UNITED INDIA INSURANCE COMPANY LIMITED v. AKASH SAMARIA,

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice Rajbir Sehrawat.

UNITED INDIA INSURANCE COMPANY LIMITED – Appellant,

versus

AKASH SAMARIA and others – Respondents.

FAO No.89 of 2021 (O&M)

(i) **Motor Vehicles Act, 1988 (59 of 1988) Section 166 – Income – It is the income of the deceased which he was earning at the time of the death, which is the basis for calculation and grant of the compensation to the dependants; and any earlier lesser income would be totally irrelevant. [Para 9]**

(ii) Motor Vehicles Act, 1988 (59 of 1988) Section 166 – FIR – Filed after 36 hours – Even if there had been no FIR registered in the matter, that would not have disentitled the claimants from compensation on account of death of deceased in the accident – The FIR can, at the best, be taken as a supporting document, to assess; whether the vehicle is involved in the accident or not – Even, the challan has been filed – Claimants have examined the eye witness who has duly proved the accident – If the insurance company intended to rebut the evidence led by the claimants on this aspect, then the insurance company should have led positive evidence in this regard. [Para 10]

Mr. Ashwani Talwar, for the appellant.

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Rajbir Sehrawat, J. (Oral) – *(6th September, 2021)* – This is an appeal filed by the appellant-Insurance Company challenging the award dated 13.02.2020 passed by the Motor Accident Claims Tribunal, Gurugram (for short, the Tribunal), whereby an amount of Rs. 71,18,000/- has been awarded as compensation; on account of death of Hari Ram Samaria in a motor accident involving the vehicle insured by the appellant-insurance company.

2. The brief facts, as mentioned in the award passed by the Tribunal are; that on 15.06.2018, Hari Ram Samaria was going to Bikaner along with his friends in their swift car bearing registration No.RJ-14VC-2126. At about 1.00 A.M. when they had travelled around 7 kilometers ahead of Shri Dungergarh, then a Canter bearing registration No.RJ-23GB-4788 of Ashoka Leyland make, being driven by respondent No.6-driver in a rash and negligent manner; came from the opposite side and hit the car, due to which Hari Ram Samaria

suffered injuries; to which he succumbed. On account of this accident, FIR No.135 dated 17.06.2018 was registered at Police Station Shri Dungergarh, District Bikaner, Rajasthan, under Sections 279 and 304-A of IPC. With these assertions, the claimants, who are widow, minor children and the mother of deceased Hari Ram Samaria, filed the claim petition before the Tribunal; asserting further therein that the deceased was earning about Rs. 5.5 lakh per annum. He was 42 years of age. Hence, a compensation of Rs. 80.00 lakh was claimed in the claim petition.

3. On being put to notice, respondent Nos.6 and 7 herein; the driver and the owner of the offending vehicle; did not respond. Hence, they were proceeded against ex-parte. The appellant-insurance company put in appearance and defended the matter. Besides taking preliminary objections; involvement of the alleged offending vehicle in the accident was denied. It was further pleaded that the vehicle was being driven in breach of terms and conditions of the insurance policy. The valid route permit and the fitness certificate; qua the vehicle were not available at the relevant time. The vehicle has been falsely implanted in the case.

4. To substantiate their case, the claimants examined the eye witness of the accident and produced the income proof of the deceased in the form of Income Tax Return for the year immediately preceding the date of accident. On the other hand, the insurance company did not examine any witness. No other evidence was led by the insurance company to substantiate their pleadings as asserted in the written statement. However, the documents Ex.R-1 to R-4 were placed on record qua insurance policy etc.

5. Appreciating the pleadings and the evidence led by the parties, the Tribunal has awarded an amount of Rs. 71,18,000/- as compensation. The income of the deceased has been assessed as per the ITR of the deceased.

6. The age of the deceased has been taken at 42 years. Accordingly, keeping in view the age of the deceased, the multiplier of 14 has been applied; and the benefits on account of future prospects at the rate of 25% have been awarded.

