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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: March 16, 2023

New India Assurance Company Limited

....Appellant

versus

Jyoti and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Ashwani Talwar, Advocate and
Mr. Sehaj Mahajan, Advocate for appellant.

ARUN MONGA, J. (ORAL)

Aggrieved by Award dated 16.05.2022 rendered by learned Motor Accidents Claims Tribunal, Rohtak (for brevity, Tribunal), appellant-Insurance Company is before this Court by way of an appeal.

2. Succinct facts, as noted by learned Tribunal, are as below:

“.....on 04.11.2019, the deceased Birender alongwith his friend Sunil was coming from Baandikui (Rajasthan) on Bolero car bearing registration No.HR12W/6232. When they reached near petrol pump of village Digavda, Tehsil Rajgarh, District Alwar (Rajasthan), the respondent No.1 came on a mini bus bearing registration No.RJ29PA/1978 (hereinafter referred to as the offending vehicle), driving the same in a rash and negligent manner and at a very high speed and struck against their car. As a result of that, Birender sustained multiple grievous injuries. He was shifted to General Hospital, Rajgarh, District Alwar but on the way he succumbed to the injuries sustained in the accident-in-question. On the basis of statement of Surender Singh, FIR No.557 dated 05.11.2019, under Sections 279, 337 & 304-A IPC was registered at Police Station Rajgarh, District Alwar (Rajasthan).”

2.1. Upon notice, respondents No.6 and 7 herein (driver and owner of alleged offending vehicle) filed joint written statement denying the accident in question. They alleged that offending vehicle was falsely implicated in this case. In fact, no accident was caused by respondent-driver at any point of time. A false FIR

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was registered against him. Remaining averments were denied to be wrong. They prayed for dismissal of petition.

2.2 Appellant-Insurance Company filed separate written statement denying case of the claimants. It alleged that there was violation of terms and conditions of the insurance policy as respondent No.6 herein was not holding a valid and effective driving license on the date of alleged accident. Respondent No.7 herein (owner) was not having valid and effective fitness certificate of the mini bus at the time of accident in question. It was also averred that vehicle No. RJ-29PA/1978 was not involved in alleged accident. Case of the claimants was pleaded to be false and prayed for dismissal of claim petition.

3. Learned Tribunal framed the following issues:

- “1. *Whether the accident in question resulting in death of Birender took place due to rash and negligent driving of vehicle bearing registration No.RJ-29PA/1978 being driven by respondent No.1? OPP*
2. *If issue No.1 is proved in affirmative, whether the petitioners are entitled to compensation? If so, to what extent and from whom? OPP*
3. *Whether the respondent No. 1 was not holding a valid and effective driving licence on the date of alleged accident? Whether the respondent No.1 has violated the terms and conditions of the insurance policy, if so, its effect? OPR-3*
4. *Relief.”*

4. On appraisal of record/ evidence, learned Tribunal decided issues No.1& 2 favour of claimants. Issue No.3 was decided against appellant-Insurance Company. Consequently, a compensation of Rs.51,35,440/- was awarded along with interest @ 6% per annum from the date of petition till its actual realization.

5. I have heard contentions of learned counselor appellant and perused the record.

6. Having heard contentions of learned counsel representing appellant and for reasons being stated herein below, appeal is bereft of any merits and accordingly, deserves to be dismissed.

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7. The crux of the contentions in appeal, and arguments addressed in terms thereof, is that the deceased himself was negligent in driving his balero car, who, while overtaking the insured minibus, rammed his balero car into the insured minibus on its driver's side. And, since the offending bus did not have a fitness certificate at the time of accident, the liability of the insurer was thus excluded. Basis thereof, learned counsel argues that Tribunal below erred in holding that the accident was caused due to the negligent driving of the minibus by its driver. It, therefore, wrongly held the insurance company to be liable for compensating the claimants.

8. I have gone through the statements of PWs Surender Singh and Sunil Kumar reproduced in the memo of appeal. The definite and positive testimony of PW Sunil Kumar is that he was sitting with the deceased in the baleno car at the time of accident, the mini bus had come in a rash and negligent manner and struck their car from by its side (of mini bus). He also deposed that on the statement of PW Surender Singh (brother of the deceased), the FIR was recorded. The testimony of PW Surender Singh is consistent with that of PW Sunil Kumar. Absolutely nothing was brought out in their cross-examination to show that Birender Singh deceased was negligent in driving his balero car and had, while overtaking the insured minibus, rammed his car into the insured minibus. No such inference can be drawn on conjectures and surmises alone.

9. Categorical observations/findings recorded by the Learned trial Court recorded in the impugned order are that fitness certificate Ex. R-3 (of the mini bus) had been issued on 27.02.2019, was to expire on 26.02.2020 and that on the date of accident (04.11.2019), respondent No. 2 held valid fitness certificate.

10. Record thus negatives the aforesaid contentions raised in the appeal.

Accordingly, the same are rejected.

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11. That apart, I am unable to persuade myself with the arguments of learned counsel for appellant-Insurance Company that learned Tribunal ought to have ascertained contributory negligence on the part of driver of Bolero Car in which deceased was sitting as a co-passenger at the time of accident, which resulted in accident leading to death of deceased. It was open to Insurance Company to adduce evidence *qua* this factual aspect of the matter at the relevant time. Not only it failed to do so, on the other hand, there was not even an attempt made before learned Tribunal to get any issue framed that driver of Bolero Car was driving it in a rash and negligent manner. In fact, even FIR which led to criminal proceedings wherein evidence was adduced *qua* negligence also did not reveal any such contributory negligence on the part of driver of Bolero car. It appears that this argument has been raised without any basis on record at belated stage before this Court to get out of cogent findings returned by learned Tribunal which do not otherwise, warrant any interference. Other than above factual aspect, no question of law has been canvassed by learned counsel for appellant.

12. In the premise, no grounds for interference are made out.

13. Dismissed.

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

(ARUN MONGA)
JUDGE

March 16, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No