IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-331-2016
Reserved on:- 20.07.2023
Pronounced on:- 17.08.2023

Reliance General Insurance Company Limited

...Appellant

Versus

Balvir and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Sanjeev Kodan, Advocate
for the appellant- Insurance Company.

Mr. Sajjan Singh, Advocate
for respondent No. 1.

Respondents No. 2 and 3 proceeded *exparte*
vide order dated 15.07.2016.

Mr. Ravi Kumar, Advocate
for Mr. Sanjeev Goyal, Advocate
for respondent No. 4.

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AMARJOT BHATTI, J.

1. The appellant – Reliance General Insurance Company Limited filed present appeal against impugned Award dated 21.11.2015 passed by learned Motor Accident Claims Tribunal, Jhajjar vide which the respondent No. 1/claimant has been awarded compensation of Rs.6,04,500/-, out of which respondents No. 1 to 3 relating to Trailor bearing Registration No. RJ-30GA-2233 were directed to pay Rs.4,04,500/- along with interest at the rate of 8% per annum from the date of the filing of petition till realization holding primary liability of

respondent No. 3 and remaining sum of Rs. 2,00,000/- to be paid by respondent No. 4 being insurer of Eicher 407 bearing Registration No. HR-63B-3576 without interest, as detailed therein.

2. The facts of the case are that Balvir filed claim petition under Section 163-A of the Motor Vehicles Act, 1988 for grant of compensation of Rs. 10,00,000/- alongwith interest @24% per annum on account of death of his son Suresh in a motor vehicular accident on 01.06.2012. Late Suresh was about 37 years old at the time of accident. He was driver by profession and was earning Rs.3,300/- per month from all sources. On the fateful day of 01.06.2012 at about 03:30 P.M., Suresh was coming from Beawar Side on his vehicle Eicher – 407, bearing Registration No. HR-63-B-3576. When he reached near Shri Nath Hotel in front of Badjatya Automobiles, the deceased Suresh lost the balance of his vehicle due to which his vehicle struck with Trailer bearing Registration No. RJ-30-GA-2233 and suffered serious injuries. Suresh was taken out from the said vehicle and was sent to A.K.H. Beawar for medical treatment, from where he was referred to Ajmer, where he was declared dead by the doctors and his postmortem was conducted. The matter was reported to the police and on the statement of complainant Balvir father of the deceased Suresh, FIR No. 218 dated 01.06.2012, under Section 279, 304-A of IPC was registered at Police Station Sadar Beawar. Hence the claim petition was filed.

3. The claim petition was contested by respondents No. 3 and 4. In the written statement filed by respondent No. 3 i.e. ICICI Lombard General Insurance Company Limited, the preliminary objections regarding jurisdiction, cause of action and violation of terms and conditions of Insurance Policy were taken. It is submitted that respondent No. 1 Badri

Lal Rebari driver of offending Trailor was not holding any valid and effective driving license and documents of the said vehicle. The insured did not inform the answering respondent about the alleged accident as per terms and conditions of the policy and law. It is further submitted that the insurance company and owner of Eicher 407 bearing No. HR-63B-3576 are not impleaded as party, therefore, the present claim petition is bad for non-joinder and mis-joinder of necessary parties. On merits, it is submitted that no accident took place near Shrinath Hotel on 01.06.2012. A false case has been registered by the claimant in collusion with the local police. The respondent No. 3 specifically denied the factum of accident. It was prayed that the claim petition may be dismissed with costs.

4. In the written statement filed by respondent No. 4, preliminary objections regarding cause of action, locus standi, jurisdiction have been taken. It is submitted that the answering respondent has no liability to indemnify the insured or to pay any compensation to the claimant. The claim petition is not maintainable under Section 163-A as the provisions of Section 163-A are only applicable to the Third Party as the said provisions fall under Chapter XI (Section 145 to 164) of the Motor Vehicle Act, 1988. The claimant in collusion with police officials registered false FIR. On merits, the factum of deceased Suresh being driver by profession and earning Rs.3300/- per month is denied. The involvement and negligence of vehicle bearing No. HR-63-B-3576 (Eicher-407) is also denied. It is submitted that the alleged accident, if any caused solely due to the negligence of driver of vehicle RJ-30-GA-2233 (Trailor), who while driving the same at a high speed came from wrong side of road and dashed by unknown vehicle. Therefore, the Insurance Company is absolved of its

liability to pay the compensation. It was prayed that the claim petition filed by the claimant may be dismissed qua the answering respondent – Insurance Company.

