

FAO-296-2023 (O&M)

Date of Decision :08.02.2023

UNITED INDIA INSURANCE COMPANY LTD ...Appellant

versus

ANITA AND ORSRespondents

Coram : Hon'ble Mr. Justice B.S. WaliaPresent : Mr. Maninder Arora, Advocate for the appellant.
Mr. Kulvir Narwal, Advocate for the respondents.

B.S. Walia, J. (Oral)

[1] Challenge by the Insurance Company in the instant appeal is to the award passed by the learned Motor Accident Claims Tribunal, Rohtak awarding compensation of Rs.18,62,320/- to respondent Nos.1 to 3/claimants on account of death of Pawan due to rash and negligent driving of tractor by respondent No.4.

[2] Notice was issued in the instant case for final disposal on the submission of counsel for the appellant that deceased being a gratuitous passenger and sitting on the mudguard of the tractor, claim against the Insurance Company was not maintainable in view of the decision of this Court in *Ajay Kumar and others vs. Darshana Devi and others, 2019 (2) Law Herald 1536*, and in the circumstances, the learned Tribunal had erroneously declined the Insurance Company the right to recover the compensation payable by it from the owner / driver of the offending vehicle.

[3] Pursuant to notice issued, Mr. Kulvir Narwal, Advocate has put in appearance on behalf of respondent Nos.4 and 5 i.e. owner and driver of the offending vehicle and contends that the petition is misconceived as there

is no finding in the award of the deceased sitting on the mudguard of the tractor at the time of his death. Learned counsel contends that in fact the appeal has been filed on false grounds as perusal of the award reveals that the deceased had alighted from the tractor for answering the call of nature and when he was returning, driver of the tractor started the tractor and hit against the deceased resulting in his death. Relevant extract of the award is reproduced as under:-

“2. Petitioner No.1 is the widow, petitioner No.2 is the minor son and petitioner No.3 is the mother of the deceased. The case as set up by the petitioners is that on 17.04.2021, the deceased Pawan Kumar along with his brothers Pardeep Kumar and Kuldeep was going from his village Morkheri, District Rohtak to meet his cousin Rakesh on a tractor bearing registration No. HR-10J/3997 (hereinafter referred to as the offending vehicle). Kuldeep was driving the offending vehicle in a rash and negligent manner and at a very high speed. Deceased Pawan Kumar and his brother Pardeep Kumar asked Kuldeep to drive the tractor slowly but he did not pay any heed to their request. At about 9.00 p.m., when they reached Jakhoda bye-pass in the area of Police Station Asauda, District Jhajjar, Pawan Kumar felt nature call and he asked Kuldeep to stop the tractor. Kuldeep stopped the tractor and Pawan Kumar went to attend call of nature. When Pawan Kumar returned back, Kuldeep was watching on other side towards farmer's tent and suddenly he started the tractor at a fast speed and in a negligent manner and hit against Pawan Kumar. As a result of that, Pawan Kumar fell down and sustained multiple grievous injuries. Pawan Kumar was shifted to Civil Hospital, Bahadugarh where he was declared brought dead by the doctor on duty. The accident took place due to rash and negligent driving of the offending vehicle by respondent No.1. On the basis of statement

of Pardeep Kumar, FIR No.121 dated 18.04.2021, under Sections 279 & 304-A IPC was registered at Police Station Asauda.”

[4] Faced with the aforementioned submission, learned counsel for the appellant contends that the deceased was in the process of climbing the tractor.

[5] A perusal of the award also does not reveal any such position as has been contended by learned counsel for the appellant. In fact, a perusal of the relevant lines of paragraph No.12 of the award reveals that when Pawan Kumar deceased returned after answering the call of nature, the driver i.e.his brother was looking towards the other side and suddenly started the tractor at a fast speed and in the process struck against the deceased Pawan Kumar as a result of which Pawan Kumar fell down and sustained multiple grievous injuries. The award does not reflect that the deceased fell down from the tractor. On query, learned counsel for the appellant concedes that there is no evidence to the effect that the deceased fell down from the tractor while getting on to the same. In the circumstances, the judgment cited by the learned counsel for the appellant is of no avail.

[6] Accordingly, find no merit in the appeal, the same is dismissed.

(B.S. Walia)
Judge

08.02.2023
'Amit'

Whether speaking/ reasoned : Yes/No
Whether reportable : Yes/No