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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1918-2022 (O&M)
Date of decision: January 31, 2023

The New India Assurance Company Limited
....Appellant
versus

Saroj Bala and others
....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Punit Jain, Advocate
for the appellant-Insurance Company.

Mr. Ashwani Arora, Advocate for respondents No.1 to 5.

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ARUN MONGA, J. (ORAL)

CM-17449-CII-2022

For reasons stated in the application, same is allowed, subject to all just exceptions. Copies of investigation reports as Annexures A-6 and A-7 are taken on record.

CM-5450-CII-2022

This is an application for placing on record copy of RTI reply from the office of Motor Licensing Officer, Zonal Office, Mall Road, Delhi as additional evidence (Annexure A-4).

Application is dismissed as no explanation is coming forth for adducing relevant evidence which was clearly in possession of the claimant at the time when learned Tribunal was seized of the matter. The impugned award was pronounced on 17.11.2021 and the application has been filed belatedly without there being any sufficient cause.

Dismissed.

<u>Main case (O&M)</u>

Appellant before this Court is the Insurance Company seeking to set aside impugned award dated 17.11.2021passed by learned Motor Accidents Claims Tribunal, Chandigarh(for short 'Tribunal) whereby, claim petition filed by respondents No.1 to 5-claimants, was partly allowed.

2. Succinct facts as noted by the Tribunal are as below:

> "*On 27.05.2018 at about 6.30 AM Sanjeev Kumar (deceased)and Onkar Chand were coming from Ratia, District Fatehabad(Haryana) to village Loharin, Distrit Hamirpur (HP) while sitting in a Bolero Pick up bearing registration No.HP-67-1476whichwas being driven at fast speed and in a rash and negligent manner by Surinder Kumar, respondent No. 1. The vehicle was loaded with wheat. When they reached in Samana, District Patiala at that time the aforesaid Pick up went out of control due to over speed and struck against a wall. As a result of this accident, the deceased received serious injuries. He was immediately taken to Civil Hospital-Samana from where he was referred to PGI, Chandigarh where he remained under prolonged medical treatment. The deceased also remained under prolonged treatment under DMC Hospital, Ludhiana and he ultimately expired on 03.01.2020 due to the injuries he sustained in the accident. It is averred that the accident took place due to rash and negligent driving of Pickup No. HP-67-1476 driven by Surinder Kumar, respondent No.1. It is claimed that deceased on the date of accident was 41 years old. He was Cleaner on of Bolero Pickup No.HP-67-1476 and earningRs.12,000/- per month. Hence, a compensation of Rs.75 lacs along with interest @ 12% per annum from the date of filing ofthe claim petition till realization has been claimed by the claimants being LRs of the deceased.*"

Said Sanjeev Kumar was the cleaner of the offending vehicle.

3. Upon notice, respondents-driver and owner of alleged offending vehicle were proceeded against *ex parte*. Appellant-Insurance Company contested the claim petition and filed written statement stating

that respondent-driver was not holding a valid driving license at the time of accident and hence, there was violation of the terms and conditions of the Insurance Policy. Insurance Company cannot be fastened with any liability. It was further submitted that Sanjeev Kumar was a gratuitous passenger traveling in a goods carrying vehicle having seating capacity of two whereas three persons were travelling in the alleged vehicle and, thus, there was violation of terms and conditions of the insurance policy. Remaining averments were denied and prayer for dismissal of the claim petition was made.

4. During the pendency of the claim petition, claimant Sanjeev Kumar expired on 3.1.2020 and accordingly, the claim petition was amended. Thereafter, learned Tribunal framed the following issues:

> "*1. Whether accident resulting into the death of Sanjeev Kumar s/o Sh.Baldev Singh took place due to rash and negligent driving of vehicle make of Bolero Pick up bearing registration No.HP-67-1476 on the part of driver of said vehicle namely Surinder Kumar, respondent No. 1? OPP.*
> *2. Whether claimants are entitled to compensation for the death of Sanjeev Kumar s/o Sh.Baldev Singh in the accident, if so, to what extent and from whom? OPP*
> *3. Whether the offending vehicle was being driven in violation of terms and conditions of the insurance policy, if so, its effect? OPR*
> *4. Relief.*"

5. On appraisal of record/ evidence, learned Tribunal decided issue No.1 to 3 in favour of the claimants. Consequently, claim petition was decided partly in favour of the claimants. Appellant-Insurance Company was held liable to pay claimants a total compensation of

Rs.22,33,387/-, within a period of two months, along with interest @ 6% per annum from the date of filing of petition till actual realization.

6. I have heard learned counsel for the parties and gone through the record.

7. Learned counsel for the appellant has argued that the offending vehicle was not involved in the accident. The said argument has been canvassed substantially on three grounds; (A) The DDR recorded after the accident does not mention registration number of the vehicle; (B) No FIR was registered after recording of the DDR; and (C) The discharge summary (Annexure A-2, Exhibit P-11 before the Tribunal) issued by the medical officer at PGI clearly states that the accident took place while the deceased was sitting in a trolley.