5. From the pleadings of the parties, following issues were framed by the Tribunal on 29.07.2015:-

> *(1) Whether Suresh son of Balvir died due to use of four wheeler Eicher 407 bearing Reg. No. HR-63B-3576, owned by Suresh (since deceased) and insured with respondent No. 4? OPP*
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> *(2) Whether Suresh son of Balvir died due to driving of vehicle bearing Reg. No. RJ-30-GA-2233, being driven by respondent No. 1, owned by respondent No. 2 and insured by respondent No. 3? OPP*
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> *(3) Whether the claimants are entitled to claim compensation? If yes, then from whom and quantum of compensation payable to them? OPP*
>
> *(4) Whether Suresh (since deceased) violated the terms & conditions of the Insurance Policy? OPR-4*
>
> *(5) Whether respondent No. 1 and 2 violated the terms & conditions of Insurance Policy? OPR-3*
>
> *(6) Relief.*

6. In order to prove the claim petition, the petitioner/claimant Balvir stepped into the witness box as PW-1. Thereafter, learned counsel for the claimant/petitioner tendered the copy of RC bearing No. HR-63B-3576 as Ex.P8, copy of RC of Trailor bearing No. RJ-30-GA-2233 as Ex.P9, Driving License of Badri Lal as Ex.P10, copy of policy of Trailor bearing No. RJ-30-GA-2233 as Ex.P11, copy of permit of said vehicle as Ex.P12, copy of pollution control certificate as Ex.P13 and copy of insurance policy of Eicher 407 bearing No. HR-63-B-3576 as Ex.P14 and closed the petitioner's evidence.

7. In order to rebut the case of the claimant/petitioner, no witness was examined by any of the respondent.

8. After hearing the arguments advanced by learned counsel for the parties, the claim petition filed by the claimant Balvir was allowed by passing impugned Award dated 21.11.2015, as referred above. Feeling aggrieved of this Award, the present appeal has been preferred by appellant – Reliance General Insurance Company Limited.

9. I have heard the arguments of learned counsel for the appellant – Insurance Company as well as learned counsel representing the contesting respondents. The present appeal has been preferred by Reliance General Insurance Company Limited - appellant/respondent No. 4 in the main case regarding the relief granted in favour of the claimant vide which the present appellant i.e. respondent No. 4 Insurance Company of Eicher 407 bearing Regd. No. HR-63-B-3576 is directed to pay Rs. 2 lacs to the claimant without interest. The learned counsel for the insurance company of the aforesaid vehicle has taken the stand that no liability could have been fixed on the appellant-insurance company as the claim petition was filed under Section 163-A of Motor Vehicles Act, 1988. The deceased Suresh was owner of the aforesaid Eicher 407 bearing Regd. No. HR-63-B-3576. The appellant- insurance company was the insurer and did not take any premium for the owner. The owner does not fall within the purview of third party. Therefore, the learned Motor Accident Claims Tribunal, Jhajjar wrongly decided the issue vide which the insurance company has been directed to pay Rs. 2 lacs to the claimant. The learned counsel for the insurance company has put reliance on the authority cited in **2013(3) PLR 397 Supreme Court of India**, in case titled "***New India***

Assurance Co. Ltd Versus Prabha Devi" where in that case *the owner had insured the vehicle which met with an accident. The owner of the said vehicle while traveling on the vehicle died and the legal heirs of the deceased owner filed claim petition under Section 166 of Motor Vehicles Act, 19889. In that case, it was held that owner was not a passenger, therefore, third party claim should not be granted to the legal representatives of the deceased.*

The learned counsel for the Insurance Company has also referred to the findings given by the learned Motor Accident Claims Tribunal, Jhajjar while passing the Award dated 21.11.2015 where the learned Tribunal has given contradictory reasoning while passing the Award. In para No. 15 of the Award, it was concluded that the Tribunal was not the appropriate forum to file claim against ones own insurance company. Infact, the petitioners should have filed a claim before the insurance company and in case of non-payment, they should have filed petition before the District Consumer Forum. But thereafter, while granting relief in para No. 25 of the Award, the appellant-insurance company was directed to pay Rs. 2 lacs to the petitioner. Therefore, the impugned Award dated 21.11.2015 passed by learned Motor Accident Claims Tribunal, Jhajjar is not justified. The appellant – insurance company cannot be held liable to pay any amount to the claimant/petitioner. Therefore, the liability fixed on the appellant – insurance company may kindly be set aside by accepting the present appeal.

