IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-67-2019(O&M)
Date of decision:-10.11.2022

Cholamandlam MS General Insurance Co.Ltd.

...Appellant

Versus

Smt.Rajbala and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Punit Jain, Advocate for the appellant.

Mr.M.S. Randhawa, Advocate
for respondents No.1 and 2.

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H.S. MADAAN, J.

CM-433-CII of 2019

1. For the reasons mentioned in the application, the same is allowed and delay of 51 days in re-filing of the appeal stands condoned.

FAO-67-2019(O&M)

2. This appeal is directed against award dated 16.5.2018 passed by Motor Accidents Claims Tribunal, Narnaul (hereinafter referred to as the Tribunal) vide which it had allowed the claim petition filed by petitioners/claimants Smt.Rajbala and Satbir, parents of Ravinder, an unfortunate victim of a road side accident against Mastu Ram – driver, Satyavir – owner and Cholamandalam SS General Insurance Company Ltd. - insurer of Swift D'zire car bearing registration No.HR-66A/6223

(hereinafter referred to as the offending car).

3. Briefly stated, facts of the case are that petitioners/claimants (respondents No.1 and 2 herein) had brought the claim petition in question contending that their son Ravinder aged about 20 years engaged in the avocation of retrading and resoling of the tyres, earning Rs.15,000/- per month had lost his life in a road side accident, which took place on 13.5.2016 at about 3:00/3:45 p.m. in the area of Mai Turn near Hudina, on account of rash and negligent driving of offending car by Mastu Ram – driver.

4. Notice of that claim petition was given to respondents, who put in appearance and contested the claim petition. However, after hearing arguments, the Tribunal had accepted the petition and awarded compensation of Rs.13,90,800/- with interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount to both the claimants. The liability to pay this amount being joint and several of all the three respondents.

5. Feeling aggrieved by the said award, the respondent No.3 - Cholamandalam SS General Insurance Company Ltd. has approached this Court by way of filing an appeal, notice of which was given to respondents and respondents No.1 and 2 have put in appearance through counsel.

6. I have heard learned counsel for the appellant as well as learned counsel appearing for respondents No.1 and 2 besides going through the record.

7. Learned counsel for the appellant – insurance company has

contended that finding recorded by the Tribunal on issue No.1 with regard to involvement of insured vehicle in the accident and the accident having taken place on account of rash and negligent driving of the insured vehicle by its driver is erroneous and wrong for the reason that no cogent or credible evidence had been led by the claimants to prove such allegations and as a mater of fact the car in question was planted in this case by the claimants just to get compensation. He has further contended that in the FIR no description of the vehicle or that of the driver has been given and further author of the FIR had not witnessed the accident and was planted later on.

8. On the other hand, learned counsel for respondents No.1 and 2 has countered the arguments contending that the claimants had brought enough cogent and convincing evidence both ocular as well as documentary, to show that respondent No.1 – Mastu Ram was author of the accident by his rash and negligent driving of the offending car, resulting in causing grievous hurt to Ravinder to which he had succumbed. According to learned counsel for respondents No.1 and 2 the criminal machinery in this case was set into motion by PW3 Surender Kumar by lodging FIR Ex.P1. PW2 Hukam Chand had categorically stated that the offending car was being driven by Mastu Ram in a rash and negligent manner at the relevant time resulting in the accident in which Ravinder lost his life; on completion of investigation, challan copy Ex.P3, has been filed in the Court and Mastu Ram is facing trial for the offences under Sections 279 and 304-A IPC with regard to the accident in question. Therefore, the Tribunal was justified in deciding issue No.1 in favour of

the claimants.

9. After hearing the rival contentions, I do not find myself in agreement with learned counsel for the appellant – insurance company. As regards non-mentioning of the particulars of the offending car and those of its driver in the FIR, it is to be taken into view that the FIR is not a substantive piece of evidence and its only purpose is to set the criminal machinery in motion. FIR may not contain the minute and precise details of the incident. The FIR can be got registered by a person, who may not be an eye-witness of the same. It is only during investigation of the case that police can come to know about the culprit, who had committed the crime. Therefore, non-mentioning of the details with regard to the offending vehicle and its driver in the FIR do not effect the case of the claimants adversely.

10. Furthermore, as it is borne out from the record after registration of the FIR, the matter was investigated and the accident was found to have been caused due to rash and negligent driving of the offending car by Mastu Ram, for that reason challan was filed against him in the Court and he is facing trial. The claimants have proved in evidence the necessary documents in that regard besides examining PW3 Surender Kumar at whose instance the FIR was lodged and PW2 Hukam Chand, who had provided the ocular evidence. The Tribunal has dealt with this aspect in detail by analysing the evidence adduced by the parties on the issue as well as settled judicial position. I do not see any defect or infirmity in the approach of the Tribunal. The Tribunal was fully justified in deciding issue No.1 in favour of the claimants and against the

respondents holding that the accident in question in which Ravinder son of claimants had lost his life had taken place due to rash and negligent driving of offending car by respondent No.1 – Mastu Ram (driver).

11. The main thrust of arguments by learned counsel for the appellant – insurance company was in that regard. Though he has tried to attack the impugned award on the point of quantum of compensation also but I find that the compensation awarded is just and appropriate keeping in view the settled principles of law laid down by the Apex Court in cases ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009*** and ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77*** on the subject and no question is there for reducing the compensation so awarded.

12. No other point was argued by learned counsel for the appellant – insurance company.

13. The findings recorded by the Tribunal are well reasoned and cannot be said to be arbitrary or erroneous contrary to the evidence available on record. Therefore, there is no ground to set aside the award.

14. Finding no merit in the appeal, the same stands dismissed accordingly.

Since the main appeal stands dismissed, miscellaneous applications, if any, stand disposed of accordingly.

10.11.2022 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No