227

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-7759-2017(O&M)
Date of decision: January 10, 2023

Jaswant Kaur and others

….Appellants

versus

Kashmir Singh and others

….Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Khushagra Mahajan, Advocate for the applicant-appellants.

Mr. Nikhil K. Chopra, Advocate for respondent No.3-Insurance Company.

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ARUN MONGA, J. (ORAL)

CM-9690-CII-2019

This is an application for permission to the appellant/claimants to produce additional evidence i.e., certified copy of award dated 20.02.2018, certified copy of execution application and certified copy of order dated 19.07.2018, whereby compensation has been deposited by respondent No.3-Insurance Company, as Annexures A-1 to A-3, respectively.

Notice of the application was issued way back on 21.05.2019. Despite ample opportunity, no reply has been filed. In any case, no useful purpose would be served to give further opportunity to file reply. Having gone through the contents of the application and for the reasons stated therein, the same is allowed. No prejudice will be caused to respondents by placing on record the appended Annexures A-1 to A-3. Perusal of the same reflects that Respondent No.3-Insurance Company was party in the said proceedings.

Main case (O&M)

Aggrieved with award dated 14.03.2017 rendered by Motor Accidents Claims Tribunal, Amritsar (for brevity, Tribunal), appellant/ claimants are before this Court by way of an appeal seeking enhancement of compensation.

2. Facts are not in dispute. Succinct facts as noted by the Tribunal are as below:

> "*2. As per case of the claimants, Vishavdeep Singh son of Shri Karanvir Singh, residence of House No.33-A, Gali No.7, Shaheed Udham Singh Nagar, Sultanwind road, Amritsar, aged 30 years, was running a stationery shop under the name and style of "Krishna Book Shop & Stationery Mart", in that way self employed, earning Rs.30,000/- per month. On 06.01.2015 at about 5.30 p.m., Vishavdeep Singh, since deceased, alongwith his friend Vinod Sharma son of Shri Tirath Ram Sharma were going on motorcycle bearing registration No.PB-02-BY-3855(Temp.)-2014 at a normal speed towards their home from Gill Farm. The neighbor of deceased Vishavdeep Singh namely Balbir Singh son of Shri Sohan Singh was following them alongwith his family in his car. When they all reached just above Daburji bridge, Amritsar, a truck bearing registration No.PB-10-DM-4660 was wrongly and negligently parked on the wrong side i.e., right hand side of the road without indicator/reflector or any other precaution showing the existence of the truck on the road in the darkness of evening, resulting Vishavdeep Singh could not notice the existence of the truck on the road and his motorcycle struck in the back of stationary truck, as a result of which both the occupants of the motorcycle fell on the road and sustained multiple injuries. Vishavdeep Singh was riding the motorcycle and Vinod Sharma was sitting on the pillion. Vishavdeep Singh died at the spot whereas Balbir Singh called for ambulance by dialling 108 number and got injured Vinod Sharma admitting in Guru Nanak Hospital, Amritsar. The accident took place solely due to negligent act of respondent No. 1, Kashmir Singh, who, wrongly parked the truck bearing registration No.PB-10-DM-4660.Formal FIR No.08 dated 06.01.2015 for offences under sections 304-A/336/337/338/427 of Indian Penal Code was recorded at Police Station Sultanwind, Amritsar, on the statement of Balbir Singh. Claimants prayed that claim petition be allowed.*"

3. Upon notice, respondents No.1&2 filed joint written statement raising allegation that deceased was not having any legal and valid driving licence and was not having any knowledge of driving the motorcycle. He brought the motorcycle on the road against the provisions of Motor Vehicles Act.

4. Respondent No.3/Insurer filed written statement alleging that respondent No.1-Kashmir Singh (driver) was not having a legal and valid driving licence and was holding fake licence at the time of alleged accident. Respondent No.2 violated the terms and conditions of the insurance policy. If despite violation of terms and conditions of the insurance policy any award is passed, in that event Insurance Company be given a right to recover said amount paid on behalf of insured. Truck in question was not having a legal and valid route permit and fitness certificate at the time of alleged accident.

5. Claimants also filed replication to written respondent of respondents No.1 and 2 reiterating averments of the claim petition and denying those of written statement.

6. Learned Tribunal framed the following issues:

> "*1) Whether Vishavdeep Singh son of Shri Karanvir Singh suffered injuries in a motor vehicular accident which took place on 06.01.2015 at about 5.30 p.m. in the area of near Daburji bridge, Amritsar city, due to rash and negligent act inasmuch as wrong parking of truck bearing registration No.PB-10-DM-4660, by respondent No.1, Kashmir Singh, to which he succumbed? OPP.*
>
> *2) Whether the petitioners/ claimants are entitled to recover any compensation, if so, the amount and from whom? OPP*
>
> *3) Whether the petition is not maintainable? OPR.*
>
> *4) Whether the petition is bad for mis-joinder and non-joinder of necessary parties? OPD.*
>
> *5) Whether respondent No.1, Kashmir Singh, was not the driver of truck bearing registration No.PB-10-DM-4660 at the time of accident, if so, its effect? OPR-3.*

6) Whether respondent No.2, insured, violated terms and conditions of insurance policy, if so, its effect? OPR-3.

7) Relief."

