IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4847 of 2017(O&M)

Date of decision: 16.5.2018

IFFCO TOKIO General Insurance Co. Ltd. …..Appellant

VERSUS

Neelam Kumari and others .....Respondents

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

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REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 19.01.2017 passed by Motor Accidents Claims Tribunal, Hisar (in short 'the Tribunal') on account of death of Narender Kumar in a motor vehicular accident that took place on 22.09.2013.

The Tribunal has awarded compensation of Rs.7,78,000/- detailed hereunder:-

Monthly income of the deceased	Rs.6000/-
Deduction for personal expenses	1/3rd
Multiplier	11
Loss of dependency	Rs.5,28,000/-
Loss to estate	Rs.1,00,000/-
Loss of love and affection for children	Rs.1,00,000/-
Cost of litigation	Rs.25,000/-
Expenses on transportation and funeral	Rs.25,000/-

Counsel for the appellant-insurance company has assailed the award primarily on three counts. The first submission made by counsel is that Sheli Ram PW-4, an alleged eye witness to the occurrence did not connect driver of the offending vehicle to be author of accident in the criminal proceedings lodged against Dinesh in case titled State Vs. Dinesh and statement of Sheli Ram in those proceedings is Ex.R5. The second submission made by counsel is that original policy has not been produced on record by the insured and no premium in regard to policy was deposited with the insurance company by its agent who purportedly issued the policy and the same is sufficient to show that the document Ex.R10 is forged and fabricated. He has challenged quantum of compensation on the plea that the Tribunal has allowed an amount of Rs.2,25,000/- under conventional heads but the same is required to be restricted to Rs.70,000/- in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270.**

I have heard counsel for the appellant, perused the paper-book particularly the award.

Sheli Ram, an eye witness to the occurrence appeared before the Tribunal and supported cause of the claimants. Even in the criminal case, he has not disputed identity of offending vehicle Tata Magic bearing registration No.HR61-A-0154. Sheli Ram is not a beneficiary of the award. There is nothing on record suggestive of the fact that he is related to the claimants. If Sheli Ram, for the reasons best known to him, did not identify the driver in the criminal proceedings, claimants cannot be blamed for the same. In the given scenario, the appellant cannot derive any advantage to its contention from the fact that Sheli Ram did not identify the driver in criminal proceedings, therefore, findings on issue No.1 are erroneous.

So far as policy issued in favour of the insured, Ex.R10 was issued by agent of the insurance company whose name is Harpreet and Agent No.13001139 and bears policy No.1-28Q2UKE P400. The witness of the insurance company has admitted that Harpreet is agent of their company and his number is 13001139. If agent of the company has committed an illegality during the course of his business, the company cannot escape liability under the guise of some wrong/illegality committed by the agent. Under the circumstances, the Tribunal has rightly refused to accept contention of the insurance company that the insurer is not liable to indemnify the insured on the basis of document Ex.R10.

This brings the Court to quantum of compensation assessed by the Tribunal. The Tribunal has not allowed benefit of future prospects. Claimants shall be entitled to addition in income for future prospects at the rate of 10% as the deceased has been held to be 55 years old. Multiplier and deduction for personal expenses allowed by the Tribunal are affirmed. In this manner, loss of dependency comes to Rs.5,80,800/- [Rs.7,92,000/- (Rs.6000 x 12 x 11) + Rs.79,200/- (10% future prospects) – Rs.2,90,400/- (1/3rd deduction towards personal expenses).

Compensation awarded by the Tribunal under conventional heads is modified to the effect that claimants shall be entitled to Rs.70,000/- detailed hereunder :-

Loss of consortium to the widow	Rs.40,000/-
Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-

An amount of Rs.25,000/- allowed towards costs of litigation is affirmed.

In view of the above, total compensation comes to Rs.6,75,800/- and the compensation awarded by the Tribunal is reduced to the extent of Rs.1,02,200/- (Rs.7,78,000/- - Rs.6,75,800/-).

The appeal is partly allowed in the aforesaid terms. As the appeal has been decided on merits, application for condonation of delay is of academic relevance only.

Before parting with this order, it is pertinent to mention here that amount of compensation assessed by the Tribunal has been reduced without notice to the claimants. They would be at liberty to file an appropriate application if they have any grievance to express. It is further clarified that in case the claimants file an appeal for enhancement, any observation made for disposing of the appeal filed by the insurance company would not cause prejudice to their rights.

MAY 16, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no