

(2014) 07 P&H CK 0444
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 3766 of 2011

ICICI Lombard General Insurance Company Ltd.

APPELLANT

Vs

Asha

RESPONDENT

Date of Decision : 23-07-2014

Acts Referred:

Citation : (2014) 07 P&H CK 0444

Hon'ble Judges : Navita Singh, J

Bench : Single Bench

Advocate : Rajneesh Malhotra, Advocate for the Appellant; Arun Singal and Satpal Dhamija, Advocates for Ashwani Talwar, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Navita Singh, J.—Learned counsel for the parties have been heard.

2. This appeal has been filed against the award dated 29.11.2010 passed by Motor Accident Claims Tribunal (Tribunal for short), Sonapat, whereby compensation to the tune of Rs. 5,46,000/- was awarded to the claimants (respondents No. 1 to 5) fastening the liability on the appellant. The appellant has prayed that the liability should have been of the appellant and respondent No. 8 in equal share.

3. The case of the claimants was that on 30.1.2009 the deceased along with his wife Asha and co-brother Kishan Lal started their journey at 6.00 a.m. from Rohtak in Santro Car bearing No. HR-11B-5941 to Gurgaon. The deceased was driving the car and Kishan Lal was sitting in front with him while Asha-now respondent No. 1 was sitting behind. It was foggy at that time and when they reached in the area of village Jakhoda at about 7.00 a.m., the car touched the stationary truck from the left side as the truck was parked on the road without any indication or barricades. The number of the truck was HR-61-5179. The deceased came out of the car to assess the damage caused when canter No. HR-55H-1040 driven in a rash and negligent manner by present respondent No.

6 came from the side of police post of village Ashoda and struck the truck, as a result of which, the deceased was sandwiched between the truck and the canter. A criminal case was got registered regarding the accident on the statement of Kishan Lal. The claimants claimed compensation to the tune of Rs. 25 lacs.

4. Respondents No. 6 to 8 were the driver, owner and insurer respectively of the canter while respondents No. 9, 10 and the appellant were driver, owner and insurer respectively of the truck. The matter was heard ex parte against respondents No. 6, 7, 9 and 10. Respondent No. 8 pleaded that the accident took place due to the negligence of the deceased himself as well as driver of truck No. HR-61-5179. It was totally denied that driver of the canter was at fault.

5. Appellant filed a separate reply being insurer of the truck and pleaded that respondent No. 9 was not holding a valid driving licence at the time of alleged accident. Some of the allegations regarding the accident and particulars of the deceased were denied for want of knowledge, pleading further that the accident took place due to the rash and negligent driving of the truck by driver i.e. respondent No. 6. There was a collision between the truck and car and deceased Prem Parkesh had succumbed to his injuries at the spot. Also the deceased was driving the Santro car in a negligent manner and hit the stationary truck.

6. The following issues were settled by the Tribunal:-

1. Whether death of deceased Prem Parkash was caused in a road accident which took place on 30.01.2009 allegedly due to rash and negligent driving of TATA LPT-709 No. HR-55H-1040 by respondent No. 1 or truck No. HR-61-5179 by respondent No. 4 at the time of the accident? OPP

2. If issue No. 2 is proved, to what amount of compensation the petitioners are entitled to and from whom? OPP

3. Whether respondent No. 1 and respondent No. 4 were not holding a valid and effective driving licence and TATA PLT-709 No. HR-55H-1040 and truck No. HR-61-5179 were being driven in violation of the terms and conditions of the insurance policy at the time of accident? OPR-3 & 6

4. Relief.

7. It may be mentioned at the outset that primarily and rather solely the dispute is between the appellant and respondent No. 8. The appeal against respondents No. 1 to 5, who were the claimants before the Tribunal being legal representatives of deceased Prem Parkash, already stands dismissed vide order dated 26.5.2011. They did not come in the picture because they had already been indemnified by the appellant.

8. Learned counsel for the appellant argued that the Tribunal erred in holding that the accident was caused on account of sole negligence of the driver of the truck insomuch as he had parked it without any indication or barricades, whereas it should have been held that the Canter which came and hit the car was equally

negligent because it is not possible that he did not see either the truck or the car. It was further contended that even if for the sake of arguments, it be assumed that the truck was parked without any light or other indication, there is no evidence that parking lights or any other light of the Santro car was not blinking or was not on and that for that reason the Canter driver could not see the car as well.

9. Learned counsel for respondent No. 8 argued that the argument advanced on behalf of the appellant was too far-fetched because it was not the case of the appellants before the Tribunal that the lights of the Santro car were on and the Canter driver was driving rashly and negligently and that despite the light(s) showing on the car, he hit the same. The only pleading of the appellants was that the accident was not caused due to any negligence on the part of the truck driver and rather it took place due to rash and negligent driving of the Canter driver.

10. The arguments advanced on behalf of the appellant are not acceptable because Kishan Lal PW 2 was an eye witness and the cross examination conducted on him contained only a simple suggestion to him that the death of Prem Parkash occurred due to the sole negligence on the part of the Canter driver. It was not enquired from him as to whether light of the Santro car was on after the same had hit the truck in front and what was the extent of visibility due to weather. Similarly, Asha, PW 1 widow of the deceased was also travelling in the car and was thus an eye witness but surprisingly it was not even suggested to her by the appellant that the accident had taken place due to the negligence of Canter driver. It was suggested that the accident did not took place due to the negligence of the truck driver and further suggested that the accident took place due to negligence of her husband. Both the suggestions were denied. It was not even put to her directly or indirectly that the Canter driver was the only person responsible for the accident. This was suggested passingly only to Kishan Lal as mentioned above. Since the appellant did not conduct his defence properly before the Tribunal and neither cross examined the witnesses of respondents No. 1 to 5 nor produced any evidence to show that the accident had taken place on account of negligence of Canter driver, the mere defence set up in the written statement cannot be believed and taken to be proved.

11. It is clear from the material on record that the accident basically took place because the truck was parked on a foggy morning without any indication by way of blink of lights and barricades. Had the truck been parked with proper signal, the accident might have been averted. Since there is no evidence that Santro car was having any light, it cannot be said that the Canter driver was negligent in hitting the car especially when it is admitted case of the parties that the visibility was very poor. No case of contributory negligence is, thus, made out as claimed by the appellant.

12. For the foregoing reasons, the appeal is dismissed.