

**IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH**

-:-

**F.A.O No. 1128 of 2009 (O&M)
Decided on : January 15, 2015**

IFFCO-TOKIO Insurance Co. Ltd.

... Appellant.

Versus

Sumesh Sharma & Ors.

... Respondents

CORAM : HON'BLE MR.JUSTICE MAHAVIR S. CHAUHAN

Present : Mr. N.K.Malhotra, Advocate, for the appellant.

Mr. P. R. Yadav, Advocate, for respondents No. 1 to 3.

Mahavir S. Chauhan, J. (Oral)

Manoj, a 28 years old youth, statedly working with M/s Vigilance V.S.T, Security Private Ltd., Gurgaon, died in a motor vehicle accident on 15.08.2006 caused on account of rash and negligent driving of three wheeler bearing registration No. HR-55D-8293 ('offending vehicle' – for short) by Salim (respondent No.5). His legal representatives, namely, widow and two minor sons brought Claim Application No. 153 of 2006 before the learned Motor Accident Claims Tribunal, Fast Track Court, Gurgaon ('the Tribunal' – for short), to seek compensation alleging loss of dependency. In the claim application income of the deceased was stated to be Rs.8,000/- per month. The application was contested by the respondents, namely, driver, owner and insurer of the offending vehicle. From the pleadings of the parties, learned Tribunal formulated following issues:-

1. Whether Manoj Kumar died as a result of rash or

- negligent driving of the vehicle in question by respondent No.1, as alleged?OPP
2. Whether the petitioners are entitled to compensation if so to what amount and from whom?OPP
 3. Whether respondent No.2 was not duly licenced driver, if so to what effect?OPR.]
 4. Relief.

After both the sides had concluded their respective evidence, learned Tribunal appraised the same in the light of the submissions made at the bar, returned findings on all the issues favourable to the applicants and vide award dated 25.08.2008 allowed compensation amounting to Rs.7,85,000/- along with interest @7.5% per annum from the date of filing of the appeal till payment/realisation of the awarded amount. To challenge award dated 25.08.2008, this appeal, i.e., FAO No. 1128 of 2009 has been brought by the insurer of the offending vehicle while cross-objections No. 59-C -II of 2009 have been preferred by the applicants to seek enhancement of compensation.

I have heard learned counsel for the parties.

On behalf of the insurer it is argued that the averments of the applicants with regard to employment and salary of the deceased are highly doubtful and no reliance ought to have been placed thereupon and there is no evidence with regard to age of the deceased, but even in the absence thereof, the learned Tribunal has taken age of the deceased as 28 years.

On behalf of the applicants it is, however, argued that the learned Tribunal has not taken into consideration documents pertaining to employment of the deceased, which ought to have been taken into

consideration and on that basis loss of dependency ought to have been taken at Rs.8,000/- per month. It is also argued that compensation granted by the learned Tribunal for loss of consortium and for expenditure on last rites of the deceased is on the lower side while nothing has been awarded for loss of love and affection as regards minor applicants.

Nothing more has been urged on the either side.

Factum and manner of the occurrence are not in dispute.

As regards employment of the deceased, learned Tribunal has found as a matter of fact that the salary certificate Exhibit P/5 and evidence with regard to employment of the deceased are doubtful. Various circumstances have been enumerated by the learned Tribunal to suspect this part of the case of the applicants. Nothing to the contrary could be shown during the course of hearing. However, learned Tribunal faced with the difficulty of absence of evidence as regards income of the deceased has taken his income as Rs.6,000/- per month and contribution of the deceased towards the family, i.e., applicants as Rs.4,000/- per month. This part of the finding has not been disputed by either side.

As regards age of the deceased, suffice it to say that though there is no evidence on this aspect of the matter, but from the post mortem report, Exhibit P/3, it comes out that the deceased was aged about 28 years on the day when his life was snuffed out of him. This document has been placed on record by the applicants and has not been objected to on behalf of the appellant and other respondents. Therefore, findings of the learned Tribunal as regards age of the deceased being 28 years cannot be interfered with.

Selection of multiplier is not challenged.

That being so, compensation on account of loss of dependency has remained undisputed.

However, it is found that the compensation allowed for loss of consortium and funeral expenses is on the lower side and minor children of the deceased are also entitled to compensation for loss of love and affection.

Consequently, while dismissing the appeal (FAO No. 1128 of 2009) brought by the insurer, the cross-objections (XOBJC-59-CII of 2009) brought by the applicants are allowed and the impugned award is modified to the following effect:-

1. The applicants shall be entitled to an amount of Rs.25,000/- as expenditure on last rites of the deceased.
2. Applicant-Sumesh Sharma shall be entitled to Rs.1 lac on account of loss of consortium;
3. Applicants-Sahil & Nikhil (minor sons of the deceased) shall be entitled to amount of Rs. 1 lac on account of loss of love and affection.

Other terms of the impugned award shall remain unchanged.

The appeal is disposed of in the aforestated terms.

No costs.

January 15, 2015
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[Mahavir S. Chauhan]
Judge