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HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.407 of 2021
Date of decision:27.04.2021

New India Assurance Co. Ltd. ... Petitioner

Versus

Inderjit Singh @ Inderjeet and others ...Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. R.C.Kapoor, Advocate,
for the petitioner.

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G.S. Sandhawalia, J.

The challenge in the present appeal, filed under Section 173 of the Motor Vehicles Act, 1988, is to the award of the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as the "Tribunal"). The claimants-respondent nos.1 and 2, father and minor son of the deceased Jaswinder Singh, have been held entitled to a sum of ₹17,72,160/-, along with interest @ 7.5% per annum from the date of the filing the claim petition till its realization. The compensation, as such, has been bifurcated to the extent that 75% would go to the minor son, which is to be kept in the FDR till he attains majority, whereas the balance 25% would go to the father of the deceased.

The argument raised by the counsel for the Insurance Company is to the extent that the deceased was driving the motorcycle and struck the insured vehicle from the back, which was parked on the side of the road

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and, therefore, the issue of contributory negligence has been ignored by the Tribunal. It is further submitted that at the initial stage, no criminal proceedings, as such, had been initiated against the driver of the car, i.e. respondent no.3 and, therefore, the factum of rash and negligent driving has not been proved and, thus, the compensation has wrongly been awarded. The said argument is liable to be rejected on closure scrutiny of the award of the Tribunal, which is well reasoned.

Counsel for the insurance company has also taken this Court through the statement of PW2 Bhag Singh where it has been stated that the light was dim and there was no complete darkness and deceased was not driving the vehicle in a rash and negligent manner and the said witness was got admitted to PGI, Chandigarh after the accident.

It is to be noticed that the accident took place on 29.07.2018 at about 7.30 pm on Mullanpur Bridge, Mullanpur-Chandigarh road, due to the parking of the car bearing registration No.CH01-BD-9184 in the middle of the road on the bridge, without any parking indication that it had broken down. The deceased was on the motorcycle and had struck the car from back and received serious injuries and was taken to PGI, Chandigarh, where he was declared brought dead. A DDR No.21 dated 30.07.2018 had also been registered. The defence of the owner and driver (being father and son) was that the front tyre of the car had punctured, which was duly parked on the left side of the road with parking indicators.

In order to establish the factum of rash and negligent act of the car driver for claiming the compensation, Bhag Singh PW2 was examined,

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whereas the father of the deceased himself stepped into the witness box as PW1. Bhag Singh PW2 had stated that he was pillion rider, as such, along with the deceased when they had hit the car which was parked in the middle of the road without any parking indicators as signal. Due to which both of them had fallen down and received serious injuries and were taken to the PGI, Chandigarh, where Jaswinder Singh was declared brought dead. The conclusion which can be reached from the statement of PW2 Bhag Singh is, thus, that car was parked in the middle of the road negligently, without any safety signals. It is not disputed by the respondents that the front tyre of the insured vehicle had been punctured and it was parked on the left side of the road, but with parking indicators. However, the factum that the parking indicators were on was not proved as the driver of the vehicle did not step into the witness box in order to deny this negligent aspect. Thus, it is on this basis that an adverse inference was rightly drawn by the Tribunal against the driver of the vehicle.

Thus, while rightly placing reliance upon the Post Mortem Report Ex.P2, the issue of rash and negligent driving of the car was decided against respondent no.3-driver and no fault can be, as such, found in the said reasoning. The argument that the issue of contributory negligence, as such, would come into force for reducing the amount of compensation, which has been awarded, is without any basis once the insurance company had failed to prove the factum of contributory negligence by not summoning the driver of the vehicle to prove the fact that the various safety measures were taken by the driver of the car by putting on the blinking parking lights

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to ensure that the vehicle, which was stationary in the middle of the bridge, was visible to the oncoming traffic in the dwindling lights, since the accident took place at 7.30 pm in July, and could not have been parked off the road, as contended by the Insurance Company's counsel.

On the issue of compensation, it has been noticed that the deceased was 26 years old as per the postmortem report and though the claim, as such, was made that he was a skilled labourer and earning more than ₹20,000/- per month, the notification of the Punjab Government was taken into account to the effect that the minimum wages of the skilled labourer was ₹366/- per day with effect from 01.03.2018. Therefore, while applying 25 working days, the monthly income of the deceased was assessed as ₹9,150/- per month and 40% addition was made on the basis of future prospects to it on the strength of the judgment of the Apex Court rendered in the case of **National Insurance Company Limited vs. Pranay Sethi and others,** 2017(4) RCR (Civil) 1009 to assess the monthly income @ ₹12,810/- per month. After applying reduction of 1/3rd for personal expenses, the annual income was assessed @ ₹1,02,480/- and multiplier of 17 was, thus, applied. Benefits of ₹15,000/- on account of loss of the estate and ₹15,000/- on account of funeral expenses were also added to reach at the total compensation of ₹17,72,160/-. It was also noticed that the father of the deceased is 100% disabled as per the disability certificate Ex.P7 and that there was no other legal representative as the wife of the deceased had already expired. The liability was,thus, fixed upon the driver, owner and the insurance company while noticing that the insured vehicle, as such, was

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being driven by a person holding a valid driving license Ex.R3.

Thus, keeping in view the above, merely because the criminal proceedings were not lodged, as such, against the driver of the car, would not be, as such, a ground to hold that the rash and negligent act of the driver of the insured vehicle has not been proved.

Resultantly, there is no merit in the present appeal and, thus, the same is here by dismissed in limine.

April 27, 2021 **(G.S. Sandhawalia)**
vinod* **Judge**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No

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