IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

223 **FAO-2499-2017 (O&M)**
Date of decision: 14.02.2023

Lal Chand **...Appellant(s)**

Vs.

Maina Devi & Others **...Respondent(s)**

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.J.P. Sharma, Advocate for the appellant.

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<u>NIDHI GUPTA, J.</u>

<u>CM-8180-CII-2017</u>

This is an application under Section 151 CPC praying for exemption from filing true typed copy of Award dated 21.10.2016 passed by learned Motor Accident Claims Tribunal, Narnaul as well as of Annexure A1 and placing on record photocopy of the same.

After going through the contents of the application, the same is allowed subject to all just exceptions.

<u>CM-23697-CII-2019</u>

This is an application under Section 151 CPC praying for placing on record zimni order dated 19.10.2019 as Annexure A1 and exemption from filing true typed copy of the same.

After going through the contents of the application, the same is allowed subject to all just exceptions.

MAIN CASE

Present appeal has been filed by the registered owner of tractor bearing registration No.HR-34D-7834 (hereinafter referred to as "the offending vehicle") against Award dated 21.10.2016 passed by Motor Accident Claims Tribunal, Narnaul (hereinafter referred to as "the learned Tribunal") passed in MACT Case No.46 of 2015 filed under Section 166 of the Motor Vehicles Act (hereinafter referred to as "the Act") wherein total compensation of Rs.12,67,400/- has been awarded to the claimants/respondents No.1 to 7 herein.

However, vide the impugned Award learned Tribunal has fixed the liability to pay the compensation amount of Rs.12,67,400/- on the appellant and driver of the offending vehicle/respondent No. 8 herein, as it was held by the learned Tribunal that the appellant had "*failed to bring on record the copy of insurance policy".*

Learned Tribunal on the basis of pleadings and evidence placed before it concluded that deceased-Manoj had died due to the injuries suffered by him in a motor vehicular accident that took place on 31.12.2014 due to the rash and negligent driving of the offending vehicle being driven by respondent No.8/driver, and insured by respondent No.9 herein. Learned Tribunal awarded compensation as noted above along with interest @ 9% per annum from the date of filing the petition till its actual realization. Claimants are the mother and six minor siblings of the deceased.

As the appellant was unable to produce insurance policy issued by respondent No.9 herein in respect of offending vehicle, accordingly, the learned Tribunal exonerated the Insurance Company from its liability to pay compensation, and respondent No.8/ driver and appellant were held jointly and severally liable to pay the aforesaid compensation amount.

It is submitted by learned counsel for the appellant that findings returned by learned Tribunal are result of perverse misreading of evidence on record. It is submitted that the appellant had duly placed on record the cover note of the offending vehicle Exhibit R3, which is all that was given to him by the representative of the respondent/Insurance Company. It is submitted that no policy was ever received by the appellant.

It is further submitted that a perusal of Exhibit R3, cover note of insurance of the offending vehicle shows that the appellant had made payment for insurance of the offending vehicle in question whereafter, cover note was issued by the authorized agent of the respondent/Insurance Company. It is submitted that, had the authorized agent of the respondent-Insurance Company not received any payment made by the appellant for the policy, the authorized agent would not have issued the cover note of insurance in favour of the owner of offending vehicle. It is also emphatically submitted that the appellant had duly made bona fide payment of the premium amount to the authorized agent of the Insurance Company for insurance of the offending vehicle against which a cover note was also issued by the authorized agent of the Insurance Company and therefore, false plea of the Insurance Company to the effect that offending vehicle was not covered under the Insurance Company, could not have been accepted by the learned Tribunal.

It is submitted that the appellant has paid due consideration to the authorized agent of the Insurance Company before the date of accident and therefore, the appellant cannot be held liable. It is submitted that the appellant is a poor person and cannot afford the liability imposed upon him.

