IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2241 of 2014 (O&M)
Date of decision:- January 09, 2017

IFFCO-TOKIO GENERAL INSURANCE COMPANY LTD.

....APPELLANT..

VS.

HARMEET KAUR AND OTHERS

....RESPONDENTS..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Ankur Gupta, Advocate,
for the appellant.

Mr. J.S. Cooner, Advocate,
for respondents No. 1 and 2.

Ms. Gurnam Kaur Turka, Advocate,
for respondent No.3.

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<u>JASPAL SINGH, J. (Oral)</u>

Dissatisfied with the award dated December 19, 2013 passed by Motor Accident Claims Tribunal, SAS Nagar Mohali (for short, "Tribunal") in case captioned as "Shinder Kaur and another vs. Labh Singh and another", MACT Case No. 37/16-02-2011 M/s Iffco Tokio General Insurance Company (for short, "Insurance Company") has preferred the instant appeal.

2. The first and foremost contention of learned counsel for the appellant is that while deciding the issue with regard to the deduction towards the personal and living expenses of the deceased, the ld. Tribunal

has committed an error while ordering deduction only to the extent of 1/3rd. In fact, it should have been 50% of the income of the deceased, who was aged about 23 years and a bachelor.

3. The next contention raised by learned counsel for the appellant is that while deciding the quantum of compensation to be awarded to the claimants, Tribunal has wrongly assessed the income of the deceased to the tune of ₹6000/- per month, which is otherwise without any basis. The ld. Tribunal should have taken the income of the deceased at par with the minimum wage rate prevalent at the time and date of accident in the State of Punjab i.e. maximum to the extent of ₹4000/- approximately.

4. The third and last contention of learned counsel for the appellant is that the ld. Tribunal has also committed an error while taking 50% of the deceased's income towards his future prospects. In fact, the deceased was not a regular or permanent employee. Rather, as per the version of the claimants, he was privately employed as a Welder. Thus, the claimants are not entitled to any compensation on account of future prospects.

5. On the other hand, learned counsel for the respondent has submitted that the impugned award dated December 19, 2013 is absolutely inconsonance with the evidence available on file and settled canons of law. It is based upon oral as well as documentary evidence, which is otherwise, un-shattered or un-rebutted. Thus, it requires no interference.

6. This Court has given an anxious thought to the rival submissions made by learned counsel for the parties and has perused the record available on file.

7. As far as the first contention of learned counsel for the appellant is concerned, this Court finds full legal and factual force. The deceased was admittedly unmarried and aged about 23 years at the time of his demise. In view of the observation made in ***"Sarla Verma vs. Delhi Transport Corporation, 2009(3) RCR (Civil) 77,*** which has been approved by the Full Bench judgment rendered in ***"Reshma Kumari and others vs. Madan Mohan and another", 2013 (2) RCR (Civil) 660,*** the deduction was required to be made to the extent of 50% of the income of the deceased towards his personal and living expenses and the deduction made by the ld. Tribunal to the extent of $1/3^{rd}$ in this regard is against the settled proposition of law. In fact, the claimants were only entitled to the compensation keeping in view the income of the deceased after having deducted 50% of his income. Thus, the award in this regard deserves to be modified.

8. Undoubtedly, the award was passed on December 19, 2013 by the Tribunal while assessing the income of deceased-Harjit Singh to the tune of ₹6000/- per month. The deceased was employed as a Welder. The evidence adduced by the claimants with regard to the income of the deceased is un-rebutted and simply because minimum wage rate prevalent at the time of accident in the State of Punjab was to the tune of ₹4000/- approximately, does not mean that deceased was not earning more than the minimum wage rate. From the evidence available on record it is established that Harjeet Singh-deceased was working as a Welder with Swami Coach near Dera Bassi, District Mohali on a monthly salary of ₹6500/- per month. Thus, taking into consideration all aspects, his income has been assessed to the tune of ₹6000/- per month by the Tribunal, which requires no

interference by this Court.

9. As far as the grant of compensation to the extent of 50% of the income of the deceased on account of future prospects is concerned, the claimants cannot be denied any compensation on account of future prospects in view of the judgment passed by Hon'ble the Supreme Court in "***Rajesh and others vs. Rajbir Singh and others", 2013(3) RCR (Civil) 170.*** Otherwise also, merely due to the pendency of any matter/reference before the Hon'ble Supreme Court qua aforementioned judgment, compensation on account of future prospects cannot be withheld, especially in the circumstances that the operation thereof has not been stayed.

10. In the light of what has been discussed above, the appeal is partly allowed and the compensation is ordered to be recalculated after having considered the deduction to the extent of 50% instead of 1/3rd of the income of the deceased with no change in multiplier, interest and the compensation awarded on account of other grounds.

11. No order as to costs.

January 09, 2017 **(JASPAL SINGH)**
sonika **JUDGE**

Whether speaking/reasoned: Yes

Whether reportable: Yes