In the High Court of Punjab and Haryana, at Chandigarh

F.A.O. No. 3037 of 2021 (O&M)

Date of Decision: 15.11.2021

SHRIRAM General Insurance Company Limited
… Appellant(s)

Versus

Santosh Khatri and Others
... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Sanjeev Kodan, Advocate
for the appellant(s).

Anil Kshetarpal, J.

1. Through this appeal, the insurance company assails the correctness of the award dated 02.09.2021 passed by the Motor Accidents Claims Tribunal, Rewari (hereinafter referred to as "the Tribunal").

2. The Tribunal has allowed the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the 1988 Act") on account of the death of Sh.Pawan Kumar in an automobile accident. The appellant had insured the Oil Tanker which caused the accident. In order to prove the rash and negligent driving of the driver of the Oil Tanker, the claimants examined Narender as PW.4. He deposed that he was on the pillion whereas late Sh.Pawan Kumar was driving the motorcycle and that the accident took place due to the rash and negligent driving of the driver of the Oil Tanker. The learned counsel representing the insurance company while cross-examining the witness tried to impeach his credibility. However, he adhered to his stand. PW.4 Narender further stated

that the accident had taken plate with the Oil Tanker, however, he could not note down its registration plate number, although the said Oil Tanker was painted in red and blue colour. The insurance company has examined Sh. Govind Parsad, the Investigating Officer as RW.1, who has deposed that the insured vehicle was involved in the accident in question.

4. Heard the learned counsel representing the appellant at length and with his able assistance, perused the impugned judgment as well as the statements of the witnesses which have been placed on the file.

5. The learned counsel representing the appellant states that the driver of the offending vehicle was arrested after a period of 86 days and in the FIR, the registration plate number of the Oil Tanker was not disclosed. He further submits that PW.2 Surender Kumar is not the eye witness. The learned counsel further contends that the Tribunal has erred in failing to deduct the income-tax from the income of the deceased as well the increase on account of increase in income due towards future prospects.

6. In the considered view of this Bench, there is no substance in the present appeal for more than one reasons.

7. Firstly, the insurance company has examined Sh. Govind Parsad, the Investigating Officer, as RW.1, who has deposed about the involvement of the insured vehicle in the accident in question. PW.2 Surender Kumar has stated that he was coming behind the Oil Tanker and had noted down its registration plate number. The police recorded his statement on 04.06.2017, whereas the accident took place at 9.45 PM on 02.06.2017.The learned counsel representing the insurance company has made an attempt to discredit the statement of PW.2 Surender Kumar made in

examination-in-chief while putting searching questions in the cross-examination. However, Surender Kumar did not buckle under the pressure of the cross-examination and stood his ground.

8. Keeping in view the aforesaid facts, the Tribunal has correctly held that the Oil Tanker had caused the accident.

9. The next argument of the learned counsel representing the appellant is to the effect that the name of the driver of the Oil Tanker has not been disclosed. It may be noted here that once the vehicle has been identified, it was for the owner to disclose the name of the driver, particularly when the driver, after causing the accident, had run away from the spot. Smt. Sunder Bai, the registered owner of the offending vehicle has appeared in evidence as RW.7 and stated that the Oil Tanker was not involved in the accident. However, she has failed to disclose as to who was driving the vehicle at the time of the accident.

10. The next argument of the learned counsel representing the appellant is with reference to the failure of the Tribunal to deduct the income-tax from the income of the deceased. From a bare look at para 20 of the finding arrived at by the Tribunal, it is evident that the Tribunal has relied upon Ex.R22, which shows that the gross salary of the deceased Sh.Pawan Kumar was ₹5,23,177/-, out of which he paid ₹659/- towards tax. Thus, the Tribunal, after deducting the income-tax, arrived at the net income of ₹5,22,500/- annually and calculated the dependency as well as the future prospects on that basis. Once the Tribunal has calculated the increase in the future prospects from the net income of the deceased, then, there is no reason to further deduct the amount on account of income-tax from the

income of the deceased.

11. Keeping in view the aforesaid facts, no ground is made out to interfere. Hence, the present appeal is dismissed.

12. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

November 15, 2021
"DK"

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