Learned counsel for the appellant further submits that computation of compensation granted to the claimants is not in accordance with the law laid down by the Hon'ble Supreme Court in ***Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram, 2018 (18) SCC 130; Sarla Verma vs. Delhi Transport Corporation (2009) AIR (SC) 3104;*** and ***National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680***.

It is submitted that learned Tribunal has awarded future prospects at the rate of 50% whereas the same should have been at 40% in view of the fact that the deceased was stated to be a mason/labourer/self-employed. It is further submitted that exorbitant amount of Rs.1,00,000/- has been granted towards loss of love and affection. It is submitted that therefore, the impugned Award deserves to be set aside on this ground as well.

No other argument is made on behalf of the appellant.

I have heard learned counsel for the appellant.

Relevant Zimni order dated 19.10.2019 (Annexure A1) passed by the learned Executing Court in the present case, is reproduced hereinbelow:-

"Maina Devi Versus Rajesh etc.

CIS No Execution 07-2017 *CNR No.HRNR01-0000225-2017*

Present: Shri M.S.Khandelwal, Advocate for DH.
JD No.1 exparte.
Shri R.S.Yadav, Advocate for JD No.2.

Heard. Its an execution petition of the MACT award dated 21.10.2016 vide which respondents No.1 and 2 (owner and driver) were held to pay the awarded amount of Rs.12,67,400/- with interest. On notice and appearance of the respondent No. 2 through his counsel since 26.04.2017 no payment has been made. In these circumstances, warrant of attachment of offending tractor be issued with a direction of the Bailiff to attach and recover the tractor and keep the same in the near by Police Station and file a report in this regard on or before 16.11.2019.

(……….)
October 19th, 2019 *MACT, Narnaul.*
UID No.HR-0026

(N.K. Scenographer-1)"

Last order dated 25.02.2020 passed by this Hon'ble Court in the present Appeal, is as follows:

"CM-23697-CII-2019 in/and
FAO-2499-2017(O&|M)

Lal Chand vs. Maina Devi and others

Present: None for the applicant/appellant.

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On 20.01.2020, the following order had been passed:

"Today Mr. J.P. Sharma appears for the appellant and has filed a power of attorney in his favour, with a "no objection" endorsed upon it by the learned counsel who

had originally filed the appeal, which is ordered to be taken on record.

He submits that though the cover note issued by the respondent-insurance company in respect of the policy subscribed to by the appellant is of the same date as the date on which the accident took place at 8/9.00 p.m., however, even the said cover note shows that a premium had been paid in respect of the said policy on December 30, 2014 at 10.40 a.m., but with the amount of the premium not shown in the cover note.

Though apparently an inference would normally be taken that the cover note was issued subsequently with the cash shown to be paid a day earlier, (especially with the amount stated to have been paid by way of premium not shown in the cover note), yet simply to try and determine as to the evidence led before the Tribunal, let the record be summoned for 25.02.2020."

Even today, on second call none appears on behalf of the applicant/appellant.

Adjourned for the last time to 19.03.2020, with it made clear that if the appeal is not argued even on that date, it shall stand dismissed in default, with no further order required to be passed in that regard.

February 25, 2020 ***(…….)***

dharamvir ***JUDGE"***

In the conspectus of the latest position in the present Appeal as noted above, the findings of the learned Tribunal as recorded in

Para 23 and 24 of the impugned Award are very relevant and material to the case at hand and therefore the same are reproduced hereinbelow:-

