

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CM-896-CII-2023 &
CM-897-CII-2023 in/&
FAO-241-2023 (O&M)
Date of Decision :14.03.2023

Shri Ram General Insurance Company Ltd.

...Appellant

Versus

Mohammad Atik and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rajbir Singh, Advocate
for the appellant-Insurance Company

* * *

Harsimran Singh Sethi, J. (Oral)

CM-896-CII-2023

The present application has been filed for condonation of delay of 53 days in filing the present appeal.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the application is allowed. Delay of 53 days in filing the present appeal is condoned.

FAO-241-2023

In the present first appeal, the challenge is by the Insurance Company to the award dated 28.07.2022 passed by the Motor Accident Claims Tribunal, Karnal by which, the tribunal has awarded a compensation of Rs.33,96,638/- which have been apportioned between the claimants No.1 and 2 in the manner indicated in the award itself.

Learned counsel for the appellant-Insurance Company argues that the story being put forward by the claimants of the alleged accident is

false and the same has been forwarded in connivance with respondents No.1 and 2.

Argument raised by the learned counsel for the appellant-Insurance Company is that Mohammad Sabir Iqbal, who died in the accident was driving the vehicle and was tired of a long 10 hours drive due to which he was not in position to drive the vehicle in a proper manner as it has already come on record that he was driving back from Manali and the tribunal has failed to appreciate the fact that he did not had adequate sleep, which had led to the accident hence, negligence being put upon the driver of the other vehicle i.e. truck bearing registration No.HR-67-A-1350, was without any evidence. Learned counsel for the appellant-Insurance Company placed reliance upon the testimony of the one of the eye-witness i.e PW2 who was travelling in the car along with the deceased to support the said argument.

Qua the said argument, the interpretation which is being given to the testimony of PW-2 cannot be accepted as nothing has come on record that the car was being driven continuously for 08 to 10 hours . It has only come on record that the journey from Manali is of 8 to 10 hours. Nothing has come on record that as to on what time they have started the journey from Manali so as to accept the contention of the appellant that the car was driven by the deceased continuously for more than 10 hours, which led to the accident. In the absence of any such evidence being pointed out that the car was being driven continuously for 08 to 10 hours before the same met with an accident, the argument being raised by the learned counsel for the appellant-Insurance Company cannot be accepted so as to set aside the findings recorded by the tribunal so as to put the blame upon the deceased

of being negligent in driving the vehicle.

Learned counsel for the appellant-Insurance Company further argues that once, it has already come on record that the offending truck never touched the car being driven by the deceased, it cannot be said that the driver of the truck was negligent so as to cause accident especially, when it has already come on record that both the vehicles were driven in their own lane.

With regard to the said argument, a finding has been recorded by the tribunal that as per the evidence which has come on record that the driver of the truck was driving the truck in a zigzag manner due to which, the accident took place. This Court is not to appreciate the evidence again so as to come to a different conclusion. The evidence qua recording of the said finding is already available on record and needs no interference by this Court to overturn the said finding.

Learned counsel for the appellant-Insurance Company argues that there is a contradiction in the claim petition and the testimony of the eye-witness with regard to the negligence on the part of the driver of the offending vehicle. Learned counsel for the appellant-Insurance Company submits that in the claim petition, it was mentioned that the truck suddenly stopped and in order to save the collision, the car was turned, which led to the accident whereas, in the testimony of one of the witness, who was travelling in the car, it has come on record that at the time of overtaking the truck, the car met with an accident. Learned counsel for the appellant-Insurance Company further submits that once there was no collision between the two vehicles, the negligence being put upon the driver of the truck by the tribunal is without any evidence rather the same is contrary to

the pleadings as well as evidence on record.

The said interpretation being given to the pleadings as well as evidence on record by the learned counsel for the appellant-Insurance Company is not correct. Even if, there was no collision between the two vehicles and in order to save the collision between the two vehicles, if one of the vehicle loses control and strikes in building, it cannot be said that driver of the offending vehicle, who was driving the vehicle in a zigzag manner, which he was not supposed to, was not negligent in driving the offending vehicle. It has also come on record that the driver of the offending vehicle was driving the truck in a zigzag manner and thereafter, stopped and in order to avoid the collision between the two vehicles, the driver of the car i.e. deceased lost the control and collided with the wall of the petrol pump, which finding of fact cannot be treated to be without any evidence so as to hold the driver of the truck as negligent. The tribunal has recorded the findings by correctly appreciating the complete evidence which has come on record.

Learned counsel for the appellant-Insurance Company further argues that the complainant on whose statement FIR was registered was never examined and rather one of the claimant witness stated that FIR was wrongly registered, which means that the contents of the FIR were incorrect, hence no action could have been taken by the police therefore, reliance being placed by the tribunal on the criminal proceedings to hold that there was an accident is not correct appreciation of the facts on record.

It is a settled principle of law that the evidence required for passing an award by the Motor Accident Claims Tribunal is not of that strict nature as compared to criminal proceedings. Once, an FIR has been

registered, it becomes the duty of the police to investigate the same to find out the truth. Once, in the criminal proceedings driver of the offending vehicle has already been held guilty of the accident reliance being placed upon those proceedings by the tribunal is justified. One sentence in the testimony of the witness cannot overrule the other corroborating evidence.

In the present case, once an FIR was registered and challan had already been presented finding a prima facie case against the driver of the offending vehicle, it cannot be said that the reliance being placed by the tribunal on the criminal proceedings for recording a finding that the truck in question was involved in the accident is without any evidence. Hence, the said argument of the learned counsel for the appellant cannot be accepted.

The last argument raised by the learned counsel for the appellant-Insurance Company is that keeping in view Rule 23 of the Rules of the Road Regulations, 1989, the vehicle which is following has to avoid the collision and has to be careful of the vehicle in front and is required to slow down by maintaining a proper distance between the two vehicles.

The said argument has already been dealt by the tribunal while passing the award in question. Further, in the present case, it has already come on record in the testimony of the claimant witness that the car which was being driven by the deceased was changing the lane to overtake the truck and the offending truck was driven in a zigzag manner, which led to the accident hence, the reliance being placed by the learned counsel for the appellant-Insurance Company upon Rule 23 of the Rules of the Road Regulations, 1989, is not applicable in the facts and circumstances of the present case.

No other argument has been raised.

Keeping in view the above, no interference is called for by this Court and the appeal is accordingly dismissed.

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Application is also dismissed.

March 14, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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