

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.4931 of 2011 (O&M)

Date of Decision.13.01.2016

IFFKO-TOKYO General Insurance Company LimitedAppellant

Vs.

Smt. Bhagwani and othersRespondents

2. FAO No.5483 of 2011

Smt. Bhagwani and othersAppellants

Vs.

Anil and othersRespondents

Present: Mr. Yogesh Gupta, Advocate
for the appellant in FAO No.4931 of 2011 and
for respondent No.3 in FAO No.5483 of 2011.

Mr. Anil Ghanghas, Advocate
for the appellants in FAO No.5483 of 2011 and
for the respondents in FAO No.4931 of 2011.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J.

1. Both the appeals are with reference to a claim made for death of a male stated to be aged 47 years in the petition in a motor accident that took place on 5.3.2008. The deceased was said to be a transporter holding a fleet of vehicles having earned himself the benefit of credits from financial institutions and running them, after having hypothecated the same with the financial institutions. The claimants were widow, three children aged 22 years, 20 years and 18 years and

father and the further contention was that the deceased was earning ₹ 50,000/- per month. He had been hospitalized and treated for all the injuries suffered by him at private hospitals and the bills have been filed providing for proof for the expenses incurred.

2. The Tribunal found the negligence of the insured's vehicle as having been established and while assessing the compensation provided for an assessment of ₹48,34,590/- as the amount payable by the Insurance Company. The aggregate sum was comprised of ₹ 8,92,590/- towards medical expenses, ₹1,17,000/- towards hospitalization, ₹10,000/- towards transportation, ₹37,80,000/- towards loss of dependency, ₹10,000/- towards loss to estate, ₹20,000/- towards loss of consortium and ₹5,000/- towards funeral expenses.

3. The contention by the insurer in FAO No. 4931 of 2011 is that the choice of multiplier as 14 was made on an assessment that he was aged 45 years as found in the medical bills and hospital records, while the post mortem certificate reveals the age 47 years, which was also the age stated in the petition. The contention, therefore, was that the appropriate multiplier must have been 13 in terms of the decision of the Supreme Court in *Sarla Verma and others vs. Delhi Transport Corporation and another*, 2009(6) SCC 121.

4. The further contention is that the deceased had not admittedly been paying income tax as disclosed in the petition in column 7 and during the relevant time for the assessment year 2008-09 the exemption from payment of tax was available upto ₹1,10,000/- only. The Tribunal's assessment that deceased was earning ₹30,000/- per month was without reference to any document. The argument would,

therefore, be that the income could not have been more than ₹1,10,000/- and after making appropriate modification on deduction of 1/4th in terms of the decision in *Sarla Verma's* case referred to above, the dependency could have been calculated only on the income that could have been exempted from payment of income tax and the appeal would require consideration by way of appropriate and just re-assessment of income. The plea on behalf of the appellant is that on a proper reckoning the amount payable would be only ₹16,00,000/-, which was also the amount that had been deposited and noted down by this Court already.

5. The claimants would come in appeal by seeking for enhancement in FAO No. 5483 of 2011 and would also file an application for additional evidence to offer proof for ownership for vehicles and the hypothecation that had been made to the financial companies and the further details of the installments that were being paid towards discharge of loans. The counsel for the appellants/claimants would argue that the minimum income as non-taxable at ₹1,10,000/- could be taken only in a situation where there was no proof regarding income but in this case the documents already filed showed that the deceased was owner of 9 trucks, having employed 8 persons as drivers for each one of the vehicles and himself acting as a driver for one of them. According to the counsel, the additional documents filed would show that the liability before his death in favour of the financial company was ₹1,09,62,093/- and the loan that had been repaid till his death without any default was to the tune of ₹43,19,381/- and that there had been undischarged loan to the tune of ₹66,37,712/-. The counsel for the appellant/claimants in

FAO No.5483 of 2011 would disclose that even the outstanding loan has been discharged after his death in some way by sale of the vehicles or by income earned from the trucks. The counsel would provide to me his own projection of what the income and expenditure could have been, having regard to the fact that the claimants themselves offered no proof of expenses and income earned and left to the Court to decide on the basis of conjectures of what would have earned. The counsel would state that the deceased would have paid ₹8,000/- to each one of the drivers and the total earning including the amounts, would have been substantial, considering the fact that installments for 9 trucks being paid @ ₹2,95,500/- per month. Taking the income at ₹13,06,700/- per year on the basis of such projections, the counsel would state that the assessment made already was grossly low and the annual dependency ought to have been at ₹ 2,19,52,600/-.

