IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3856-2016(O&M)
Date of decision:-27.2.2023

IFFCO TOKIO General Insurance Company Ltd.

...Appellant

Versus

Pushpa Rani and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Ankur Gupta, Advocate
for the appellant.

Mr.Arvind Rajotia, Advocate
for respondents No.1 and 2.

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H.S. MADAAN, J.

1. Briefly stated, the facts of the case are that petitioners/claimants Smt.Pushpa Rani, aged about 52 years – widow and Randeep Kumar aged about 26 years – son of Prem Chand, an unfortunate victim of a road side accident had brought a claim petition under Section 166 of the Motor Vehicles Act (hereinafter referred to as the Act) before Motor Accidents Claims Tribunal, Patiala (hereinafter referred to as the Tribunal) against respondents Karamdeep Singh – driver-cum-owner and IFFOC TOKIO General Insurance Company Ltd. - insurer of the Indica car bearing registration No.PB-11R-2522 (hereinafter referred to as the offending car).

2. As per the case of the claimants, on 16.7.2015, Prem Chand

deceased was driving motorcycle bearing registration No.PB31-M-7705 on the correct left hand side of the road, at a moderate speed going from Bhai Bakhtaur to Kotfatta road; at about 5:30 p.m., when he reached near petrol pump after crossing the railway gate, then the offending car being driven by respondent No.1 Karamdeep Singh at a very high speed in a rash and negligent manner, without observing the traffic rules came from behind and struck against the motorcycle of Prem Chand; resultantly Prem Chand fell down on the road and received multiple simple and grievous injuries; he was taken to Civil Hospital, Bathinda for treatment but he succumbed to the injuries.

After the accident respondent No.1 Karamdeep Singh left the spot leaving the offending car behind. The information regarding the accident was given to the police.

3. According to the claimants, deceased Prem Chand was aged about 53 years and was working as a Daftri in AGM Office of Punjab State Cooperative Agricultural Development Bank Ltd., Mansa getting Rs.60,000/- per month; an amount of more than Rs.80,000/- was spent by the claimants on the transportation of dead body, performing last rites and funeral expenses; they were fully dependent upon the income of the deceased and on account of his untimely death, they are not left with any source of income. They prayed that the claim petition be accepted.

4. On notice both the respondents appeared and filed separate written statements offering a contest.

In the written statement filed by respondent No.1, he denied having caused any accident with his Indica car. He denied that the deceased had suffered any injuries in the accident.

In the written statement filed by respondent No.2, it had raised preliminary objections that claim petition is not maintainable in the present form; the driver of the offending car i.e. Karamdeep Singh was not holding a valid and effective driving licence, fitness certificate and registration certificate at the time of alleged accident and the driver of the offending car was under the influence of alcohol at the time of mishap, therefore violating the terms and conditions of the insurance policy, resultantly the insurance company be absolved to pay any amount of compensation to the claimants. On merits, the answering respondent contended that the accident had not taken place due to negligence of respondent No.1. Refuting the remaining assertions, such respondent prayed for dismissal of the claim petition.

5. Issues on merits were framed. Both the parties led evidence in support of their respective claims.

6. After hearing arguments, the Tribunal decided issues No.1 and 2 in favour of the claimants and against respondents No.1 and 2, issue No.3 was decided in favour of the claimants and respondent No.1, issue No.4 was decided against respondent No.2 and in favour of claimants and respondent No.1, issue No.5 was decided against the respondents and in favour of the claimants. Resultantly, the claim petition was allowed and the claimants were awarded compensation of Rs.31,85,040/- payable by both the respondents jointly and severally. The respondents were directed to make the payment of the compensation amount to the claimants within a period of two months from the date of passing of award, failing which

the claimants would be entitled to interest @ 6% per annum from the date of claim petition till actual realization of the amount. The apportionment is detailed under the award itself.

7. This award left the insurance company aggrieved and it has approached this Court by way of filing the present appeal praying that the same be accepted, the impugned award be set aside and the appellant – insurance company be absolved of its liability to pay compensation to the claimant.

