

Moreover, it is a matter of record that the respondent - driver has been summoned by the learned trial Court vide order dated 02.02.2019 (Ex.P1) to face trial. It is a settled principal of law that in the proceedings under the Act, the claimant has to prove his case on the touchstone of preponderance of probabilities and not to prove the same beyond reasonable doubt. Reference in this regard can gainfully be made to the judgment of the Hon'ble Supreme Court in **Mangla Ram versus Oriental Insurance Company Limited and others 2018 (5) SCC 656**. In the present case, claimant has indeed successfully proved its case on the touchstone of preponderance of probabilities. Issue No. 1 has been correctly decided by the learned Tribunal and finding in this respect is upheld. There is no dispute regarding the fact that offending vehicle was duly insured by the appellant – insurance company and that there was no violation of terms and conditions of the insurance policy.

Argument raised by learned counsel for the appellant that multiplier of 14 has been incorrectly applied is untenable, hence rejected. It is a matter of record that age of the deceased was 45 years at the time of the accident, multiplier of 14 has, thus, been correctly applied in terms of judgment of the Hon'ble Surpeme Court in ***Smt. Sarla Verma and others Versus Delhi Transport Corporation and another*** 2009 (3) RCR (Civil) 77. It is a settled position of law that multiplier has to be applied with reference to the age of the deceased and not with reference to the age of the claimant. Reference in this regard can gainfully be made to the judgment of the Hon'ble Supreme Court in **Munna Lal versus Vipin Kumar Sharma, (2015) 6 SCC 347**. All the issues have been correctly decided by the learned Tribunal, which brook no interference.

Learned counsel for the appellant is unable to point out any illegality, perversity or infirmity in the impugned award 16.03.2020, passed by the learned Motor Accidents Claims Tribunal, Kurukshetra, which calls for any interference by this Court at the instance of the appellant-insurance company.

No other argument has been addressed.

Appeal is accordingly dismissed with no order as to costs.

(Lisa Gill)
Judge

March 31, 2021
rts

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