IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-6991-2017(O&M) with
Cross-OBJ-220-CII-2017
Reserved on:- 26.07.2023
Pronounced on:- 22.08.2023

United India Insurance Company Ltd.

...Appellant

Versus

Parmila @ Promila and Ors.

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Vinod Chaudhary, Advocate
for the appellant.

Mr. Sandeep Kotla, Advocate
for respondents/cross-objectors.
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AMARJOT BHATTI, J.

1. The appellant-United India Insurance Company Ltd. has filed the present appeal against impugned Award dated 17.07.2017 passed by learned Motor Accident Claims Tribunal, Fatehabad vide which the respondents No.1 and 2/claimants have been awarded compensation of Rs.11,00,000/- in equal share along with interest @ 7.5% per annum from the date of the filing of claim petition till its realization, as detailed therein.

The respondents No.1 and 2/claimants have filed cross objection seeking enhancement of compensation to the tune of Rs.50,00,000/- with interest @ 18% till the realization of the amount.

2. The facts of the case are that the claimants Parmila @ Promila

and Devi Lal have filed claim petition under Section 166 of Motor Vehicles Act, 1988 on account of death of their son-Sumit in a motor vehicle accident. The facts of the case are that Late Sumit was about 16 years old at the time of accident. He was a student of 10+2 class. He used to help his father at his workshop. On the fateful day of 08.09.2016 at about 7:30 AM, deceased Sumit had boarded the private bus bearing registration No.HR39D/5736 owned by respondent No.2-Shiswal TPT Co-operative Society Limited, Hisar from Bus Stop of village Mochiwali to go to Bhuna to attend his school. His uncle namely Satyawan also boarded the said bus with him. The bus in question was being driven by its driver at a high speed and in a rash and negligent manner and without adhering to the traffic rules. When the said bus reached village Jandli Khurd, the driver took a sharp turn at a high speed, due to this, Sumit who was standing near the front window due to over crowd in the bus fell down on the road and was run over under the rear tyre of the bus. He received multiple, grievous, serious injuries and died at the spot. The driver of the said bus fled away from the spot. The police recorded the statement of his uncle Satyawan, on the basis of which FIR No.365 dated 08.09.2016 was registered under Sections 279/304-A of IPC against the driver of offending vehicle. The bus was taken into police possession and later on its driver was arrested. The accident had taken place solely due to rash and negligent driving of the offending bus. The claimants have filed this petition for grant of compensation of Rs. 15,00,000/- for the pecuniary losses, Rs.5,00,000/- for the loss of love and affection to each petitioner, Rs.5,00,000/- for loss of estate and Rs.1,00,000/- for the expenditure incurred on the transportation and last rites along with interest @ 24% per annum from the date of filing the petition till its actual realization payable by the respondents who are liabale jointly and senerally with costs.

3. The claim petition was contested by respondents No. 1 to 3. The respondents No. 1 and 2 filed joint written statement. They took preliminary objections regarding maintainability, cause of action, locus-standi, mis-joinder and non-joinder of necessary parties. On merits, it was pleaded that no such accident took place on the given date and time with the bus bearing registration No. HR-39D-5736. All the facts were denied. The bus was insured with respondent No.3 for the period 26.10.2015 to 25.10.2016. The manner of accident is also denied, accordingly claim petition deserves dismissal.

4. The Insurance Company – respondent No. 3 admitted the fact that the offending vehicle was insured with it. However, it is submitted that the driver of the offending vehicle was not having a valid Driving Licence at the time of alleged accident. It was further submitted that the fitness of the said private bus had expired before the date of alleged accident. Therefore, the Insurance Company is absolved of its liability to pay the compensation. Accident and the facts stated in claim petition were denied. It was prayed that the claim petition filed by the claimants may be dismissed qua the answering respondent – Insurance Company.

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

(1) Whether the accident in question took place on 08.09.2016 due to rash and negligent driving of offending

vehicle bus bearing registration No.HR-39D-5736 by its driver- respondent no. 1 in which Sumit expired, if so its effect? OPP

(2) If issue no.1 is proved in affirmative, whether the petitioners are entitled to compensation, how much and from whom? OPP

(3) Whether the driver of the offending vehicle was not holding a valid and effective driving license at the time of accident? OPR-3

(4) Whether the offending vehicle was being driven by respondent no.1 in violation of terms and conditions of insurance policy? OPR-3

(5) Relief

6. In order to prove the claim petition, the claimant No.1-Parmila @ Promila herself stepped into the witness box as PW1. The claimants also examined Satyawan as PW2 and tendered documents Ex.P1 to Ex.P5.

7. In order to rebut the case of the claimants, the respondents No.1 and 2 tendered documents Ex. R1 to Ex. R4 and closed their evidence. The counsel for Insurance Company also tendered copy of Insurance Policy Ex.R5 and closed the evidence.

8. After hearing the arguments advanced by learned counsel for both the parties, the claim petition filed by the claimants Parmila @ Promila and Devi Lal was allowed by passing impugned Award dated 17.07.2017 vide which the compensation was awarded to the tune of

Rs.11,00,000/- as detailed therein by holding the liability of all the respondents as joint and several. Feeling aggrieved of this Award, the present appeal has been preferred by appellant/Insurance Company and the claimants/respondents No.1 and 2 filed their cross objections..

