IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1539 of 2020 (O&M)
Reserved on : 08.08.2022
Date of Decision : 17.08.2022

L&T General Insurance Company ...Appellant

Versus

Smt. Rajo & Others ...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashwani Talwar, Advocate for the appellant.

<u>ALKA SARIN, J.</u>

The present appeal has been preferred by the insurance company against the award dated 06.11.2019 passed by the Motor Accident Claims Tribunal, Jind (hereinafter referred as to the 'Tribunal') whereby the claim petition filed by the claimant-respondent No.1 has been partly allowed and she has been awarded compensation of Rs.12,94,840/- on account of death of her son, Sunil Kumar.

In the present case, the case as set up by the claimant-respondent No.1 was that Sunil Kumar (deceased) was working as a Plumber in Narwana. On 12.04.2017, he was returning from Narwana to his village Mangalpur after completing his work on his motorcycle bearing registration No.HR-32G-9003. At about 08:45 PM, when he reached in between the area of village Dohana Khera and Mangalpur, the present respondent No.3 (driver) while driving Tractor bearing registration No.HR-32J-7373 in a rash and negligent manner at fast speed, came from village Mangalpur side and hit the motorcycle of Sunil Kumar from front side as a result of which he received serious and grievous injuries on the head, leg and other body parts. After the accident, Sunil Kumar was shifted to Civil

Hospital, Narwana where he was declared dead. FIR No.70 dated 13.04.2017 under Sections 279, 304-A and 283 IPC was lodged against the present respondent No.3 (driver). The claimants were the parents of Sunil Kumar and it was averred that the deceased was aged 26 years at the time of accident and he was unmarried. The deceased was doing the work of Plumber and was earning Rs.30,000/- per month. The claimants claimed compensation of Rs.50 lakhs with interest. It may be mentioned here that during the pendency of the proceedings before the Tribunal the father of the deceased also passed away and the only surviving claimant is the mother i.e. the present respondent No.1.

Upon notice, the present respondent Nos.3 and 4 (driver and owner) filed a joint written statement taking preliminary objections like cause of action, *locus standi* and suppression of true and material facts. It was denied that the alleged accident had taken place with Tractor bearing registration No.HR-32J-7373 and it was submitted that the Police had registered a false case in collusion with the complainant and the present respondent No.3 (driver) had been falsely implicated in the case. A separate written statement was filed by the present appellant-Insurance Company raising preliminary objections and denying that the alleged accident had taken place with Tractor No.HR-32J-7373. It was averred that in the FIR as well as on the Trolley there was no registration number of any Tractor bearing No.HR-32J-7373 mentioned nor was any Trolley registered with the Registration Authority in favour of the present respondent No.4 (owner). In the FIR the colour of the Trolley was not mentioned and further the present respondent No.4 (owner) did not pay any premium to cover the risk of

Trolley and the Trolley which was taken into possession by the Police was never drawn by the Tractor No.HR-32J-7373.

On the basis of the pleadings of the parties and the evidence on the record, the Tribunal held the claimant-respondent No.1 entitled to be awarded compensation of Rs.12,94,840/- on account of death of her son, Sunil Kumar along with interest.

The argument of the learned counsel for the appellant-Insurance Company that the factum of the accident was doubtful deserves to be rejected on the ground that the testimony of the PWs i.e. PW2 Vinod, author of the FIR whose testimony was corroborated by PW1 Smt. Rajo and PW3 Rajesh could not be shaken despite lengthy cross-examination. The present respondent No.3 (driver) is facing a criminal trial and as per the impugned award he chose not to appear in the witness box to rebut the evidence led by the claimant-respondent No.1 and hence there is no reason to disbelieve the same. It is also mentioned in the impugned award that during investigation by the Police it was also found that the present respondent No.3 (driver) had parked his Tractor Trolley on the road without any indicator or signal and he has been charged for the offence under Section 282 IPC.

Learned counsel for the appellant-Insurance Company has also argued that there has been a violation of the insurance policy. It was contended that once a Trolley was attached to the Tractor, the Tractor became a transport vehicle for carriage of goods and therefore the driver only had a licence to drive a Tractor and not a transport vehicle. He submitted that it could not be said that the driver had an effective and valid driving licence to drive a goods carriage or a transport vehicle and as such the appellant-Insurance Company could not be made liable. This argument raised by the counsel for the appellant-Insurance Company also has to be rejected in view of the decision by the Supreme Court in the matter of **Nagashetty vs. United India Insurance Co. Ltd. [(2001) 8 SCC 56]** wherein it was inter-alia held that :

> *"10. We are unable to accept the submissions of Mr S.C. Sharda. It is an admitted fact that the driver had a valid and effective licence to drive a tractor. Undoubtedly under Section 10, a licence is granted to drive specific categories of motor vehicles. The question is whether merely because a trailer was attached to the tractor and the tractor was used for carrying goods, the licence to drive a tractor becomes ineffective. If the argument of Mr S.C. Sharda is to be accepted, then every time an owner of a private car, who has a licence to drive a light motor vehicle, attaches a roof carrier to his car or a trailer to his car and carries goods thereon, the light motor vehicle would become a transport vehicle and the owner would be deemed to have no licence to drive that vehicle. It would lead to absurd results. Merely because a trailer is added either to a tractor or to a motor vehicle by itself does not make that tractor or motor vehicle a transport vehicle. The tractor or motor vehicle remains a tractor or motor vehicle. If a person has a valid driving licence to drive a tractor or a motor vehicle, he continues to have a valid licence to drive that tractor or motor vehicle even if a trailer is attached to it*

> *and some goods are carried in it. In other words, a person having a valid driving licence to drive a particular category of vehicle does not become disabled to drive that vehicle merely because a trailer is added to that vehicle."*

It is well settled that it is mandatory for the insurance company not only to plead the breach of conditions of an insurance policy but also to substantiate the same by adducing positive evidence. In the absence of any evidence it cannot be presumed that there was a breach of the conditions of the insurance policy. In the impugned award it is mentioned that *"Further, the insurance company, respondent No.3, did not adduce even iota of evidence to prove that any violation of the insurance policy was committed by the insured"*. In this view of the matter, the arguments raised on behalf of the appellant-Insurance Company carry no weight.

No other argument has been raised. It may be mentioned here that the website of the District Court also discloses that the impugned award stands executed.

In view of the above, I do not find any merit in the present appeal, which is accordingly dismissed. Pending applications, if any, also stand disposed off.

17.08.2022 **(ALKA SARIN)**
jk **JUDGE**

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO