(2010) 10 P&H CK 0298

In the Punjab And Haryana At Chandigarh

Case No : FAO No. 3185 of 2006 and 5020 of 2006 (O and M)

New India Insurance Company Limited APPELLANT

Vs

Anchal Sood and Others RESPONDENT

Date of Decision : 06-10-2010

Acts Referred:

Citation : (2011) 4 JCR 319 : (2011) 161 PLR 442 : (2011) 3 TAC 105

Hon'ble Judges : K. Kanan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Kannan, J.—The appeal by the Insurance Company is against the award arising out of death of a driver/owner of a private car that was said to have collided with the insured''s truck bearing registration No. HR-67-0035. The accident was alleged to have taken place on 13.01.2003, when he was going to Haridwar with the ashes of his mother, who had died on 10.01.2003. The deceased had a serious injury while his brother had also sustained injuries. They were taken to Himanshu Hospital Saharanpur from where they have been shifted to Prem Nursing. Home, Panipat on the same day. His condition deteriorated and referred to Apollo Hospital, New Delhi, where he succumbed to injuries on 18.01.2003. Respondents 1 and 2, who were driver and the owner, filed written statement, contending that the accident took place only on account of negligence of the driver. The 3rd Respondent filed a written statement denying the vehicular particulars and the fact that the driver had a driving licence. It also denied the involvement of the vehicle and suspecting collusion between the claimant and the owner, the Insurance Company had sought for permission for defense on all grounds u/s 170. The permission was also granted.

2. The deceased was the Development Officer in National Insurance Company. His wife had predeceased him. He had a son and a daughter. The son was studying higher secondary school and the daughter was studying a graduate course. The daughter was examined as PW1, who spoke about the status of

parties and the extent of dependence of the children on their father. PW2 was the Accounts Officer from the National Insurance Company, who produced the details of salary during the relevant time, and gave evidence to the effect that his annual income was Rs. 3,54,395/- and also gave evidence to the effect that the retirement age in the Company was 60 years. In the cross-examination, it was elicited that he received Rs. 2,680/- as conveyance allowance and Rs. 250/- as entertainment allowance. The witness volunteered an information that the salary did not actually include the incentives which were calculated yearly on the basis of the performance of the Development Officer. His brother, who travelling on the same day on the date of the accident, gave evidence that he was himself injured and he had given a complaint to the police, who recorded his statement and lodged the FIR. Significantly, the FIR had been lodged only on 31.01.2003 that was nearly 18 days after the accident and 12 days after the death. In the cross-examination, it was elicited from him that he never visited the Police Station at Saharanpur from the date of the accident till 31.01.2003. It was suggested to him that he had deliberately not gone to the police station at Saharanpur because a willing owner and vehicle were not available to be implicated. He added that he was in a state of shock because of his injury and death of brother as well as his mother, who had died three days before the accident. PW4 was a Medical Record Technician, Apollo Hospital, Delhi, who said that the deceased was admitted in the hospital on 14.01.2003 and that the police at Sarita Vihar, Delhi, was informed regarding the admission of the patient, who had been injured in a motor accident. He was not able to say whether the police had taken any action on the basis of the report sent by them.

3. The long delay in filing the FIR from the date of the accident to the date when it was lodged 18 days later, must first be properly explained. The surviving member in the accident sought to explain it that he was in a state of shock. There was yet another brother Narender Sood, who had been examined as RW2. It is not very clear from the records as to who cited him as a witness. He had stated that his brother Sham Sunder, who was injured along with the deceased brother, was soon hospitalized at Prem Hospital, Panipat. He was under great shock and the doctor had given him sedatives. He was under the influence of medicines and he was not in a position to talk. He had been, therefore, sent to their village along with his wife on 14.01.2003. Sham Sunder himself was not in a position to tell anything about the accident when he met him in the hospital. This evidence is helpful to know the aspect as to why Sham Sunder himself did not give a complaint immediately. Narender Sood also gave evidence to the effect that he had informed the Police Station at Sarita Vihar, Delhi and the police had also recorded the statement. His brother-in-law Ashok Kumar was also said to have been present at that time. He was cross-examined by both the claimants as well as by the first Respondent. If he had been cited as a witness by the owner, then the Insurance Company had not availed to itself an opportunity to cross-examine him. It should have been suggested to him that the vehicle had been wrongly planted at his instance or some of his relatives. More significantly,