6. The claimants are also aggrieved about the fact that as against the medical bills and receipts aggregating to nearly ₹14,00,000/-, the Tribunal has wrongly deducted ₹5,00,000/- and provided only for ₹8,92,519/-, which according to him was erroneous. The counsel for the claimants would make an attempt to show that the Tribunal was unjustified in deducting the amounts mentioned in marked documents 220 to 227 aggregating to ₹5,00,000/- and say that these amounts were actually correlated as payments made and the deduction ought not to have been effected. The counsel would also seek for reassessment on the scales of compensation as provided in ***Rajesh and others vs. Rajbir Singh and others, 2013(9) SCC 54*** allowing for a lakh of rupees for loss of consortium and @ ₹50,000/- for loss of love and

affection for the major sons and daughter and the parent. Funeral expenses and loss to estate are also sought to be revised in terms of the abovesaid decision and appropriate reckoning according to the counsel for compensation should have been ₹21,59,18,600/-.

7. Responding to the argument regarding the medical expenses, the counsel for the appellant insurer would point out to the marked documents as proof of deposits made which were liable for adjustment against various bills. The amounts covered in Ex. P-79 to Ex. P-81 were, respectively ₹3,719/-, ₹3,719/-, ₹7500, ₹7500, ₹7500, ₹1,00,000/-, ₹1,00,000/-, ₹50,000/-, ₹80,000/-, ₹40,000/-. The contention is that these have been shown already in the expenses incurred and receipts are also produced and Ex. P-79 to P-81 were the receipts for the actual expenses incurred and one of the receipt would also state for the excess of deposit made a refund of ₹7,000 was being made. The deduction of the amounts mentioned in the marked documents are therefore according to the counsel justified. The counsel would reiterate an argument that the age ought to be only with reference to the claimants' own pleadings as 47 years in the post mortem certificate and the Tribunal was not justified in taking the age as 45 years on the basis of the hospital admission record or of other receipts when no actual proof of age was made with reference to any other document other than the post mortem certificate and the records. The age had a reference for the choice of multiplier and the multiplier applied at 14 was impermissible.

8. The counsel for the Insurance Company would rely on a judgment of the Supreme Court in *Oriental Insurance Company*

Limited vs. Meena Variyal & others, 2007(5) SCC 428 that holds that “it was necessary for the claimants to establish what was the monthly income and what was the dependency on the basis of which the compensation could be adjudged as payable. Should not any Tribunal trained in law ask the claimants to produce evidence in support of the monthly salary or income earned by the deceased from his employer Company? Is there anything in the Motor Vehicles Act which stands in the way of the Tribunal asking for the best evidence, acceptable evidence? We think not. Here again, the position that the Motor Vehicles Act vis-a-vis claim for compensation arising out of an accident is a beneficent piece of legislation, cannot lead a Tribunal trained in law to forget all basic principles of establishing liability and establishing the quantum of compensation payable. The Tribunal, in this case, has chosen to merely go by the oral evidence of the widow when without any difficulty the claimants could have got the employer - company to produce the relevant documents to show the income that was being derived by the deceased from his employment. Of course, in this case, the above two aspects become relevant only if we find the insurance company liable. If we find that only the owner of the vehicle, the employer of the deceased was liable, there will be no occasion to further consider these aspects since the owner has acquiesced in the award passed by the Tribunal against it.”

9. As regards the deduction of legal expenses covered through documents marked 220 to 227, the counsel for the appellant-insurer points out that allowing for the amounts without deduction would mean duplication of claims. He would explain that the hospital was receiving amounts in advance for in-patients and adjusted the same against the period of treatment undertaken after the deposits. I have examined the documents myself and I am convinced that the amount paid as aggregating to ₹5 lacs covered through the bills have actually been adjusted by reference to actual bills which have aggregated to

₹8,92,590/-, an amount that has been actually awarded by the Tribunal.

There is no error in calculation and the claim sought for by the claimants in that regard is tenable.