> *"23. It is proved on the file that respondent No.1 was the driver of the offending vehicle at the time of accident. Further, it is proved on the file by copy of registration certificate Ex.R2 of offending vehicle that respondent No.2 is the owner of the offending vehicle. The photocopy of insurance cover note of the offending vehicle has also been produced on record as Ex.R3.*
>
> *24. Learned counsel for the respondent no.3 has submitted that the offending vehicle i.e. tractor bearing no.HR-34D-7834 was not insured with Reliance General Insurance Company Ltd and the arguments of learned counsel for the respondent no.3 is fortifies from the order dated 31.07.2015 of this tribunal whereby the respondent no.2 was directed to place on record the insurance policy but the insurance policy has not been brought on record and copy of cover note Ex.R3 has been brought on record and learned counsel for the respondent no.3 has submitted that they never issued this cover note and the insurance policy has not been brought on record despite specific direction to respondent no.2, so, it cannot be said that Reliance General Insurance Company ever received any premium for insurance of tractor bearing no.HR-34D-7834 and ever issued insurance policy. In the cover note Ex.R3 the date of issuance of insurance has been shown to be 30.12.2014 and even this cover note is only a photocopy and is not original cover note, so, this insurance cover note is even not proved. It is settled law that mere marking of document as an exhibit does not dispense with its formal proof. Since the respondent no.2 has failed to bring on record the copy of insurance policy, so, terms and conditions of the insurance policy are left to be proved, so, adverse inference is liable to be drawn against the respondent no.2 the owner of the tractor bearing no.HR-34D-7834 on account of non production of insurance policy and thus the insurance company is exonerated from the liability to pay any compensation. The liability shall be that of respondent no.1 the driver and the respondent no.2 the registered owner of offending vehicle who shall be jointly and severally liable to pay the compensation.*
>
> *Thus, issue No.2 stands decided in favour of the petitioners and issue No.3 stands decided in favour of the respondent No.3."*

A few undisputed facts that emerged from the facts enumerated/material reproduced hereinabove are that:

a) the insurance policy in respect of the offending vehicle was not placed on record by the appellant;

b) a photocopy of the cover note allegedly issued to the appellant by respondent No.9 herein has been placed on record as Exhibit R3 (at page No.151 of the LCR);

c) even the said cover note purported to have been issued by the respondent/Insurance Company in respect of the policy is of the same date as that of the accident i.e. 31.12.2014; and even no amount of premium as claimed to have been paid by the appellant, is reflected in the said cover note.

Learned counsel for the appellant is unable to give any explanation in respect of the above facts on record.

As regards the submissions of the learned counsel for the appellant regarding the calculation of compensation, the learned Tribunal has calculated compensation in following manner:-

As the claimants were unable to prove their assertion that the deceased was a mason and was earning Rs.25,000/- per month, Notional Income of the deceased was taken as Rs.7,000/- per month, taking the deceased to be a casual labourer on the basis of evidence on record.

On the basis of postmortem report Ex.3 wherein age of the deceased was mentioned as 25 years, the learned Tribunal took age of the deceased between 26 to 30 years. In conformity with the judgment in case of ***Sarla Verma*** (supra), learned Tribunal applied multiplier of 17. In view of the fact that there were seven claimants, deduction of $1/5^{th}$ was made towards personal expenses.

However, since question regarding addition of income towards future prospects was referred to larger Bench in case titled **National Insurance Co. Ltd. Vs. Pushpa & Others decided on 02.07.2014,** and was still pending before the larger Bench of Hon'ble Supreme Court at time of decision of claim petition, learned Tribunal directed that *"The amount of Rs.5,71,200/- calculated towards loss of future prospects of income alongwith interest @ 9% per annum would be disbursed to petitioners subject to outcome of the decision of the larger Bench of the Supreme Court."*

A consolidated amount of Rs.1,00,000/- was granted to the 7 claimants towards loss of love and affection, and Rs.25,000/- towards funeral expenses. Hence, total compensation awarded to the claimants was calculated as above to Rs.12,67,400/-. It may be noted that if, in conformity with **Pranay Sethi (supra)** consortium of Rs.44,000/- each was to be granted to the claimants it would work out to Rs.3,08,000/-.

In view of the above discussion, I find no merit in the present appeal and the same is hereby, dismissed.

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

14.02.2023 **(Nidhi Gupta)**
Sunena **Judge**

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