IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.121

Case No. : FAO-2895-2023 (O&M)
Date of Decision : October 09, 2023

Gopal Bhatia and another .... Appellants

vs.

Bajaj Alliance and another .... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Imran Farooqi, Advocate
for the appellants.

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GURBIR SINGH, J. :

1. **CM-10515-C-II-2023 :** This is application under Section 5 of the Limitation Act, 1963 read with Section 151 CPC for condonation of delay of 378 days in filing the present appeal. For the reasons mentioned in the application, the same is allowed and delay of 378 days in filing the present appeal is condoned. The application stands disposed of.

2. **Main Appeal :** This appeal has been filed by the driver and owner (respondents no.1 and 2 respectively before the Motor Accidents Claims Tribunal, Ludhiana – for short, the learned Tribunal) of the offending vehicle i.e. car bearing registration No. PB-13-BF-6648, against the Award dated 31.01.2022, whereby claim petition filed by the claimant-Sukhwinder Kaur (respondent no.2 before the learned Tribunal) under Section 166 of the Motor Vehicles Act, has been allowed against the appellants and dismissed against respondent no.1-Insurance Company.

3. The learned Tribunal, on the basis of evidence led on the file, came to the conclusion that on 27.07.2019, Darshan Singh (since deceased) was coming from Gill Road side on his motor-cycle bearing No.PB-10-CH-2978 towards his village Lohgarh Narangwal, when all of sudden, a car bearing registration No. PB-13-BF-6648, being driven by appellant No.1 in rash and negligent manner, struck his motor-cycle from behind and he succumbed to injuries received by him in the said accident, which took place due to rash and negligent driving of said car by appellant No.1

4. The learned Tribunal further came to the conclusion that the deceased was 57 years old at the time of his death and was working as Supervisor in Dolfin Rubbers Ltd. On the basis of his salary slip Ex.P-5, his monthly income was assessed at Rs.13,000/- per month. 1/3rd of his income was ordered to be deducted as personal expenses. Multiplier of 9 was adopted. 10% amount of his income was added as future prospects. A sum of Rs.40,000/- was granted as loss of consortium. A sum of Rs.15,000/- was granted as loss of estate. A sum of Rs.15,000/- was granted as funeral expenses. Total compensation of Rs.10,99,600/- was awarded, detail whereof reads as under :-

Sr. No.	***Head of Compensation***	***Amount***
01.	Loss of Dependency to claimant (wife)	Rs.19,29,600/-
02.	Loss of Consortium to claimant	Rs.40,000/-
03.	Loss of Estate to claimant	Rs.15,000/-
04.	Funeral Expenses	Rs.15,000/-
	TOTAL	**Rs.10,99,600/-**

The driver and owner of the offending vehicle i.e. appellants were held liable to pay the amount of compensation jointly and severally, with costs and interest at the rate of 6% per annum from the date of institution of the petition till realization. It has further been held that Insurance Policy (Mark-B), placed on the file was fake and forged document. The claim petition against Insurance Company was, therefore, dismissed.

5. Learned counsel for the appellants has argued that the appellants were not properly served, so, they could not contest the petition. The learned Tribunal has reached on erroneous conclusion that vehicle was not insured with respondent no.1-Insurance Company. There was no evidence regarding the age of the deceased and compensation awarded was on a higher side.

6. I have heard learned counsel for the appellants and perused the case file.

7. A perusal of the file shows that in the 'Grounds of Appeal' it is not the case of the appellants that the appellants were not properly served and they had no knowledge about the pendency of the petition. In para no.3 of the Award, it is specifically mentioned that the appellants failed to appear despite due service through publication in the newspaper and were proceeded against ex-parte. The point, which has not been raised in the 'Grounds of Appeal' cannot be argued before the Appellate Court. The learned Tribunal, on the basis of post-mortem report, has held that the age of deceased was 57 years at the time of his death. There is no rebuttal to the said evidence. The learned Tribunal has rightly come to the conclusion about the age of the deceased since it was so mentioned in the post-mortem report. The claimant examined Sushil Kumar (PW-3), who proved the salary slip (Ex.P-5) that the deceased was getting salary of Rs.13,000/- per month. In the absence of any other evidence or rebuttal to the aforesaid evidence, the learned Tribunal was justified in taking the income of the deceased as Rs.13,000/- per month.

8. The appellants have also not placed on the record any insurance cover-note or insurance policy regarding the offending vehicle. Respondent no.1-Insurance Company has examined before the learned Tribunal one witness namely Amit (RW-1), who deposed that policy (Mark-B) was not matching with the format of the original policy because the Branch Code mentioned in that policy was 1991 but the Insurance Company had no such Branch Code. The product code was mentioned as 1802, which is issued to two wheeler not not to four wheeler. The said policy was never issued by the Insurance Company. Another witness Ruhee Rana – Executive Legal (RW-2) further proved that Logo, Name of the Company, Branch Code, Stamp Duty, Notes, Signatures, Scanner, Notes below the signatures of the signatory did not coincide and matched with the format issued by the Insurance Company. Since respondent no.1-Insurance Company did not issue the policy in question and also keeping in view the fact that the appellants have not placed on record any such policy which could show that the offending vehicle was insured at the time of accident, this Court is of the opinion that the claim petition has rightly been dismissed against respondent no.1-Insurance Company.

9. In view of the above, there is no merit in the present appeal and the same is hereby dismissed in limine.

10. Pending applications, if any, shall stand disposed of along with this judgment.

October 09, 2023 **(GURBIR SINGH)**
monika **JUDGE**

Whether speaking/reasoned ?	*Yes.*
Whether reportable ?	*Yes/No.*