212.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Cross Objection No.167-CII of 2015 in/and
FAO No.3726 of 2013 (O&M)
Date of decision: 14.03.2016

Iffco Tokio General Insurance Company Limited ... Appellant

versus

M/s Parwati and others .... Respondents

II. <u>Cross Objection No.190-CII of 2015 in/and</u>
<u>FAO No.3822 of 2013</u> (O&M)

Iffco Tokio General Insurance Company Limited ... Appellant

versus

Bir Singh and others .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Ravinder Arora, Advocate and
Mr. Neeraj Khanna, Advocate,
for the appellant.

Mr. Ram Bilas Gupta, Advocate,
for respondent No.2 in FAO No.3822 of 2013.

Mr. Ravinder Hooda, Advocate,
for respondent No.3 in FAO No.3726 of 2013 and respondent No.9 in FAO No.3822 of 2013.

Mr. Johan Kumar, Advocate,
for respondent No.1/cross objector in FAO No.3726 of 2013 and for respondents 1, 3 and 7 in FAO No.3822 of 2013/cross objectors.

----

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. *(Oral)*

1. The appeals are at the instance of the insurer denying the involvement of the vehicle. It was a case of the deceased who was travelling in a scooty along with yet another person who was injured in the accident and he came by death when the insured truck dashed from behind and caused the fatality. An FIR had been registered soon after the accident on 08.01.2012 in which there was a specific reference to registration number of the truck as HR-73-1974. The driver and owner were represented through counsel at the trial.

2. The informant who was an eyewitness was in court and in the cross-examination, english alphabets were confronted to him and he could not recognize them. This was sought to be used by the insurer to contend that the witness could not have been an eyewitness and that the information given in the FIR cannot be true. The Tribunal discarded the same and proceeded to make the insurer liable. The same arguments are advanced before this court as well.

3. If there was ever a doubt about the identity of the vehicle involved when there was a specific reference to the number of vehicle and when the driver and owner were also represented in court through counsel, the Insurance Company should have secured the details which are possible by virtue of the provisions under Section 133 of the Motor Vehicles Act. An eyewitness, who is illiterate but whose report was taken to prepare an FIR, must be

given its due credence and if he was unable to identify the alphabets, I will not make much of it, for, it was always possible that the appellant gathered enough assistance for the informant and track down the actual identity of the vehicle. The details contained in FIR must be taken as true unless the driver himself was prepared to give evidence that he did not drive the vehicle on that day or the owner had given evidence that his vehicle was never involved in the accident. A mere inability of the author of FIR to identify the alphabets cannot be so taken as to strike out the whole of the claim and allow for a vague statement in defence of the insurer that the vehicle was not involved to gain a premium. It is an unfortunate reality in courts that the Insurance Companies make no genuine effort to settle claims and engage in irresponsible defences of denying everything of what is contained in the petition without eliciting a direct response through a notice served on the owner or the driver. It will be an utter travesty of justice for an insurer to deny the accident when the insured was not prepared to deny the same. I have no reason to suspect that there was any collusion about the owner and driver, for, nothing was brought by the insurer to say that the owner and driver were not cooperating with the insurer and they had fraudulently lent their names and their vehicle as having been involved in the accident. I reject the appeal filed by the insurer and confirm the finding regarding the involvement of the vehicle.

4. As regard the cross objection for enhancement of compensation (i.e. Cross Objection No.190-CII of 2015 in FAO No.3822 of 2013), the contention is that the deceased was 48 years old woman whose value of services as householder was taken as ₹4,600/- per month. The court made a deduction, which according to the counsel, ought not to have been done. If the services rendered in the family had been quantified at ₹4,600/-, there can be no deduction for the same. I will provide for ₹1 lakh for loss of consortium to the husband. Considering the fact that there were 3 minor children, I will allow for ₹1 lakh each and for the major child ₹50,000/-. I will reassess the compensation under various heads as under:-

Accident	08.01.2012		
Age	48		
Occupation	Housewife		
Claimants	Husband, 3 minor and 1 major children		
	Heads of claim	**Tribunal**	**High Court**
Sr. No.		Amount (₹)	Amount (₹)
1.	Income		
2.	Add,% of increase 30%/50%		
3.	Deduction ½, 1/3, ¼, 1/5		4,600
4.	Multiplicand		55,200
5.	Multiplier	12	13
6.	Loss of dependence		7,17,600
7.	Medical expenses		
8.	Loss of consortium		1,00,000
9.	Loss of love and affection		3,50,000
10.	Loss to estate		2,500
11.	Funeral expenses		
	Total	5,49,920	11,70,100

There shall be an award of ₹11,70,100/- and the additional compensation over what has been awarded already by the Tribunal will attract interest at 6% from the date of petition till date of payment. The amount shall be distributed equally amongst the claimants. The amounts standing to the credit of the minor children shall be retained in a fixed deposit during the entire period of minority and 75% of the same shall be permitted to the withdrawn on attaining majority and the remaining 25% shall be deposited for a period of 3 years by splitting them into 3 portion, the first portion for a period of 1 year, the 2nd portion for a period of 2 years and the 3rd portion for a period of 3 years. The amounts shall be directed to be disbursed to the parties respectively on attaining maturity to them as and when they attain majority. The award stands modified and the appeals by the insurer are dismissed and the cross objection No.190-CII of 2015 filed in FAO No.3822 of 2013 is allowed to the above extent.

5. As regards the cross objection filed for enhancement of compensation for injuries (i.e. Cross Objection No.167-CII of 2015 in FAO No.3726 of 2013), the Tribunal provided for the entire medical bills of ₹13,530/- and assessed the compensation for all simple injuries and provided for pain and suffering and for all hospital charges including special diet and transportation to aggregate to ₹40,000/-. The amount assessed is correct and

appropriate and I find no reason for interference. The cross objection No.167-CII of 2015 filed in FAO No.3726 of 2013 is dismissed.

(K.KANNAN)
JUDGE

14.03.2016
sanjeev