7. Arguing the case on behalf of the appellant, learned counsel for the appellant has submitted that the Tribunal has gone wrong in law in assuming the income of the deceased as per the ITR. It is the ITR only for one year, which has been placed on record. Hence, that could not have been taken as a conclusive proof of income by the Tribunal. Therefore, the income of the deceased has been assessed on the higher side. Learned counsel for the appellant has further submitted that the accident had taken place in Rajasthan. Therefore, the Tribunal in Haryana had no jurisdiction to entertain the claim petition. Just to bring the jurisdiction within the State of Haryana, one of the claimants is shown to be resident of Gurugram.

8. Therefore, the award passed by the Tribunal is bad for want of territorial jurisdiction. To support his argument that the offending vehicle insured by the insurance company was not involved in the accident, learned counsel for the appellant has submitted that the FIR was registered on the next day; after a gap of 36 hours. Even in that FIR, the number of the

vehicle has not been mentioned. Hence, it has not been proved that the offending vehicle was involved in the accident.

9. Having heard learned counsel for the appellant and having perused the case file, this Court does not find any force in the argument raised by learned counsel for the appellant. Undisputedly, the vehicle in question was insured by the appellant-insurance company. Therefore, in case the claimants are able to prove their claim against the respondents, then the appellant is bound to make the payments. So far as the argument of learned counsel for the appellant qua assessment of the income of the deceased is concerned, it needs no emphasis that the compensation is to be awarded to the family of the deceased on the basis of the income of the deceased at the time of his death. The burden of proving the income of the deceased at the time of his death has been duly discharged by the claimants by producing the ITR of the deceased. It is only on the basis of the said ITR that the income of the deceased and the consequent loss of dependency to the claimants, has been assessed by the Tribunal. If the insurance company had any proof that before this year the deceased, who was self employed, was not earning this much of money, then the insurance company was free to lead anything in evidence to that effect. However, nothing has been led in evidence by the insurance company to establish that the income of the deceased; as has been taken by the Tribunal; was not the true income; at the time of his accident. At the cost of repetition, this deserves to be emphasized that it is the income of the deceased which he was earning at the time of the death, which is the basis for calculation and grant of the compensation to the dependants; and any earlier lesser income would be totally irrelevant. Hence, this Court does not find any illegality in the findings recorded by the Tribunal; in this regard.

10. So far as the arguments of learned counsel for the appellant qua the territorial jurisdiction and the significance of the FIR are concerned, the same are liable to be noted only to be rejected. The territorial jurisdiction for claiming compensation for motor accident is not tagged to any particular place. Otherwise also, undisputedly; one of the claimants is resident of Gurugram. Therefore, the claim petition was rightly filed, and has been rightly entertained by the Tribunal at Gurugram. So far as the FIR relating to the accident is concerned, it deserves to be noticed that even if there had been no FIR registered in the matter, that would not have disentitled the claimants from compensation on account of death of deceased in the accident. However, the FIR can, at the best, be taken as a supporting document, to assess; whether the vehicle is involved in the accident or not. In the present case, the contents of the FIR itself show that the vehicle driven by respondent No.6 is involved in the accident. Even, the challan has been filed in the matter against respondent No.6-driver of the offending vehicle. Beside this, the claimants have examined the eye witness of the case, who has duly proved the accident and the involvement of the vehicle in question. If the insurance company intended to rebut the evidence led by the claimants on this aspect, then the insurance company should have led positive evidence in this regard. However, despite taking a specific plea in the written statement that the vehicle insured by the appellant was not involved in the accident, the insurance company has not led any evidence to support this assertion made in the written statement. Hence, their pleadings have gone totally unsubstantiated.

11. No other argument was raised.

12. In view of the above, finding no merits in the present appeal, the same is dismissed.

R.M.S. – *Appeal dismissed.*