7.1 Having heard arguments at some length, I am unable to persuade myself with the totally new defence taken at this stage, *de hors* the defence on record.

7.2 Adverting to the third ground first i.e., whether the deceased was sitting in the trolley at the time of accident? Pertinently, the said discharge summary was produced before the Tribunal as Exhibit P-11 by the claimants and yet appellate-Insurance Company neither confronted any of the claimants witnesses with the same nor took any steps to summon medical officer, who had issued the said discharge summary. Even otherwise, attending physicians, who had treated the deceased, when appeared in the witness-box in support of the claimant petition, were put to cross-examination and even they were never asked any questions *qua* the said discharge summary. Furthermore, the Insurance Company carried out its own independent investigation and the relevant concluding portion of report dated13.05.2019 (Annexure A-6) is reproduced herein below:

> ***Opinion/ Remarks of the Investigator***
>
> *"The contents of General Diary no 37 dt 28-05-2018 of P.S. Samana reveals that the said accident took place all of a sudden as the vehicle went out of control and struck against a wall. No one is responsible for this accident."*
>
> *Xxxx xxxx xxxx*
>
> ***Conclusions:***
>
> *On investigation, scrutiny of papers and discussions with many people it is gathered and concluded that:-*
>
> 1. *Claimant sustained bodily injuries in this accident, who was travelling as cleaner in the vehicle.*
> 2. *xxxxx xxxxx xxxx*"

7.3 Perusal of the above report clearly reflects that the defence taken before this Court flies in the face of its own investigation report. The said report is self-speaking and I need not comment on the same any further. In addition to the report, Insurance Company had though taken a plea in the written statement that the offending vehicle was not involved, but never took any steps to get issue framed *qua* the same nor even bothered at the time of adducing the evidence on the same driver and/ or owner of the vehicle to confront them regarding whereabouts of the vehicle at the time of accident.

7.4 Adverting now to the other ground of FIR not being registered. It was also open to the Insurance Company to have approached the police authorities who recorded the DDR and request that further investigation be carried out. In case, Insurance Company was aggrieved for not taking the DDR to its logical conclusion, it ought to have taken appropriate legal action against inaction of the police officials. In fact, shoe seems to be on the other foot inasmuch as Insurance Company rather conducted its own independent investigation of which report dated 13.05.2019 was furnished and still clearly contradictory stand was taken in the written statement regarding the vehicle not being involved in the accident when it seems to have acquiesced before the Tribunal of its involvement in the accident.

7.5 As regards non-mentioning of the vehicle number at the time of DDR, the same also does not result in any legal presumption that the offending vehicle was a trolley. In fact, the narratives given in the DDR suggest that it was the Balero pick-up vehicle as has been pleaded in the claim petition though of-course the number is not mentioned. Being apposite, same is reproduced herein below:

> *" **GENERAL DIARY REPORT***
>
> *State: PUNJAB*
> *P.S: CITY SAMANA*
> *District: PATIALA*
>
> 1. *G.D No.: 037*
> 2. *G.D Date: 28/05/2018 14:36 hrs*
> 3. *G.D Type : Others*
> 4. *Entry for (officer) :Jagtar Singh*
> 5. *Case Type: ADULT*
> 6. *G.D, Brief:*
> *It is to be recorded that injured Sanjeev Kumar S/o Baldev Singh R/o Lohari, District Hamirpur, Himachal Pradesh is admitted in PGI due to injuries from RSA. Send IO for further investigation. We contacted the Father-In- Law namely Onkar Chand S/o Jivan Ram R/o Drogav Police Station Tohni Devi, District Hamirpur, Himachal Pradesh of injured on mobile No. 88941-62399, who told that this accident had happened suddenly due to Gaddi*

(Vehicle) goes out of control and strucked against a wall at Ambedkar Chowk Samana and no one is responsible for this accident. He also said that injured Sanjiv Kumar is now in good condition. This information is to be record and registered.

7. Subject: ASI Jagtar Singh
8. Acts &Section :

S. No.	*ACTS*	*SECTION*

Report Printed On: 15/07/2018 *Sd/- Signature*

Report Printed by *Name Gurbax Singh*
Name: Gurbax Singh *Rank: HC (Head Constable)*
Rank: HC (Head Constable) *No. 506/PTL"*

8. The fact of accident given in the DDR clearly is in tune with what has been deposed by the witnesses, who appeared in support of the claim petition. Here the Insurance Company clearly faltered in not putting any of the witnesses to the so-called omission of the number being not mentioned in the DDR and/ or the same being an afterthought, as is being argued here, at this stage. In this aspect, findings of the learned Tribunal are relevant, which are reproduced herein below:

"xx xx xx.

In the light of the above rival submissions and to see as to whether there was any relation of the accident for the cause of death of the deceased, the medical evidence is to be scanned. It is the admitted fact the accident of the deceased had taken place on 27.5.2018which was being witnessed by PW2 as they both were travelling in the same vehicle which was being driven by respondent No. 1. It is also proved by the claimants with their unrebutted evidence that PW2 was not only the eye witness but has also proved that the act of driving of respondentNo.1 of the offending vehicle was rash and negligent as he was driving his vehicle with high speed which had ultimately struck with a wall on account of losing control by him on his vehicle.