9. Learned counsel for the Insurance Company has argued the present appeal on the quantum of compensation awarded by the Tribunal. It is argued that the deceased victim was a young boy of 16 years of age who was student of 10+2, therefore, he was not an earning hand in the family. The learned Motor Accident Claims Tribunal, Fatehabad while granting compensation has increased the income, considering the future prospects to the tune of 50% instead of 40% increase. The victim was a young boy and he was unmarried and the multiplier has been wrongly applied by the learned Motor Accident Claims Tribunal, Fatehabad. It is further argued that the victim had boarded a bus which was overcrowded, therefore there was some negligence on his part. Therefore, it is prayed that the quantum of compensation awarded by the learned Motor Accident Claims Tribunal, Fatehabad may kindly be modified by reducing the same and it may also be considered that the deceased victim was also at fault.

10. On the other hand, the respondents No.1 and 2 who are the parents of deceased victim/claimants have filed cross objections that the income of the deceased has been assessed towards lower side. The victim was 16 years old boy who was going to school in 10+2 class and he also used to help his father in mechanical work at his shop. Therefore, the income of the deceased should have been taken as Rs.9,000/- per month, which was approximate minimum wages prevailing in the State of Haryana

in the year 2016. The respondents No.1 and 2/Cross Objectors have not been granted compensation for loss of love and affection. No compensation has been granted under other conventional heads, therefore, the compensation awarded by the learned Tribunal is inadequate and towards lower side. It is further pointed out that respondents no.1 and 2/Cross Objectors are entitled to receive the compensation with interest @ 18% per annum.

11. I have considered the arguments and have gone through the record. The facts of the case regarding the manner in which the accident took place is not disputed. Admittedly, the deceased victim on 08.09.2016 at about 7:30 AM boarded a private bus bearing No.HR-39D-5736 owned by respondent No.2-Shiswal TPT Co-operative Society Limited, Hisar from bus stop of village Mochiwali for going to Bhuna to attend his school. It is pointed out that the bus was being driven at a high speed in a rash and negligent manner by its driver and when it reached village Jandli Khurd, the driver took a sharp turn at a high speed as a result of which the victim who was standing near the front window due to overcrowding of bus fell down on the road and was run over under the rear tyre of the bus and he died on the spot. The stand taken by the Insurance Company that there was some negligence on the part of the deceased victim for boarding an overcrowded bus does not hold any ground. It was the duty of the bus conductor to stop the passengers from boarding the bus once it was full. The deceased victim was a school going child who boarded the crowded bus for reaching his school on time. Therefore, in my opinion it was the responsibility of the bus conductor to see the number of passengers which

were to be carried in his bus. For this purpose the Insurance Company cannot derive any benefit regarding the liability to pay the amount of compensation.

Secondly, the quantum of compensation is disputed by the learned counsel for Insurance Company as well as by respondent No.1 and 2/claimants/Cross Objectors. The deceased victim namely Sumit was a young boy of 16 years of age who was student of 10+2, therefore, he was not an earning hand. It is alleged that he used to help his father at his workshop. Considering the age of the deceased victim and the fact that he was also student of 10+2, in future he could have further improved his qualification or he could have worked with his father at his workshop. Under these circumstances the income of the deceased victim is to be assessed by way of guess work. Considering the aforesaid facts the income of the deceased victim assumed as Rs.6,000/- per month is towards the lower side. Therefore, in order to assess the quantum of compensation the income of the deceased victim is taken as Rs.7,000/- per month and by relying upon the authority cited in <u>2013(3) CivCC 15 Supreme Court of India</u>, in case titled "***Rajesh and others Vs Rajbir Singh and others***", he is granted, 40% increase in income considering his future prospects which comes out to be Rs. 2,800/- and monthly income is taken as Rs. 9,800/- and annual income as Rs. 1,17,600/-. Sumit was unmarried and the claim petition was filed by his parents, one half income is deducted towards personal expenditure and the dependency of the parents is taken as Rs.58,800/- and considering his age as 16 years multiplier of 18 is applied and with this multiplier the amount of compensation comes out to be

Rs.10,58,400/-. The learned Motor Accident Claims Tribunal, Fatehabad had granted Rs.50,000/- towards loss of love and affection and Rs.28,000/- towards funeral expenditure. By relying upon the authority cited in <u>2009 ACJ 1298 Supreme Court of India</u>, in case titled "*Smt. Sarla Verma and others Vs Delhi Transport Corporation and another*", the petitioners are granted compensation under the conventional heads i.e. Rs.44,000/- each in favour of the parents for loss of consortium and love and affection of their son, Rs.16,500/- towards loss to estate and Rs.16,500/- towards funeral expenditure and the total amount of compensation comes out to be Rs.11,79,400/-. The rate of interest @ 18% per annum claimed by the respondents No.1 and 2/claimants/Cross Objectors is towards higher side. The learned learned Motor Accident Claims Tribunal had granted compensation of Rs.11,00,000/- in favour of the parents and the said amount if already paid is liable to be adjusted from the aforesaid amount and the parents are entitled to the enhanced amount of compensation i.e. to the tune of Rs.79,400/- in equal shares along with interest @ 7% per annum from the date of filing of appeal till realization of the amount.

The appeal preferred by the Insurance Company as well as the cross objections filed by the respondent No.1 and 2/claimants/Cross Objectors are accordingly disposed of and the Award dated 17.07.2017 passed by the learned Motor Accident Claims Tribunal stands modified.

22.08.2023
Sunil Devi

(AMARJOT BHATTI)
JUDGE

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