10. On the other hand, the learned counsel for the contesting respondents took the stand that the present claim petition was filed under

Section 163-A of Motor Vehicles Act, 1988, therefore, the claimant/petitioner was not required to prove rash and negligent driving. In the present claim petition, both the vehicles involved in the accident were impleaded as party to this case. The deceased was driving Eicher 407 bearing Regd. No. HR-63-B-3576 when it met with an accident. As per insurance policy Ex.P-14, this vehicle was insured with the appellant/respondent No. 4 Insurance Company and it was a comprehensive policy. Therefore, the learned Motor Accident Claims Tribunal, Jhajjar rightly directed the appellant – insurance company to deposit Rs. 2 lacs in favour of the claimant/petitioner Balvir. The present appeal is without merits and the same may kindly be dismissed.

11. I have considered the arguments advanced before me and I have also gone through the trial Court record carefully. The present appeal has been preferred only by Reliance General Insurance Company Limited – appellant/respondent No. 4 vide which the learned Motor Accident Claims Tribunal, Jhajjar while passing the impugned Award dated 21.11.2015 has directed this insurance company to pay Rs. 2 lacs in favour of the claimant/petitioner Balvir. There are specific issues framed by the learned Motor Accident Claims Tribunal, Jhajjar regarding the entitlement of claimant about the quantum of compensation as well as who is liable to pay the same and there is another issue as to whether the deceased violated any term and condition of insurance policy vide which the Eicher 407 bearing Regd. No. HR-63-B-3576 was insured. For the proper adjudication of the matter in controversy, the insurance policy vide which the Eicher 407 bearing Regd. No. HR-63-B-3576 was insured is required to be perused which is Ex.P-14. As per this document, the aforesaid Eicher 407

bearing Regd. No. HR-63-B-3576 was insured for the period 21.07.2011 to 20.07.2012, whereas the fateful accident took place on 01.06.2012 during the subsistence of this insurance policy. As per the terms of insurance policy, it is specifically mentioned regarding the Persons/Classes of persons entitled to drive, according to which any person including the insured provided that a person driving holds an effective Driving License at the time of the accident and is not disqualified from holding or obtaining such a license. Provided also that the person holding an effective Learner's License may also drive the vehicle and that such a person satisfies the requirement of Rule 3 of the Central Motor Accident Rules, 1989. Therefore, in the case in hand, even the owner of Eicher 407 bearing Regd. No. HR-63-B-3576 was entitled to drive the vehicle provided he was having valid Driving License. Furthermore, there is detail of premium schedule, according to which the premium was paid regarding Driver/Cleaner/Conductor specifying number of person 2. The premium schedule indicates that the vehicle was insured to the tune of Rs. 21,172/-. The aforesaid insurance policy was comprehensive insurance policy covering the driver and it was specifically mentioned that even the owner could drive the vehicle having valid Driving License. Therefore, considering the terms and conditions of insurance policy Ex.P-14, the appellant – insurance company could not escape its liability. The claim petition was filed under Section 163-A of Motor Vehicles Act, 1988, therefore, the claimant was not required to prove rash and negligent driving. Admittedly, the accident took place between Trailor bearing No. RJ-30GA-2233 and Eicher 407 bearing Regd. No. HR-63-B-3576 which was driven by Suresh the owner and in this accident, he lost his life.

No argument is advanced regarding the quantum of compensation awarded by the learned Motor Accident Claims Tribunal, Jhajjar nor any other issue has been raised. Considering the aforesaid facts, I do not find any reason to interfere in the findings given by the learned Motor Accident Claims Tribunal, Jhajjar vide which the appellant – insurance company has been directed to pay compensation to the tune of Rs. 2,00,000/- without interest out of total Award amount of Rs.6,04,500/-. In view of my findings, I do not find merits in the present appeal filed by appellant – Insurance Company and the same is accordingly, dismissed.

In case, the aforesaid amount of compensation of Rs.2,00,000/- is not deposited by the appellant – Insurance Company then the claimant Balvir is entitled to receive the same alongwith interest @6% per annum from the date of filing of the appeal till realization of the amount.

The copy of record received from the Tribunal be sent back to the concerned quarter.

Pending application(s), if any, also stand disposed off.

17.08.2023 **(AMARJOT BHATTI)**
lalit **JUDGE**

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