The medical evidence brought by the claimants to solve the controversy regarding the connection in *between injuries and death of the deceased is very valuable and helpful for this tribunal. PW3Dr. Puneet from the Neuro Surgery Department of PGI, Chandigarh deposed about admission of the deceased with the history of road side accident in the emergency of PGI on27.5.2018 and was diagnosed as a case of cervical spine injury, C-4 and C-5 anterolisthesis with right perched facet and left locked facet. A surgery was performed forC-4 &C-5 injury with the intervention of the implant. The patient was quadricpleqic. In these kind of injuries, the person remains totally confine to bed. He further deposed that these type of patients being confined to can have bed sores deep vein thrombosis. The patient once confined to bed totally is prone to infection and multiple other problems. He clearly deposed that the possibility of death due to the above referred problem particularly when the person is suffering with grievous injuries, cannot be ruled out. These type of patients remain bed ridden and there are no chances/minimal chances of recovery. He provedEx.P11 & Ex. P12 which were issued from his hospital. It has also come in his evidence that the patient had no control over bowel and bladder and required nursing care/attendant round the clock during his lifetime. Though he deposed that he cannot comment exactly about cause of his death but there were more chances of infections in such type of patients which may cause death.*

PW4 Dr. Archit from the department of Neuro Surgey, PGI, Chandigarh also deposed on the same lines as that of PW3. Thus, there is corroboration in between the testimony of PW3 and PW4. It has also come through his testimony that as the person in such cases remain confine to bed, he may contact many other diseases. There are also chances of bed sores being the person confines to bed. Because of all these problems, the chances of his survival were bleak which may cause his death. He further supported to have issued Ex.P11 &Ex. P12 by his hospital.

PW5 Dr. Ravnish Garg from Daya Nand Medical College, Ludhiana from the department of Plastic Surgery deposed that patient Sanjeev Kumar was admitted in his hospital firstly on 29.8.2018 with alleged history of road side accident resulting spinal injury on27.5.2018. He undergone surgery for cervical vertebrae at PGI, Chandigarh and was admitted in his hospital for the management of multiple pressure sores involving saclum, bilateral prochentres and bilateral specular region. The patient had underwent multiple surgeries and dressing *along with nursing care and care of bladder and bowel. He was operated multiple time sand was lastly admitted in their hospital on 13.11.2019and was discharged on 21.12.2019. Lastly, he deposed that since the patient was bed ridden and there was every possibility of developing secondary complications which could cause his death. He proved discharge summaries issued by the hospital as Ex.P13 toEx.P18.From the entire medical evidence discussed above, this tribunal has found force in the submissions of learned counsel for the claimants where he has argued that the death of the deceased was a clear result of the injuries and its complications sustained by the deceased in the accident on 27.5.2018.*

From the medical evidence brought by the claimants it is proved that after the injuries sustained by the deceased he had become completely bed ridden and even was not able to change his posture. Even he was advised to sit on the bed after every two hours, that way, he was in the requirement of constant nursing and attendant care. It is proved on the record by the claimants that since after getting injuries by the deceased in the accident till his death he completely remained bed ridden and ultimately had developed bedsores/pressure sores on his body which ultimately became the cause of his death.

The collective study of the testimonies of the medical witnesses from PW3 to PW6, it speaks in volumes that the death of the deceased was ultimately caused by the injuries sustained by him in the accident as after sustaining the injuries, the deceased could never be got cured and remained bed ridden during the entire period till his death. There is no doubt that there was a long gap in between the date of accident and death of the deceased, however, it is proved on the record beyond doubt that the death of the deceased had a clear connection and relation with his accident which was caused on27.5.2018.

As far as the rash and negligent act of driving on part of respondent No.1 is concerned, the same has been proved by the claimants with the evidence of PW2whereas the respondent No.3 could not disprove this fact. The respondent No.1 being the driver of the offending vehicle did not come present in the witness box nor he was summoned by respondent No.3.Accordingly, issue No.1 is proved in favour of the claimants."

9. Perusal of the above reflects that entire approach and emphasis of the Insurance Company before the Tribunal was rather on the defence taken that the driver of the offending vehicle was not rash and negligent in manner while driving the vehicle, and even issue No.1 was accordingly, framed in the same terms, which is as below:

> "*1. Whether accident resulting into the death of Sanjeev Kumar s/o Sh. Baldev Singh took place due to rash and negligent driving of vehicle make of Bolero Pick up bearing registration No.HP-67-1476 on the part of driver of said vehicle namely Surinder Kumar, respondent No. 1? OPP.*"

10. In totality of the circumstances and after having perused the impugned award, I see no grounds to interfere as the same has been rendered on the basis of cogent evidence produced by the claimants coupled with the absence of any pleading and lack of any evidence on the part of the Insurance Company to show that offending vehicle was not involved in the accident.

11. No grounds to interfere are made out.

12. Dismissed.

13. Pending application(s),if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

January 31, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No