8. Notice of the appeal was given to respondents and respondents No.1 and 2 have put in appearance through counsel.

9. I have heard learned counsel for the parties besides going through the record.

10. Learned counsel for the appellant – insurance company has contended that the FIR in this case was recorded after almost 20 days of accident and in the present case respondent No.2, who is son of the deceased had himself lodged a DDR on 17.7.2015 stating therein that he was informed of the accident by a person on the telephone and was told that the accident had taken place due to the skidding of the motorcycle of his father and there was no fault of anybody, therefore he did not want to proceed against any person; there was no mention of the vehicle in question being involved in the accident, however, subsequently a false FIR was lodged on entirely different facts in order to have illegal gains from the insurance company. He has referred to the DDR recorded by the police regarding the accident.

11. On the other hand, learned counsel for the respondents has

controverted such contentions.

12. After hearing the rival contentions, I find that considering the facts and circumstances of the case, the evidence brought on record by the parties, the Tribunal was justified in returning a finding that respondent No.1 Karamdeep Singh was author of the accident by rash and negligent driving of the offending car.

13. As far as the objections now raised by learned counsel for the appellants those were also highlighted before the Tribunal but Tribunal has dealt with those in a very fine and appropriate manner.

14. The Tribunal has noticed that an FIR regarding the accident was lodged. The delay in lodging of the FIR cannot be given undue importance because here we are dealing with a claim petition under Section 166 of the Motor Vehicles Act, which is a piece of welfare legislation. It was enacted by the Parliament to provide relief to the persons, who suffered injuries in the motor vehicular accident as well as to the legal representatives of the victims, who unfortunately lost their lives in such mishaps. Strict rules of evidence and procedure are not applicable there. The delay in lodging the FIR may be a ground for acquittal of an accused in a criminal case but a claim petition cannot be thrown away simply for the said reason. With FIR having been lodged and statement of HC Gurcharan Singh appearing as CW2 being there that as per police record brought by him relating to the accident, after investigation challan has been presented against respondent Karamdeep Singh qua the present accident, copy of challan being Ex.CW2/1. The testimony of this witness does not leave any doubt in the mind that as a

matter of fact respondent No.1 had caused the accident by his rash and negligent driving of the offending car and after registration of the FIR when the police had investigated the matter, his involvement in the accident was found to be there. Then there is oral evidence of the incident provided by PW4 Sandeep Kumar, who deposed in consonance with the case of the claimants as given in the claim petition. Both oral as well as documentary evidence which is found to be cogent and convincing had gone unrebutted because respondent No.1 Karamdeep Singh had not stepped into the witness box to depose on oath that the accident had not been caused by him by rash and negligent driving of the offending car. Therefore, the Tribunal was fully justified in deciding issue No.1 in favour of the claimants against respondents.

15. As regards the contention of learned counsel for the appellant-insurance company that the complainant had earlier got DDR recorded stating that the deceased had suffered injuries to which he had succumbed due to skidding of the motorcycle and nobody was at fault in happening of the accident. This argument is unconvincing. Firstly son of the deceased had himself not seen the accident and he had lodged the DDR on the information supplied to him by others. Therefore, it is certainly not a case of contradictory versions and case set up by the claimants does not become doubtful.

16. Learned counsel for the appellant/insurance company had referred to judgments ***Pritam Singh Versus Jaswant Singh and others, 2016(2) PLR 125*** and ***Devinder Kaur and others Versus Angrej Singh and others*** passed by a Co-ordinate Bench of this Court in FAO No.2008-

2001, decided on 23.9.2015 in support of his contentions that appellant/claimant cannot be allowed wriggle out from the initial version of the occurrence. However, those judgments are not applicable to the present case due to different facts and circumstances of the case and the context in which such observations had been made.

17. Here the claimants have successfully proved that accident in question had taken place due to rash and negligent driving of the offending car by respondent No.1 - Karamdeep Singh.

18. The findings recorded by the Tribunal are well reasoned and cannot be said to be arbitrary or erroneous contrary to the evidence available on record. Therefore, there is no ground to set aside the award.

19. Finding no merit in the appeal, the same stands dismissed accordingly.

Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

27.2.2023 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No