IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-3356-2012 (O&M)
Reserved on:- 13.10.2023
Pronounced on:- 22.11.2023

Reliance General Insurance Company Limited
....Appellant

Versus

Darshan Kaur and others
...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Tajender Joshi, Advocate
for the appellant.

Mr. N.K. Malhotra, Advocate
for respondents No. 1 to 3/claimants.

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AMARJOT BHATTI, J.

1. The appellant – Reliance General Insurance Company Limited has filed present appeal against impugned Award dated 20.12.2011 passed by learned Motor Accident Claims Tribunal, Panchkula vide which the respondents No. 1 to 3/claimants have been awarded compensation of Rs. 28,92,008/- along with interest at the rate of 6% per annum from the date of institution of the petition till realization of the award, as detailed therein.

2. The facts of the case are that the claimants Darshan Kaur, Mandeep Sharma and Rupinder Sharma filed the claim petition under Section 166 of Motor Vehicles Act for grant of compensation to the tune of Rs. 30 lacs with interest on account of death of Baljit Kumar Sharma in a motor vehicular accident on 29.11.2008. Late Baljit Kumar Sharma was about 51 years old at the time of accident. He was working as Junior Engineer at Punjab State Electricity Board and was getting salary of Rs.

17,000/- per month. The claimant No.1 is the widow, claimant No. 2 is the major son and claimant No. 3 is the minor son of late Baljit Kumar Sharma. This claim petition was filed against respondent No. 1 who is owner-cum-driver of the offending Truck bearing Registration No. HR-38B-0326, whereas, respondent No. 2 is allegedly the insurance company with whom the said offending Truck was insured.

3. Notice of claim petition was given to the respondents. The respondents No. 1 and 2 appeared and filed their written statements. In the written statement filed by respondent No. 1, preliminary objections regarding maintainability, non-joinder of necessary parties were taken. On merits, all the facts as mentioned in the claim petition were denied. It was also denied that the deceased was employed anywhere. The accident took place on account of rash and negligent driving of deceased himself. The deceased was only a labourer and he was not earning more than Rs. 2000/- per month. It was prayed that claim petition qua the present respondent may be dismissed with special cost.

4. The respondent No. 2 - Insurance Company also filed written statement alleging that the answering respondent has been wrongly impleaded as a respondent as the vehicle bearing No. HR-38B-0326 was not insured with them. The driver of the vehicle in question was not holding a valid and proper driving license. The claimants have not given any intimation about the policy particulars and the driving license, thus violated the terms and conditions of insurance policy. It was submitted that the claim petition was filed just to extract compensation from the answering respondent. While denying the remaining averments, a prayer for dismissal of the claim petition was made.

5. From the pleadings of the parties, following issues were framed by the Tribunal on 11.06.2010 :-

(1) Whether Baljit Kumar Sharma died in a vehicular accident on 29.11.2008 near bus stop of village Wazidpur on Bhiwanigarh to Patiala road within the area of Police Station Sadar Patiala on account of rash and negligent driving of truck bearing No. HR-38B-0326 by respondent No. 1 Manga Singh?

OPP

(2) Whether the claimants are entitled to any compensation, if so to what amount and from whom?

OPP

(3) Whether the claim petition is bad for non-joinder of necessary parties?

OPR

(4) Whether driver of the vehicle in question was not holding a valid and effective driving license, if so its effect?

OPR3

(5) Whether the claim petition has been filed by the claimant in collusion with respondent No. 1, if so its effect?

OPR3

(6) Relief.

6. In order to prove the claim petition, claimant No. 1 Darshan Kaur herself stepped into the witness box as PW-1. The claimants also examined Jagdev Singh, eye witness as PW-2 and Shiv Chand as PW-3. Thereafter, learned counsel for the petitioners closed the evidence and tendered documents i.e. attested copy of FIR as Ex.P-3 and attested copy of Postmortem Report as Ex.P-4.

7. In order to rebut the case of the claimants, no oral evidence has been led by respondents. However, learned counsel for respondent No.1 tendered documents i.e. copy of driving license as Ex.R-1, copy of Registration Certificate as Ex.R-2, copy of fitness certificate and route permit as Ex.R-3 and Ex.R-4 and insurance policy as Ex.R-5 (objected to)

and closed the evidence.

Numerous opportunities were granted to respondent No. 2 to lead evidence. However, neither oral nor documentary evidence was led by respondent No. 2, as a result, the evidence of respondent No. 2 was closed by the order of the Tribunal.

8. Thereafter, learned counsel for the claimants filed application for leading additional evidence, which was allowed vide order dated 20.05.2011 and learned counsel for claimants tendered documents i.e. copy of report under Section 173 Cr.P.C. as Ex.P-5 and certified copy of charge-sheet as Ex.P-6 and closed the additional evidence.

On the other hand, learned counsels for the respondents suffered separate statements that they do not want to lead any evidence in rebuttal to the additional evidence of claimants.

9. After hearing the arguments advanced by learned counsel for all the parties, the claim petition filed by the claimants was allowed by passing Award dated 20.12.2011, as referred above by holding the liability of respondents as joint and several. Feeling aggrieved of this Award, the present appeal has been preferred by Reliance General Insurance Co. Ltd.

