**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO-407-2012 (O&M)
Date of decision : 18.05.2022**

Royal Sundram Alliance Insurance Company Ltd. ..... Appellant

versus

Pankaj Yadav and others ...... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Dinesh Kumar Prajapati, Advocate
for the appellant.

None for the respondents.

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PANKAJ JAIN, J.

Insurer is in appeal challenging the award dated 07.06.2011 passed by learned Motor Accident Claims Tribunal, Faridabad (hereinafter referred to as 'Tribunal'), whereby claim petition filed by respondents No.3 to 5/claimants under Section 166 read with Section 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'Act') has been allowed and they have been awarded compensation of Rs.17,83,000/- on account of death of Mrs. Mini Varghese in a motor vehicular accident dated 02.03.2009.

2. As per claim petition, on 02.03.2009 the deceased alongwith other passengers were travelling in three-wheeler No.HR-39N-3883 which was being driven by Girraj at a decent speed. When the said three wheeler reached IG Office, Faridabad, then the offending vehicle i.e. Motorcycle No.HR-51W-2294 which was being driven by respondent No.1 rashly and negligently struck against the three wheeler. The driver of the three wheeler tried to save respondent No.1, as a result of which the said three wheeler turned turtle on the road and all the

passengers sustained multiple and grievous injuries. On the statement of the driver of three wheeler, an FIR No.90 dated 02.03.2009 was registered at Police Station NIT Faridabad under Sections 279, 337, 427 and 304-A of IPC.

3. Learned Tribunal framed the following issues on the basis of pleadings raised by the parties:-

> "(1) Whether the accident in question took place due to rash and negligent driving of Motorcycle No.HR-51/W-2294 by Pankaj Yadav respondent No.1? OPP
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> (2) If issue no.1 is proved, to what amount of compensation petitioners are entitled to and from whom? OPP.
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> (3) Whether the petition is not maintainable in the present form? OPR.
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> (4) Whether the petitioners have no Locus Standi and cause of action to file the present petition? OPR.
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> (5) Whether the petition is bad for mis-joinder and non-joinder of necessary parties? OPR.
>
> (6) Whether the respondent No.1 was not holding a valid and effective driving licence at the time of accident and insured has violated the other terms terms and conditions of the insurance policy? If so to what effect? OPR-3.
>
> (7) Relief.

4. Counsel for the appellant has assailed the finding on issue No.1 asserting that there was no evidence on record to show that the offending vehicle i.e. Motor Cycle No. HR-51/W-2294 was involved in the accident and thus the finding recorded by the Tribunal is perverse. He asserts that Tribunal erred in assessing the salary of the deceased @ Rs.17,000/- per month merely on the basis of Ex.P-17 and thus finding on issue No.2 also needs interference. He has drawn attention of this Court to the statement of PW-4 Nitin Sabharwal to assert that PW-4 admittedly did not bring record to prove Ex.P-17. He thus claims that in absence

of formal proof Ex.P-17 ought not have been taken into consideration to assess the salary of the deceased. Further he submits that even if Ex.P-17 is taken to have been proved, the same does not carry details of salary with respect to Provident Fund allowance and ESI allowance. The amount being allowed on account of ESI, needs to be deducted as provided under Section 53 of the ESI Act. Lastly, he submits that insurance policy was not produced, only insurance cover was produced. The insurance cover was not issued by the insurer and thus, the appellant-insurer ought not have been saddled with the liability.

5. Having heard counsel for the appellant and after perusing the record of the case carefully, this Court is of the considered view that the submissions raised by the appellant are without merit.

6. It has come on record that after occurrence of the accident, FIR was registered on the same day without any delay. The details and the description of the offending vehicle alongwith its registration number finds mention in the FIR, wherein the negligence has been attributed to the offending vehicle. The only person who could have controverted the said fact i.e. respondent No.1 has opted not to appear in the witness box. In order to prove accident, Mrs. Rosamma Mathew PW-8, who was travelling alongwith deceased had also sustained injuries, was examined. Driver of the three-wheeler in which deceased was travelling Girraj appeared as PW-7. It is after appreciating documentary as well as ocular evidence on record, the Tribunal has returned finding on issue No.1.

7. Counsel for the appellant has not been able to show as to how the said finding is perverse or is result of misleading of evidence. Consequently, the finding returned by Tribunal on issue No.1 is maintained.

8. With respect to income of the deceased, document Ex.P-17 has come on record which certifies that the deceased was working as an Accountant. Her last

drawn salary was Rs.17,000/-. The certificate has been issued by the employer. In order to prove the said documents, PW-4 Nitin Sabharwal, Director of Le Mount Garments Pvt. Ltd.-the employer, was examined. In cross-examination, he was asked as to whether he can produce detailed salary record of Mini Varghese-the deceased, to which he answered in the affirmative. He proved on record that the salary of Rs.17,000/- was being paid to the deceased through cheque. Thus, the objection raised by the counsel for the appellant with respect to formal proof of Ex.P-17 sans merit.

9. So far as the amounts deductable on account of ESI and provident fund are concerned, the same will have no bearing on the present case. It has come on record that the carry home salary of the deceased was Rs.17,000/- which was being paid to her through cheque. Thus, any deduction on account of ESI allowance obviously is over and above Rs.17,000/- which has been assessed by the Tribunal. The plea raised by counsel for the appellant with respect to non production of insurance policy also deserves to be rejected being beyond pleadings. Insurer has neither before Tribunal nor before this Court denied insurance cover apart from oral assertions made by the counsel. Written statement of the appellant is on record. It has been nowhere stated that the offending vehicle was not insured.

10. As a sequel of discussion hereinabove, the present appeal is dismissed being without merit.

11. Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed off.

(PANKAJ JAIN)
JUDGE

18.05.2022

Dinesh

Whether speaking/reasoned Yes
Whether Reportable : No