IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
-.-

Date of decision : 15.12.2018

FAO 5655 of 2014 (O&M)

IFFCO TOKIO General Insurance Company Limited ....Appellant

versus

Ranjit Kaur and others ....Respondents

FAO 9033 of 2014 (O&M)

Hira Automobiles Limited ....Appellant

versus

Ranjit Kaur and others .....Respondents

FAO 5520 of 2014 (O&M)

Ranjit Kaur and others .....Appellants

versus

Sandeep Singh and others .....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present : Mr. Paul S Saini, Advocate and
Mr. Vipul Sharma, Advocate
for the insurance company

Mr. Ashok Bhardwaj, Advocate
for the owner-Hira Auto Mobiles Limited

Mr. A S Syan, Advocate
for the claimants

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Rekha Mittal, J. (Oral)

CM 15749 CII of 2014

Prayer in this application is for condoning delay of 28 days in filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit and arguments advanced, the application is allowed and delay of 28 days in filing the appeal stands condoned.

Main case

This order will dispose of aforesaid appeals as these have emerged out of same award dated 13.03.2014 passed by the Motor Accidents Claims Tribunal, Patiala (hereinafter to be referred as 'the Tribunal') whereby compensation has been granted on account of death of HC Jagtar Singh in a motor vehicular accident that took place on 08.06.2013.

FAO No. 5520 of 2014 has been filed by claimants seeking enhancement of compensation whereas FAO No. 5655 of 2014 has been filed by the insurance company and FAO No. 9033 of 2014 by owner of offending vehicle.

FAO No. 5655 of 2014

Counsel for the insurance company would inform that the appeal has been preferred on the limited issue of driving licence possessed by Sandeep Singh, driver of TATA 407 LPT No. PB 11 AR 9382 (offending vehicle). It is argued that the insurance company has filed an application (CM 15750 CII of 2014) for placing on record investigation report dated 01.05.2014 (Annexure A1) and verification report dated 30.04.2014 (Annexure A2) by way of additional evidence. It is submitted that as per two reports sought to be produced by way of additional evidence, licence possessed by Sandeep Singh has been found to be fake, therefore, the insurance company may be allowed to examine a witness to prove the reports after setting aside findings of the Tribunal on issue of driving licence and remittance of matter to the Tribunal for deciding that question afresh.

Counsel representing the respondents has seriously opposed request made by the insurance company with the submissions that enough opportunities were given to the insurance company to adduce evidence after the documents were brought on record by respondents No. 1 and 2 before the Tribunal.

Two reports sought to be produced by way of additional evidence are not *per se* admissible in law. Perusal of the records would reveal that respondents No. 1 and 2 before the Tribunal closed their evidence after tendering documents on 30.01.2014. The case was fixed for evidence of the respondents for 30.01.2014 after evidence was closed by the claimant. The insurance company also availed opportunities on 13.02.2014, 26.02.2014 and thereafter on 13.03.2014 for adducing evidence. On 13.03.2014, the insurance company tendered into evidence copy of insurance policy and closed evidence.

Application filed by the insurance company for additional evidence does not refer to any request for adducing oral evidence in order to prove reports Annexures A1 and A2. Prayer made by counsel for the insurance company for allowing an opportunity to examine a witness to prove the reports does not fall within the purview and ambit of Order 41 Rule 27 (a) (aa) of the Code of Civil Procedure. That being so, contention raised by the insurance company for remitting the matter to the Tribunal for decision on issue of driving licence afresh is not meritorious and accordingly rejected. As has been noticed here-in-before, two reports sought to be produced by way of additional evidence are not per se admissible. In the given scenario, the insurance company can neither be heard to say that the insured is guilty of violating the terms and conditions of policy nor can it escape liability to pay compensation or press for right of recovery against the insured.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed, leaving the parties to bear their own costs.

FAO No. 9033 of 2014

Counsel for the insurance company would inform that the insurance company has already paid compensation to claimants and the said fact has also been conceded by counsel for the claimants.

Counsel for the appellant, in view of statement made by counsel for the insurance company, would state that the appeal may be disposed of.

Disposed of accordingly.

FAO 5520 of 2014

The Tribunal has awarded compensation of Rs.44,73,565.00, detailed hereunder:-

Monthly income of the deceased	Rs.33,592/- (rounded of Rs.33,600/-)
Multiplier	13
Addition in income	30%
Deduction for personal expenses	1/3rd
Loss of dependency	Rs.43,48,565
Loss of consortium to widow	Rs.1,00,000.00
Funeral expenses	Rs.25,000.00

The deceased was Head Constable with Punjab Police and posted in Police Station Division No. 4, Patiala at the relevant time. The claimants produced on record documents and examined Balwinder Singh, Pay Clerk, Office of Senior Superintendent of Police to prove salary of deceased. Indisputably, as per documents on records, gross salary of the deceased was Rs.42,834.00 including allowances. The Tribunal has not allowed benefit of allowances while computing monthly loss of dependency at Rs.33,592.00. In the light of judgments of Hon'ble the Supreme Court ***National Insurance Company Limited vs. Indira Srivastava and others, 2008 (1) RCR (Civil) 359*** and ***Manasvi Jain vs. Delhi Transport Corporation, 2014 (3) RCR (Civil)*** allowances paid to the deceased would be a benefit available to his family, therefore, the entire salary of deceased shall be taken into consideration for computing loss of dependency. The annual income is calculated at Rs.51,4008.00 and after deducting liability to pay income tax *i.e.* Rs.33,786.00, net loss of annual dependency comes to Rs.4,80,222.00. Addition in income for future prospects allowed by the Tribunal is correct and affirmed. Similarly, multiplier applied by the Tribunal and so also deduction for personal expenses are liable to be affirmed. In view of the above, loss of dependency is calculated at Rs.54,10,501.20 (Rs.62,42,886.00 - i.e. 4,80,222 x 13 + Rs.18,72,865.80 (30% additional) – Rs.27,05,250.60 (1/3rd deduction)).

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.70,000.00 in the light of latest judgments of Hon'ble the Supreme Court ***National Insurance Company Limited v. Pranay Sethi and others,***

2017 SC 1270 and ***Sebastiani Lakra and others vs. National Insurance Company Limited and another, 2018 AIR (SC) 5034***, detailed hereunder:-

Loss of consortium	Rs.40,000.00
Funeral expenses	Rs.15,000.00
Loss to estate	Rs.15,000.00

Total compensation is Rs.54,80,501.20 and additional amount is Rs.10,06,936.20 (Rs.54,80,501.20 – Rs.44,73,565.00) payable with interest at the rate of 7.5% per annum from the date of petition till realization to widow of the deceased, to be invested in fixed deposit for a period of three years.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

15.12.2018
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