10. I have heard the arguments advanced by learned counsel for the appellant/insurance company as well as the arguments advanced by learned counsel for the respondents/claimants. The learned counsel for appellant/insurance company pointed out that Award dated 20.12.2011 passed by learned Motor Accident Claims Tribunal, Panchkula in favour of respondents No. 1 to 3/claimants to the tune of Rs. 28,92,008/- is totally wrong, illegal and against the settled principles of law. The evidence on record was not rightly appreciated by the Tribunal. The learned counsel for the insurance company firstly raised the issue that the offending vehicle

bearing Registration No. HR-38B-0326 was not insured with appellant/insurance company. The insurance company had taken specific stand in preliminary objections. Despite this, this fact has been totally ignored by the learned Tribunal. The claimants or the driver-cum-owner of the vehicle failed to place on record the cover note or the insurance policy to establish this fact. The learned Tribunal has not given any reason for holding the appellant/insurance company to pay the compensation awarded in favour of the claimants.

Secondly, the learned counsel for the insurance company raised the issue that compensation awarded in this case is towards the higher side. The income of deceased was taken as Rs. 28,858/- but failed to deduct the income tax on the said amount. The Tribunal was required to deduct 30% income tax on the said income. Apart from this, the learned Motor Accident Claims Tribunal, Panchkula has wrongly deducted 1/4th income towards personal expenses while calculating the dependency. There were three claimants and by relying upon the citation ***2009(6) SCC 121,*** case titled "**Smt. Sarla Verma v. Delhi Transport Corporation**", **Supreme Court**, it is argued that 1/3rd income was required to be deducted towards the personal expenditure. The quantum of compensation was calculated by applying the multiplier of 11. Even though in para No. 16 of the impugned Award, the multiplier is mentioned as that of 14. The learned Motor Accident Claims Tribunal, Panchkula has failed to consider that the deceased was more than 51 years of age and he was to retire at the age of 58 years and after superannuation he would have got only pension. Therefore, the quantum of compensation awarded in favour of respondents No. 1 to 3/claimants is highly excessive and it requires modification. The learned counsel for the appellant/insurance company argued that appeal preferred by the insurance company may be allowed and in case any compensation is awarded then it is the owner-cum-driver of the offending vehicle who is liable to pay the same.

11. On the other hand, the learned counsel for the respondents No. 1 to 3/claimants conceded that regarding preliminary objection No. 1 raised in the written statement filed by the insurance company no issue was framed. Therefore, no finding has been returned by the learned Motor Accident Claims Tribunal, Panchkula. So far as quantum of compensation is concerned, it is pointed out that in-fact the compensation awarded by the Tribunal is towards the lower side. Even though, 1/3rd income was to be deducted towards personal expenditure but no increase in income has been considered towards future prospects and even the compensation granted under the conventional heads is also towards the lower side.

So far as respondent No. 4, owner-cum-driver of the offending vehicle is concerned, he is *exparte* in this appeal.

12. I have considered the aforesaid factual position. Firstly while dealing with issue No. 2 regarding quantum of compensation is concerned, the learned Motor Accident Claims Tribunal, Panchkula considered the income of deceased as per salary certificate Ex.P-1 but after considering the annual salary, the deduction on account of income tax payable at the relevant time has not been considered. It is admitted by the learned counsel for insurance company as well as by the learned counsel for claimants that 1/4th income was deducted towards personal expenditure, even though the claim petition was filed by the three claimants. Apart from this, the learned Motor Accident Claims Tribunal, Panchkula further failed to consider that the deceased was getting settled income, even then the future prospects regarding increase in income has not been considered. Therefore, the

quantum of compensation awarded in favour of the claimants also needs re-calculation, keeping in mind the law cited in ***2009 ACJ 1298 Supreme Court of India***, in case titled "**Smt. Sarla Verma and others Vs Delhi Transport Corporation and another**" as well as the law settled in ***2017(4) R.C.R.(Civil) 1009***, in case titled "**National Insurance Company Limited versus Pranay Sethi and Ors.**".

The other important aspect of the present case is the liability of the respondents to pay compensation as awarded by the Tribunal. The record received from the Tribunal indicates that claim petition was contested by both the respondents. The insurance company filed written statement taking preliminary objection that the insurance company was wrongly impleaded as respondent as vehicle bearing Registration No. HR-38B-0326 was not insured with the answering respondent/insurance company on the date of accident i.e. 29.11.2008. However, no issue is framed by the learned Motor Accident Claims Tribunal, Panchkula regarding the specific objection raised in preliminary objection No. 1 in the written statement filed by the insurance company. The learned counsel for respondent No. 1 Manga Singh has merely tendered the documents Ex.R-1 to Ex.R-5 which includes one proposal form of Reliance General Insurance Company as Ex.R-5. The learned counsel for insurance company did not lead any evidence and the same was closed. Since, no specific issue was framed on preliminary objection No. 1 in the written statement filed by the insurance company, therefore, no specific finding has been returned by the learned Motor Accident Claims Tribunal, Panchkula as the offending vehicle was actually insured with the insurance company or not.

In the light of aforesaid factual position, the Award dated 20.12.2011 passed by learned Motor Accident Claims Tribunal, Panchkula is set aside and the MACT case No. 102 of 2009 instituted on 27.02.2009 is remanded back to the successor Court for framing additional issue regarding preliminary objection No. 1 in the written statement filed by the insurance company and to decide the case afresh, in view of aforesaid observation.

The original record received from the lower Court be sent back with further direction that since the case is old one, therefore, the Tribunal shall make every possible effort to dispose of the case within a period of six months from today.

Pending application(s) if any, also stands disposed of.

22.11.2023 **(AMARJOT BHATTI)**
lalit **JUDGE**

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