104 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3011-2020(O&M)
Date of decision:26.03.2021

National Insurance Co. Ltd.

.......Appellant

Versus

Smt. Suresh Bala and others

......Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Paul S Saini, Advocate for the petitioner

ANIL KSHETARPAL, J.(ORAL)

The Insurance Company has filed the appeal assailing the correctness of the award passed by the Motor Accident Claims Tribunal, Karnal (hereinafter referred to as the 'Tribunal'), while awarding a sum of Rs.20,62,625/- alongwith an interest at the rate of 7% from the date of filing of the claim petition till its realization, on account of death of a young man aged 26 years.

As per the case of the claimant, Soni Lal (deceased) was going on a motorcycle from Sarsava to Pilkhini when another motorcycle driven by Vikas Kumar struck against the motorcycle driven by the deceased, resulting in multiple grievous injuries on his head and other parts of the body. He was immediately taken to Civil Hospital, Saharanpur, from where he was taken to Jindal Hospital, HUDA Jagadhari. A head surgery was performed but he succumbed to injuries on 08.08.2013.

The Tribunal held that Vikas Kumar was rash and negligent in driving the offending vehicle and since it was insured, therefore, the Company has been made jointly liable.

Learned counsel for the appellant contends that in this case the claimants have failed to prove rash and negligent driving by Vikas Kumar. The registration number of the offending vehicle was not disclosed in the FIR. The accident took place on 01.08.2013 whereas the FIR was registered on 06.08.2013 by Ramesh Kumar, who has not been examined in the evidence. He further submits that the Tribunal has also erred in assessing the income of the deceased at the rate of Rs.13,000/- per month in the absence of any documentary evidence. In the end, he contends that the Tribunal has erred in awarding the interest from the date of filing of the claim petition till its realization, particularly, when the claim petition after dismissal in default on 14.03.2016, was restored on 02.12.2019.

In this case, record of the court below has been requisitioned and examined. When the FIR was registered, name of the driver of the offending vehicle as well as its pillion rider was disclosed. No doubt, the registration number of the motorcycle was not disclosed, however, when the police recovered the vehicle, on careful examination, it was found that the motorcycle had dents on its body. Still further, the police after investigation has found that the vehicle driven by Vikas

Kumar was involved in the said accident. Still further, it is not in dispute that after the accident, the deceased was immediately taken to the Civil Hospital and then shifted to Jindal Hospital. A head surgery was performed but he did not survive. In such a situation, particularly, when the police has also found that the vehicle in question was involved, there is no ground to doubt the case of the claimants. Still further, Bijender Singh s/o Dharamvir Singh while claiming that he was following the deceased on his own motorcycle on the date of accident and had seen the occurrence has appeared in evidence. Learned counsel representing the Insurance Company cross examined Bijender Singh at length but failed to create doubt about its correctness. Hence, the negligence of Vikas Kumar is proved.

As regards the quantum of the amount, it has come on record that the deceased was running a proprietorship firm and was an income tax payee. No doubt, in the year 2012-13 was Rs.1,78,615/- and no tax was paid, however, the return was filed without paying the income tax. The income tax return can not be ignored merely because no tax was payable. Further, the deceased was an educated person. Hence, there is no error in the income assessed by the Tribunal.

Last argument of the learned counsel for the appellant is with regard to the period of interest. It may be noted here that the amount has throughout remained with the Insurance Company. If the claim petition had been decided earlier, the Insurance Company would have had to pay the amount at that time. Since, the amount has remained with the Insurance Company and the Tribunal has awarded interest @

7% per annum only. Hence, no ground to interfere in the same is made out.

Hence, dismissed.

26.03.2021 **(ANIL KSHETARPAL)**
rekha **JUDGE**
Whether speaking/reasoned Yes /No
Whether Reportable Yes / No