118 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3519-2022 (O&M)
Date of decision : 17.08.2022

National Insurance Company Ltd. ...Appellant

Vs.

Salim and others ...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Vinod Gupta, Advocate for the appellant.

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MANOJ BAJAJ, J.

Appellant-Insurance Company has preferred this appeal to challenge the award dated 26.04.2022 passed in claim petition bearing No.57 dated 18.07.2018, whereby the claim petition filed under Section 166 Motor Vehicles Act, 1988 by respondent Nos.1 to 6 (claimants) was allowed.

Briefly, the facts of the case are that on 28.12.2017, Afsar Hussain son of Jafruddin, resident of Village Ladmaki, Tehsil Hathin, District Palwal had gone to meet his father-in-law, namely, Deen Mohd. @ Deenu and when he reached near milk dairy, Deen Mohd and his brother-in-law met him on the way. Deen Mohd. was standing with his motorcycle bearing No. HR-29-T-3244, when Afsar Hussain stopped there and started talking with Deen Mohd. At about 02.00 p.m., the motorcycle carrying four persons being driven by its driver in a rash and negligent manner, hit Deen Mohd. resulting in multiple injuries to him and some of the occupants of the offending motorcycle also sustained injuries. The victim-Deen Mohd. was rushed to Nalhad Hospital, District Nuh from where he was referred to Jai Parkash Narayna Apex Trauma Centre, New Delhi. On 14.03.2018, Deen Mohd succumbed to the injuries sustained in the vehicular accident and in this regard, a case FIR No.367 dated 30.12.2017 under Sections 279 and 337 IPC was also registered at the instance of Afsar Hussain, wherein later on offence punishable under Section 304-A IPC was also added. The claimants brought the claim petition to seek compensation against Noor Mohd. (driver of the offending motorcycle), Makhmool (owner of the offending vehicle) and the appellant/Insurance Company and claimed compensation of Rs.20 lacs.

The claim was contested by driver and owner by filing their joint written statement, wherein they denied the accident and further pleaded that as the vehicle was insured by respondent No.3 they are not liable to pay compensation. The claim was also contested by respondent No.3/Insurance Company by filing its separate written statement and denied the alleged accident and it was pleaded that the claimants in connivance with other respondents have filed this claim petition. As per pleadings, the offending vehicle was being plied in violation of the terms and conditions of the insurance policy and prayed for dismissal of the claim petition.

The Tribunal after considering the pleadings, framed four issues and thereafter, the parties were allowed to adduce their respective evidence. Upon considering the pleadings and evidence on record, the Tribunal vide award dated 26.04.2022 partly allowed the claim petition and awarded compensation of Rs.4,66,000/-along with interest @ 6% per annum.

Learned counsel has argued that the alleged licence possessed by the driver of the offending vehicle was meant to drive transport vehicle and as there is no authorization for him to drive the two wheeler, therefore, liability upon the insurance company could not have been fastened. He submits that since no evidence was adduced by insurance company relating to the licence of the driver-Noor Mohd., therefore, a separate application has been filed under Order 41 Rule 27 CPC for adducing additional evidence. He submits that apart from this, even the compensation awarded by the Tribunal is on higher side as the victim was 60 years old and as per claimants, he was earning Rs.10,000/- per month, but the compensation is based upon the assessment of monthly income as Rs.8,000/- which is on higher side. He submits that the impugned award be modified by granting recovery rights in favour of the appellant-company to recover the compensation amount from the owner and driver of the offending vehicle.

After hearing learned counsel and considering the evidence on record, this Court finds that though a vague objection regarding validity of the licence in favour of the driver was raised by insurance company in their written statement, but neither it was pressed nor any evidence was adduced to establish violation of insurance policy. A perusal of the application under Order 41 Rule 27 CPC shows that the copy of the driving licence was obtained by appellant from the police record and upon verification, it has been found to be valid for driving a transport vehicle.

During the course of hearing, Mr.Gupta, learned counsel has produced the photocopy of the said licence, which is incomplete and does not contain the material particulars, therefore, the same cannot be treated as a relevant piece of evidence. The material on record shows that the driver of the offending vehicle is facing prosecution for commission of offence punishable under Section 279 and 304-A IPC, therefore, finding returned by the Motor Accident Claim Tribunal fastening liability upon the insurance company is based upon proper appreciation of the evidence. The other argument raised by learned counsel that compensation awarded is on higher side is also without any merit as considering the age of the victim, consequent assessment of dependency of the claimants is also calculated upon the relevant factors and is reasonable.

Thus, this Court does not find any merit in this appeal and the same is dismissed.

(MANOJ BAJAJ)
JUDGE

17.08.2022
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Whether speaking/reasoned : Yes No
Whether Reportable : Yes No