IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.2401 of 2018 (O&M)
Date of Decision: May 03, 2018

IFFCO TOKIO General Insurance Co. Ltd. ...Appellant
Versus
Krishna and others ...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Sanjeev Kodan, Advocate for the appellant.

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HARINDER SINGH SIDHU, J.

The insurer has filed the present appeal challenging the award dated 07.03.2018 passed by the Motor Accident Claims Tribunal, Jhajjar (for short 'the Tribunal').

Brief facts as disclosed in the claim petition are that on 21.09.2016 in the area of Talao Road, Opp. Apna Hotel, Jhajjar a vehicular accident took place involving Trolla No.HR-56B-1516 (herein for short 'the offending vehicle'), wherein, Jagdish lost his life. The accident was alleged to have been caused due to rash and negligent driving of the offending vehicle. FIR regarding the accident was also registered.

On a claim petition having been filed by the legal representatives (widow and son) of deceased Jagdish, the Tribunal assessed the income of the deceased at Rs.11,250/- per month treating him to be an agriculturist, who also took land on lease from other persons. However, since the Tribunal held the accident to be the result of contributory negligence on the part of deceased to the extent of 50%, the monthly loss to them was assessed Rs.5625/- per month (Fifty percent of the income). The Tribunal further deducted ½ towards personal expenses of the deceased and applied multiplier of 9, added 10% on account of future prospects. The total loss of dependency was assessed as Rs.3,34,065/- . Rs.1,00,000/- as 'loss of consortium', Rs.50,000/- for 'mental agony and Rs. 50,000/- for 'funeral expenses' were awarded. In all, compensation of Rs.5,34,065/- along with interest was awarded only to the widow of the deceased – respondent No.1. Claimant son was held to be not dependent on the deceased and hence not entitled to receive any compensation.

Challenging the impugned award, Ld. Counsel for the appellant – insurer has contended that the Tribunal erred in assessing the monthly income of the deceased @ Rs.11,250/- per month without any evidence on record. It is contended that though the claimant pleaded that the deceased was involved in agricultural work by taking lands on lease, but she failed to prove the same. Even the lease deeds was not produced. The amount awarded under the conventional heads is also on higher side. Reliance has been placed on **National Insurance Company Ltd. Vs. Pranay Sethi and others (2017) 16 SCC 680**.

It was claimed in the claim petition by the claimant that the deceased was an agriculturist by occupation and he also used to earn through dairy business. PW2 Ashok Kumar resident of village Talao was examined to prove the earnings of the deceased. He stated that he and his brothers were owners in possession of agricultural land measuring approximately 9 acres. The deceased used to cultivate the said land on *Batai* and was also doing the dairy business. He further stated that monthly income of the deceased was of Rs.20,000/-. To prove the fact that PW2 and his two brothers Naveen and Vinod owned 9 acres of land, certified copy of the Jamabandi for the 2014-15 was placed before the Tribunal as Ex.P4. In was in the light of this evidence that the Tribunal assessed that the deceased must have been earning Rs.15,000/- per annum per acre and accordingly Rs.1,35,000/- from nine acres.

While relying on the oral evidence regarding the avocation of the deceased and his earnings without any documentary evidence, the Tribunal observed that in the rural areas of the region, such activities are carried out in good faith and not by entering into technical agreements in concrete shape, in order to avoid legally enforceable liabilities and perennial bondage.

Having heard Ld. Counsel for the appellant – insurer and perusing the impugned award, I do not find any ground to interfere with the finding of the Tribunal.

It is common knowledge that people living in villages with no land or with very small land holdings take land on lease on a certain amount payable annually or bi-annually or cultivate lands of other persons on the basis of share in produce (batai). Such arrangements are oral and usually no writing is executed. There is a sizable chunk of rural population whose livelihood is dependant on such arrangements. The combined land holding of the deceased and his two brothers was 9 acres. Thus only three acres fell to the share of the deceased. Even though the land would still be available and continue to yield income to the claimants, yet there can be no denying that on account of his death the claimants would suffer substantial loss on account of the management and labour that would be put in by the deceased in addition to the income he derived by taking land on lease. No fault can thus be found with the assessment of the Tribunal regarding loss of income on account of death of the deceased.

However in the light of the decision of Hon'ble Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi and others (2017) 16 SCC 680**, the amount awarded under the conventional heads is liable to be reduced from Rs.2,00,000/- to Rs.70,000/-. In other words, the compensation is liable to be reduced by Rs.1,30,000/- (200000-70000).

Hence, the appeal is partly allowed. The compensation awarded by the Tribunal is re-assessed to the extent that the claimant – respondent is held entitled to total compensation of Rs.4,04,065/- that is, Rs.1,30,000/- (534065-404065) less than the amount awarded by the Tribunal.

The appeal has been disposed of without notice to the respondents – claimants to avoid unnecessary delay and expense. A copy of this order be conveyed to the claimant - respondent No.1. In the event of the said respondent having any objection, she may file application to that effect. On receipt of any such application, the same be listed for hearing.

It is made clear that this order has been passed on an appeal filed by the Insurance Company without hearing the claimant and is confined to the contentions raised herein. It is without prejudice to the rights of the claimant to separately agitate for enhancement on any ground that may be available to her.

May 03, 2018 **(HARINDER SINGH SIDHU)**
JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No