6.1 Learned Tribunal also framed following additional issues on 25.01.2017:

"*6-A) Whether accident was the result of contributory negligence on the part of Vishavdeep Singh, since deceased, driver of motor cycle Enfield bearing registration No.PB-02-BY-3855 (Temp) 2014? OPR 1 & 2.*"

7. On appraisal of record/ evidence, learned Tribunal decided issue No.1 in favour of claimants and issue No.6-A against respondents No.1 and 2. Issue No.3 was decided against respondents and in favour of claimants. Issue No.4 was decided against the respondents. Issues No.5 & 6 were decided in favour of respondent No.3-Insurance Company. Issue No.2 was decided in favour of the claimants and against the respondents.

8. It has been contended by the learned counsel for the appellant/claimants that deceased was 30-year old at the time of accident and he was earning Rs.30,000/- p.m. by running a stationery shop under the name and style of "Krishna Book Shop & Stationery Mart" at Ludhiana. No amount was paid on account of loss of love and affection. Deceased was the only son of appellant/claimants No.1 & 2 and brother of appellant/claimants No.3 & 4. The amount paid on account of funeral expenses and towards loss of estate is very meager and same also needs to be enhanced.

9. I have heard learned counsel for the parties and perused the record.

10. Concededly from the award dated 20.02.2018 (Annexure A-1), it is clearly borne out that in another claim arising from the same accident, a compensation of Rs.25,96,921/- was awarded to injured/claimant-Vinod

Sharma therein and respondents No.1 and 2 namely Kashmir Singh (driver of Truck bearing registration No.PB-10-DM-4660) and M/s N.B. Logistics through its Managing Director/ Manager (owner of Truck bearing registration No.PB-10-DM-4660) were held liable to pay the said amount. However, respondent No.3-Insurance Company was directed to pay the said amount to the claimant at the first instance and then it would be at liberty to recover the same from respondents No.1 and 2. Not only that, it transpires that upon filing of execution application, respondent No.3-Insurance Company has also paid the said compensation to the injured/claimant.

11. It is paradoxical that while the injured has been paid, but in the case of deceased Vishavdeep Singh, who died in the same accident, his parents and sisters have been made to run from pillar to post in the office of Insurance Company and their compensation was not paid to them on the flimsy grounds that since the driver of the offending vehicle, at the relevant time, did not have valid driving licence, therefore, Insurance Company is not liable to pay. Said stand of the Insurance Company has illegally been upheld by the learned Tribunal below vide impugned award dated 14.03.2017 without applying its mind on the settled position of law that it is the statutory right of a third party to seek recovery of the amount of compensation awarded by the Tribunal from the insurance, subject of-course to the caveat that in case, the liability has been fastened on the insured, then the insurer is at liberty to recover from the insured. To that extent, learned Tribunal fell in grave error in not passing appropriate orders while making the award by directing the Insurance Company to make payment of the compensation and reserving its right to recover the same from the insured. Insurance Policy is

not in dispute, in any case. The only reason of denying the liability, as already noted above, was lack of valid driving licence. In this aspect, even the substantive statutory provisions contained in Section 147 (6) of the Motor Vehicles Act, 1988 also make the position amply clear, which for ready reference is reproduced herein below:

> "***147. Requirements of policies and limits of liability.***—
> *xx xx xx*
>
> *(6) Notwithstanding anything contained in any other law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.*"

11.1 Perusal of the above clearly reflects that Insurance Company cannot shrug-off its statutory liability to pay the compensation on the ground, even if same is factually correct, that the driver was not holding a valid driving licence.

12. As regards the computation, same also has to be modified in view of the Apex Court judgment rendered in **National Insurance Co. Ltd. v. Pranay Sethi,** reported as **(2017) 16 SCC 680** read with **Magma General Insurance Co. Ltd. Versus Nanu Ram alias Chuhru Ram and others**, reported as **2019 (3) SCC (Cri) 153**. Same are accordingly, modified as below:

Deceased	Vishavdeep Singh
Date of accident/death	06.01.2015
Age	30 years
Marital Status	Unmarried
Claimants	Father, Mother and two Sisters

Income of the deceased	Rs.6,660/- per month
Future prospects	40% (Rs.6,660+2,664) = Rs.9,324/-
Deduction for personal expenses of the deceased	50% (9,324-4662)=Rs.4662
Annual dependency	Rs.55,944/- (4,662x 12)
Multiplier	17
Conventional Heads(funeral exp. and loss of estate)	Rs.20,000/- (5,000+15,000)
Consortium (Rs.40,000 each)	Rs.1,20,000/-
Total	Rs.10,91,048/- (55,944x 17+20,000+1,20,000)
Compensation awarded by the Tribunal	Rs.9,48,000/-
Enhanced amount of compensation to be paid	Rs.1,43,048/- (Rs.10,91,048-Rs.9,48,000/-)

13. Accordingly, the impugned award is modified in terms of the above computations. Revised compensation shall be payable to the claimants along with interest i.e., 7.5% per annum, as already awarded by the learned Tribunal, from the date of filing of the claim petition till the actual date of payment. The same shall be payable to the claimants within a period of 60 days of their approaching the insurance company along with web print of the instant order, failing which additional penal interest of 3% p.a. shall be paid from the date of filing of the claim petition. Revised compensation amount be disbursed to the claimants in terms of the apportionment as already determined by the Tribunal.

14. Disposed of in above terms.

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

(ARUN MONGA)
JUDGE

January 10, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No