10. The argument essentially was with reference to the income earned by the deceased. There is a gross variation between the amounts claimed by the claimants based on the actual earnings and the amount as taken by the Tribunal. Admittedly, the deceased was not an income tax assessee during the relevant time at the time of his death. There is some meaning, therefore, in the contention of the insurer that the non-taxable income prevalent at that time which was ₹1,10,000/- could alone be taken as basis for computation of the contribution to the family. This would be so in a situation where there was no proof of income. Here the income that is shown is of a person who owned 9 trucks, having employed 8 drivers for each one of the vehicles and himself driving one truck. He had secured finance for purchase of all the vehicles and the additional documents filed in Court would show that on the date of his death, he had liabilities in excess of over a crore and he had been paying loans every month. The liability towards loans aggregated at the time of death to more than ₹66 lacs. It will be wrong to merely take all the gross income without minding the fact that the incomes were actually through an artificial prosperity that he created for himself by getting loan over a crore of rupees. The monthly repayments to the finance companies together with salary that he could have paid to each of his drivers @₹8,000/- per month was somewhere close to about ₹3 lacs per month. The counsel for the claimants would, therefore, seek the net income as earned through the various trucks

themselves as constituting an average income at not less than ₹ 50,000/-. If he had owned the properties without any loan or there were no outstanding loans on the date of his death, surely the entire income after deducting all expenses for maintenance of vehicles and for payment of salaries could have taken as available with deceased for contribution to the family. If he was only generating income from all these trucks for repayment of huge loan and there was undischarged loans to the tune of ₹66 lacs at the time of his death, it will mean that there was little left for him personally and perhaps in future after about 10 years he could have been in a position to manage a sizable fleet with no pending liabilities. At that time the income could go to bring the entire income for himself.

11. In determining the compensation, we make several approximations. We assume that a person lives through the average life span of a human being which we estimate around 70 years. The formulas providing for multiplier or deduction for personal expenses factor the uncertainties of life and therefore, take the values of multiplier at figures lower than the number of years which he would have lived but for the premature death due to accident. We also take note of the fact of lump sum amount becomes available on the Tribunal's assessment which would not have been realized by the person if he would have been alive but would have only spread during the entire length of his remaining life time. The only credit that I can give right now is that a person who did not have any income to pay income tax need not have remained for the rest of his life at the same status, given a sure prospect of repaying the loans and secured adequate sums

to be in a position to even pay tax. With the propensity of the deceased to earn fairly a large sum close to more than ₹3 lacs a month to be in a position to repay the loans, I would take him to be a person capable of sufficient managerial skills to run a profitable business and I will take the income at two times the amount what was the minimum income which was less than the taxable limit. If therefore the taxable limit was only ₹1,10,000/-, I would take the average annual income over a period of his life after discharge of the loans to be at least ₹2,20,000/-. On ₹2,20,000/-, I would work a deduction of 1/4th as person who was supporting his widow, three children aged 22 years, 20 years and 18 years and the father and take the contribution to the family as ₹1,65,000/- per year. I will adopt a multiplier of 13 and the loss of dependence would come to ₹21,45,000/-. I will provide for loss of consortium at ₹1 lac for widow and take the component of love and affection for children and father at an average of amount of ₹50,000/- each, considering that all of them were above 18 years. The Tribunal has already provided for ₹8,92,590/- for medical expenses, ₹10,000/- for transportation, ₹1,17,000/- for attendant charges that the deceased must have spent during the stay in the hospital before his death. I find that they have been properly assessed and there is no scope for future enhancement. I will retain the component of loss to estate at ₹10,000/-, for the deceased had huge liability at the time of his death but I will increase the funeral expenses from ₹5,000/- to ₹25,000/-. The total compensation payable would be ₹34,99,590/-. The amount now assessed shall also attract interest @7.5% from the date of petition till the date of payment. The liability shall be in the same manner as

determined by the Tribunal. The amount shall be distributed amongst the claimants in the same proportion as already directed by the Tribunal.

12. The appeal filed by the insurance company in FAO No.4931 of 2011 is allowed and the appeal filed by the claimants in FAO No.5483 of 2011 for enhancement is dismissed.

(K. KANNAN)
JUDGE

January 13, 2016
Pankaj*/SP