the evidence of RW2 explains why immediately the complaint was not lodged at the police station at Saharanpur. The evidence of the hospital staff and the evidence of RW2 lends credence to the fact that Police Station of Sarita Vihar at Delhi had been informed about the accident. The driver of the vehicle has been examined as RW1. It is seen that the counsel for the 2nd Respondent did not cross-examine him although opportunity had been given to them. Cross-examination had been done only by the claimant. If the driver had volunteered evidence on his own behalf, it constitutes an admission that the accident did take place. If it were to be doubted that there was collusion between the claimant and the driver supporting claimant''s cause, then the Insurance Company must have cross-examined RW1 and suggested to him that his evidence regarding the involvement was false and that the statement was the result of collusion. The Insurance Company has not cross-examined him at all. His evidence, therefore, would constitute an admission on the side of the Respondents themselves. Having regard to the admission by RW1 about the involvement of the vehicle, the question is whether the accident took place by the negligence of the deceased himself. I cannot accept such a plea by the driver, for, the only other witness, who was spoken to the accident, was an eyewitness viz the brother, who was travelling along with him and had given evidence to the effect that the accident took place only by a rash and negligent driving of the insured''s truck.

4. On a consideration of all the evidence, 1 am of the view that there had been proof enough to affirm the finding of the Tribunal that the insured''s truck had been involved in the accident and that it took place only on account of rashness and negligence of the insured''s driver. As regards the quantum of compensation, the Tribunal had taken the income of the deceased after tax of Rs. 2,83,600/-, it had provided for a deduction of 1/3rd for his personal expenses and took the remaining to be the contribution to the family. It adopted the multiplier of 15 for a person, who was aged 42 years, and determined the compensation of Rs. 28,36,050/-. It added also the funeral expenses at Rs. 2,000/- and Anr. Rs. 2,500/-for loss of consortium.

5. It must be borne in mind that the deceased had already lost his wife three years earlier, his mother died three days before the accident, the dependents were the son and the daughter. The son was at +2 stage doing distance education and the daughter was still unmarried and studying in a college.

6. Going by the normal Indian social practices, the daughter would have been married off and she would have been a dependent on her father only till her marriage. Again going by the Hindu Adoption & Maintenance Act, right to be maintained would include the right to provision for marriage as well. The son, who was barely out of senior secondary school had still a years to go and he would have been educated by the father. A deduction of merely 1/3rd even when the wife was not alive and where the extent of dependence of the son and the daughter themselves could not have subsisted right through the life, I feel inclined to take 50% as the extent of dependence of the two claimants namely

the son and the daughter. However, the Tribunal had not provided for prospect of increase in salary for a period of time. It was also elicited in evidence that the evidence tendered did not take into account the incentives which the deceased was entitled to earn by the business that he canvassed. He was 42 years of age and as per the decision in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , a provision for 30% increase towards prospect of future increases could be made. What was not provided through a prospect of increase is offset by a deduction only of 1/3rd instead of 1/2nd in the manner that I have adverted to above. Having regard to the lesser number of years of dependence by the adult children, the overall compensation arrived by taking 1/3rd deduction without providing for increase in salary would proximate to making a provision for 50% deduction and adopting the multiplier after providing an increase of 30%. I do not want to interfere with the award and retain the same in the manner in which the Tribunal has arrived at the compensation. I find it is just and calls for no modification in appeal. The appeal is dismissed.

7. The accident took place in the year, 2003 and the Court had adopted a multiplier of 15, the amounts shall be disbursed only upto 50% and the remaining amount shall be kept in separate fixed deposits for the respective shares of the owner and the daughter that will be paid in five equated installments annually,- the first deposit for a period of one year, the second for a period of two years and so on upto five years. The last equated installment shall be held for five years and the amount shall be paid to the respective claimants on the maturity after each year. Having regard to the finding that the assessment of compensation is found to be just, the cross appeal filed by the claimant for enhancement is dismissed.

