

***FAO No.1041 of 2009 and
Cross-objection No.198-CII of 2015 (O&M)***

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

**FAO No.1041 of 2009 and
Cross-objection No.198-CII of 2015 (O&M)
Date of decision: 29.08.2017**

IFFCO Tokio General Insurance Company Limited

....Appellant

Versus

Smt. Poonam and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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

Mr. Rakesh Lathwal, Advocate,
for respondent Nos.1 to 4-cross objectors.

RITU BAHRI J. (Oral)

CM-19505-CII-2017

In view of the averments mentioned in the application, same is allowed and delay of 131 days in refiling of the cross-objection is condoned.

FAO-1041-2009

IFFCO Tokio General Insurance Company Limited-appellant has filed this appeal (FAO No.1041 of 2009) against the award dated 27.11.2008 passed by the Motor Accident Claims Tribunal, Sonapat (hereinafter referred to as 'the Tribunal') whereby compensation of Rs.3,91,000/- has been awarded in favour of the claimants-respondent Nos. 1 to 4 on account of death of Kuldeep Singh in a motor vehicular accident which took place on 28.12.2006. Respondent No. 1 is widow, respondent

Singh.

On the other hand, cross objectors-respondent Nos.1 to 4 (claimants) have filed Cross Objection No.198-CII of 2015 seeking enhancement of compensation awarded by the Tribunal vide aforesaid Award dated 27.11.2008.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 28.12.2006, Kuldeep Singh (since deceased) was going to Delhi from village Rathdhana via Rai in his Maruti Alto car bearing registration No.HR-10-J-5958. At about 9.00 P.M., when he reached just on the outskirts of his village Rathdhana-Rai road, suddenly his car turned turtle and fell into the ditches, as a result of which, he received injuries. The said accident was witnessed by Naveen son of Partap Singh. The injured was taken to Civil Hospital, Sonapat, from where, he was referred to PGIMS, Rohtak. However, he was taken to Jai Parkash Narain Hospital, Delhi, where he succumbed to the injuries at about 4.00 P.M. on 29.12.2006. With regard to the accident, DDR No.10 dated 27.02.2007 was registered at Police Station, Sadar, Sonapat. Consequently, claimants-respondent Nos. 1 to 4 filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident in question resulting into the death of Kuldeep Singh had taken place due to the use of car bearing registration No. HR-10-J-5859 by the deceased and thus, returned finding on issue No.1 in favour of the claimants. This finding was rightly given on the basis of deposition of Navin (PW-4), on whose statement, DDR Ex.P4 was recorded.

In the absence of any direct evidence, income of the deceased

was assessed at Rs.3000/- per month, out of which, 1/3rd amount was deducted towards his personal expenses. The dependency of claimants, thus, came to Rs.2000/- per month. The deceased was 25 years of age at the time of accident/death and the multiplier of 16 was applied. Thus, the claimants were found entitled to compensation of Rs.3,84,000/- (2000 x 12 x 16). In addition to it, Rs.5000/- were awarded towards loss of consortium to widow (claimant No.1) and Rs.2000/- for funeral expenses/last rites etc. Hence, the claimants were found entitled to a total compensation of Rs.3,91,000/- along with interest @ 7.5% per annum from the date of filing of the petition till realization. Feeling dissatisfied with the impugned award, the Insurance Company-appellant has preferred the present appeal.

During the pendency of appeal, claimants-respondent Nos. 1 to 4 have filed Cross Objection No.No.198-CII of 2015 seeking enhancement of compensation awarded by the Tribunal.

I have heard learned counsel for the parties and perused the case file.

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident.

The Insurance Company is not disputing the finding of Tribunal on issue No.1 that the accident had been caused on account of use of car bearing registration No. HR-10-J-5859 by the deceased, which resulted into his death. The Insurance Company has challenged the liability on the ground that owner of the vehicle (i.e. car bearing registration No. HR-10-J-5859) namely Kitab Singh was, in fact, father of the deceased (driver) and as per insurance policy, it did not cover the risk of third party.

This aspect has been considered by the Tribunal by making

reference to the judgment passed in ***New India Assurance Company Limited Vs. Shyamo Chauhan and others***, 2005 RCR (Civil) 117, wherein it has been held that even if, the deceased was driver of the vehicle in question, still the owner and the Insurance Company of the vehicle would be liable under the “no fault liability” under Section 163-A of the Act.

Learned counsel for the Insurance Company-appellant has place on record copy of insurance policy (Annexure A-1) in respect of the vehicle in question. A perusal of this document shows that it was a comprehensive insurance policy and had covered the risk of owner/driver. Being a comprehensive policy, the Insurance Company is liable to compensate the borrower as a third party. In this view of the matter, argument raised by learned counsel for the appellant is rejected.

Resultantly, finding no merits, present appeal (FAO No.1041 of 2009) filed by the Insurance Company-appellant is **dismissed** and Cross Objection No.198-CII of 2015 filed by the claimants-respondent Nos. 1 to 4 is **allowed**.

In the peculiar facts and circumstances of the case, to meet the ends of justice, the compensation is hereby reassessed in view of the judgments of ***Asha Verman and others vs. Maharaj Singh and others***, 2015(2) RCR (Civil) 520, ***New India Assurance Company Limited vs Gopali and others***, 2012 (12) SCC 198, ***Sarla Verma and others vs. Delhi Transport Corporation and another***, 2009 (3) RCR (Civil) Page 77, ***Rajesh and others vs. Rajbir Singh and others***, 2013 (9) SCC 54 and ***Munna Lal Jain and another vs. Vipin Kumar Sharma and others***, 2015 (3) Recent Apex Judgments 459, as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.3000/- per month
(ii)	50% of (i) above to be added as future prospects	3000 + 1500 = Rs.4500/-
(iii)	1/10 th of (ii) above is deducted as personal expenses of the deceased	4500 – 450 = Rs.4050/-
(iv)	Compensation after multiplier of 18 is applied	Rs.4050/- x 12 x 18 = Rs.8,74,800/-
(v)	Loss of consortium for the widow	Rs.1,00,000/-
(vi)	Loss of love and affection for the children (claimant Nos.2 & 3)	Rs.2,00,000/- (Rs.1,00,000/- each)
(vii)	Loss of love and affection for the mother (claimant No.4)	Rs.50,000/-
(viii)	Funeral expenses	Rs.25,000/-
(ix)	TOTAL COMPENSATION AWARDED	Rs.12,49,800/-
(x)	Enhanced amount of compensation	Rs.12,49,800 – 3,91,000 = Rs.8,58,800/-

The enhanced amount of compensation of **Rs.8,58,800/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of “*Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others*”, 2015(1) SCC 539. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

(RITU BAHRI)
JUDGE

29.08.2017
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No