138 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-645-2017 (O&M)
Date of Decision : July 15, 2022

ICICI Lombard General Insurance Company Limited
....Appellant

Versus

Avtar Kaur and others
….Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sanjeev Goyal, Advocate
for the appellant.

Mr. Ashwani Arora, Advocate
for the respondents/claimants.

Mr. Rahul Chauhan, Advocate for
Mr. Pankaj Katia, Advocate
for respondent No.6.

ARVIND SINGH SANGWAN, J.

Prayer in this appeal is to set aside the award dated 24.10.2016 passed by the Motor Accident Claims Tribunal, SAS Nagar, Mohali vide which, while allowing the claim petition filed by respondents No.1 to 5, the following compensation was awarded :-

Age	38 years	
Occupation	Labourer	
Sr. No.	Heads of claim	
01.	Income	Rs.1,20,000/-
02.	Addition on account of future prospectus @ 50%	Rs.60,000/-
03.	Deduction @ 1/4th	Rs.45,000/-

04.	Multiplicand	Rs.1,80,000-45,000 =1,35,000/-
05.	Multiplier	15
06.	Loss of dependence/total compensation payable	1,35,000 x 15 = Rs.20,25,000/-
07.	Loss of consortium	Rs.1,00,000/-
08.	Love and affection	Rs.1,00,000/-
09.	Funeral expenses	Rs.25,000/-
	Total	**Rs.22,50,000/-**

Brief facts of the case are that the respondents-claimants filed the claim petition on the ground that on 11.10.2014 Dalbir Singh was going in his car to his village Manakpur, one Indica car bearing registration No.PB-12-T-7253, which was driven in rash and negligent manner by respondent No.1-Rajdeep Singh, who came from the opposite side and struck against the car of Dalbir Singh, who sustained multiple injuries and, later on, died in the hospital. Respondent No.1-Rajdeep Singh filed written statement and denied the factum of accident. The appellant-Insurance Company-respondent No.2 pleaded that the driver of the offending vehicle was not holding a valid and effective driving license and was also not having a valid Registration Certificate, route permit, etc., and, therefore, the Insurance Company cannot be held liable to indemnify the compensation.

Thereafter, the parties led their respective evidence and while deciding Issue No.1, the Tribunal held that on account of rash and negligent driving of the offending vehicle by respondent No.1, Dalbir Singh lost his life.

With regard to Issue Nos.2 to 4 regarding the assessment of just and fair compensation and the *inter se* liability of respondents No.1 and 2, the Tribunal held that respondent No.1 was having a valid license to drive the offending vehicle and terms and conditions of the Insurance Policy were not violated by the insurer. The Tribunal further relied upon the judgment of Hon'ble the Supreme Court in Kulwant Singh and others Vs. Oriental Insurance Company Limited, 2015 (1) SCC (Civil) 798, to submit that even if the respondent No.1 was holding a LMV license, it cannot be said that there was a breach of insurance policy as driver who also drive light goods vehicle.

The lower Court record was requisitioned.

Counsel for the appellant has argued that as per the driving license of respondent No.1, he was authorised to drive the light motor vehicle and the vehicle in disput was a Maxi cab. It has also been submitted that the vehicle was driven in violation of the policy issued by the Insurance Company as under Section 149 of the Motor Vehicles Act, the Insurance Company has a right to take a defence that the since the driver was not having a valid driving license, the Insurance Company cannot be held liable.

Counsel for the appellant on the quantum of compensation has argued that the deceased was an unskilled labourer and, therefore, the Tribunal has wrongly assessed the income to be Rs.10,000/- per month, whereas under the Minimum Wages Act for pertaining to the year 2014, the minimum wages of an unskilled person was Rs.6,000/- per month and a skilled person as Rs.7,000/- per month.

It is argued that the claimants could not produce any evidence to prove that the deceased was earning Rs.10,000/- per month.

In reply, counsel for the respondents have submitted that the Tribunal has rightly recorded a finding that in view of the judgment of Kulwant Singh's case (*supra*), the Insurance Company is liable to pay the compensation and indemnify the insurer-respondent No.1.

Counsel for the respondents-claimants has relied upon the judgment of the Hon'ble Supreme Court in Chandra @ Chanda @ Chandra Ram Vs. Mukesh Kumar Yadav in Criminal Appeal No.615 of 2021 decided on 1.10.2021, wherein it has been held that merely because the claimants are unable to produce the documentary evidence to show the monthly income of the deceased, the same does not justify adoption of the lowest tire of minimum wages while computing the income and there is no reason to discard the oral evidence of the claimants regarding the income of the deceased.

Counsel for the respondent-2 Insurance Company has also submitted that the driver was authorised to drive the vehicle and there is no violation of the policy issued by the Insurance Company.

After hearing counsel for the parties and on appreciation of the record of the Tribunal, this Court finds no merit in this appeal.

The accident has been duly proved by the statement of PW2 Bahadur Singh, the eye-witness.

It has come in the statement of PW1 Avtar Kaur, the claimant that deceased Dalbir Singh was earning Rs.12,000/- per month, being driver with Lakhbir Singh and apart from that he was earning Rs.5,000/- from dairy farm business.

The employer of deceased Dalbir Singh appeared as PW3 and stated that he had employed Dalbir Singh as a driver on monthly salary of Rs.12,000/- and in his cross-examination, he stated that he has no documentary proof of paying the salary.

The fact that the Insurance Company failed to examine respondent No.1-Rajdeep Singh, the driver of the truck either to rebut the statement of the eye-witness on the question of rash and negligent driving or the violation of any policy instructions goes against the appellant.

Even otherwise, the case of the claimant was that the deceased was earning Rs.12,000/- per month from the salary paid by his employer-Lakhbir Singh and Rs.5,000/- per month from the dairy business could not be rebutted by the Insurance Company by leading any evidence.

In view of the judgment of the Hon'ble Supreme Court passed in Kulwant Singh's case (*supra*), wherein it has been held that a driver having a license to drive light motor vehicle could drive light motor vehicle used as a commercial vehicle without any endorsement to drive a commercial vehicle and in such eventuality the Insurance Company cannot disown its liability, also, in view of the judgment passed in Chandra's case (supra), there is no reason to discard the oral evidence led by the respondent-claimants regarding the income of the deceased, this Court find no illegality or infirmity in the impugned award passed by the Tribunal.

There is no merit in the present appeal and, the same is, hereby, dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

July 15, 2022
satish

Whether speaking/reasoned : YES / NO

Whether reportable : YES / NO