

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5610 of 2017 (O&M)
Date of Decision: 04.09.2017

IFFCO TOKIO General Insurance
Company Limited

... Appellant

Versus

Babita and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ajay Singla, Advocate,
for the appellant.

RAJIV NARAIN RAINA, J.

1. This is an appeal by the Insurance Company against the award of the Motor Accidents Claim Tribunal, Jhajjar dated January 10, 2017.

2. The Tribunal has accepted the age of the deceased as 40 years on the date of death by motor accident to which the multiplier of 17 has been applied to award compensation. Even if the learned counsel for the appellant-Company says and is believed that the age should be corrected then at age 40 the multiplier of 15 was suitable for adoption. What would the difference come to?

3. The reduction in the amount of compensation on this head would reduce the compensation by ₹1,40,400/- in favour of the company being the difference between application of the two multipliers. However, to bring ₹1,40,400/- to the Insurance Company by an interference in first appeal from order one cannot lose sight of the fact that the Tribunal has

given to the claimant wife of the deceased an amount of ₹50,000/- only as loss of consortium which deserves to be increased by another ₹50,000/- to bring the amount in tune with the law in Smt. Sarla Verma and others v. Delhi Transport Corporation and another, (2009) 2 SCC (Civil) 770 and thereby the amount of ₹1,40,400/- would have to be adjusted and reduced by ₹50,000/-. Still further for loss of love and affection of the two children left behind only ₹50,000/- each has been awarded when ₹1 lakh each ought to have been given to the two children. When this is taken care of the appellant company would be faced with liability to pay ₹9600/- to the claimants because ₹1 lakh would have to be added under head 'd' for loss of love and affection. The total of such calculation is ₹1,50,000/- and consequently interference in the appeal would bring virtually nothing to the appellant in terms of money and become only an academic exercise. Moreover, at least ₹5000/- should be awarded for loss to the estate as per schedule. This brings down the amount to ₹4600/-. If the award is modified in this manner by offsetting the compensation by reducing the multiplier, the effort would not be worth the candle.

4. Therefore, I would not interfere in this matter despite the fact that the multiplier of 17 was applied whereas it should have been 15.

5. Besides, there is a delay of 121 days in filing the appeal which has been sought to be justified in para.2 of the application under Section 5 of the Limitation Act as follows:-

“2. That the award was passed by Ld. Tribunal, Jhajjar on 10.01.2017 and the certified copy of the same was applied on 10.01.2017, which was prepared on 17.01.2017 and delivered on 20.01.2017, thereafter, the learned

Counsel who conducted the case before the Ld. Tribunal sent the same to the dealing Office of the appellant at New Delhi. The copy of the judgment was sent to the Head office of the appellant at Gurgaon, where it has been checked and found the present case is fit for filing appeal for the grounds taken in appeal and thereafter according to procedure it was received by the undersigned counsel and the undersigned counsel after drafting the appeal sent the same to the head office for approval and signatures and in this process the delay of 121 days has occurred in filing the appeal which is neither intentional nor mala fide but due to the reasons mentioned above.”

6. This is not sufficient explanation of cause shown to condone the delay or acceptable reason which kept the appellant from presenting the appeal within the period of limitation. See Supreme Court in Office of the Chief Post Master General & ors. v. Living Media India Ltd. & Anr., (2012) 3 SCC 563.

7. Accordingly, the application is dismissed so also the appeal on both scores.

8. However, this order will not prejudice the claimants, in case they prefer an appeal against the award which, if filed, would be decided on its own merits without reference to this order.

(RAJIV NARAIN RAINA)
JUDGE

04.09.2017
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Whether speaking/reasoned *Yes*

Whether reportable *No*