IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO No.7775 of 2017 (O&M)
Date of decision: 19.02.2018

Iffco-Tokio General Insurance Company Ltd. ...... **Appellants**

Versus

Rekha Mehta and others ...... **Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

Mr. Ashwani Arora, Advocate for the respondents.

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ANIL KSHETARPAL, J. (ORAL)

CM-25667-CII-2017

Delay in filing the appeal is condoned and the application is allowed.

Main Case

Insurance Company is in appeal against the Award passed by Motor Accident Claims Tribunal on account of death of Sanjiv Kumar Sharma aged about 41 years in a motor vehicular accident.

Learned Motor Accident Claims Tribunal allowed the application and awarded a sum of Rs.71,48,632/- to the claimants.

Learned counsel for the Insurance Company has submitted as under:-

1. The claimants cannot be permitted to change their stand as the DDR which was got registered immediately after the accident by the father of the deceased recorded that no one is

responsible for the accident.

2. He has further submitted that since it was a case of head on collision, therefore, the deceased must be held to be contributory negligent.

3. The Motor Accident Claims Tribunal has committed an error in refusing to deduct income tax payable as the income of the deceased was assessed Rs.41,640/- per month.

4. He has further submitted that under the conventional heads, only Rs.70,000/- could be granted whereas the Court has committed an error in awarding a sum of Rs.3,25,000/-.

On the other hand, learned counsel for the respondents-claimants has submitted that the father of the deceased was not present at the time of the accident. He received a telephonic call and when he went on spot and his statement was recorded. He submits that in the present case, two eye-witnesses have been examined namely PW-2, Karamjit Singh and PW-4, Swaran Singh to prove rash and negligent driving of the offending vehicle. He has further submitted that neither the driver of the truck nor the driver of the Bolero i.e. Jeep has been examined.

This Court has carefully heard the arguments of learned counsel for the parties and with their able assistance gone through the Award passed by the learned Motor Accident Claims Tribunal and copies of the statements recorded by the Tribunal as PW-2 and PW-4, the eye-witnesses.

Learned counsel for the appellant has forcefully submitted that driver of the truck Lakhwinder Singh was examined as RW-1 and hence, finding of the Tribunal is factually incorrect. However, when learned counsel was asked where is the cross-examination of the aforesaid witness, counsel for the appellant admitted that he did not appear for cross-examination. In the considered opinion of this Court, once the witness has not appeared for cross-examination, the statement is incomplete and cannot be read in evidence.

Learned Motor Accident Claims Tribunal has found that father of the deceased was not present at the time of accident. As noticed, two eye-witnesses have been examined by the claimants and their evidence has been believed by the learned Motor Accident Claims Tribunal. One eye-witness is owning a filling station (petrol pump) near the place of accident. He has stated that when the accident took place, he was travelling on the road on a tractor-trolly. This witness does not appear to be interested witness. He has specifically stated that he does not know the family of the deceased. The other eye-witness is PW-4, Swaran Singh. He has stated that he was present at the time of accident and he requested the Police to record his statement. However, the Police did not record his statement. Learned counsel for the Insurance Company was given opportunity to cross-examine the witness, however, evidence of both these eye-witnesses could not be impeached and the witnesses stood their ground even during cross-examination.

In these circumstances, in the considered opinion of this Court, there is no change of version by the claimants. The claimants filed this petition with positive assertion that the accident took place due to rash and negligent driving of two offending vehicles i.e. truck and Bolero (jeep).

Next submission of learned counsel for the appellant is that since it was a case of head on collision, therefore, the deceased must be held to be contributory negligent. As noticed earlier, neither the owner and driver of the two offending vehicles have appeared in the witness-box nor the Insurance Company has produced any evidence to prove contributory negligence.

In absence of any evidence that the deceased was contributory negligent, this Court does not find any ground to interfere with the finding of the learned Motor Accident Claims Tribunal on this aspect.

Learned counsel for the appellant submitted that the learned Motor Accident Claims Tribunal has committed an error in not deducting the income tax payable. On the other hand, learned counsel for the respondents submitted that no doubt, the income tax has to be deducted, however, there are certain exemptions which are granted and that has to be taken care of.

Next submission of learned counsel for the appellant is that under the conventional heads, only Rs.70,000/- could be awarded whereas the Court has committed an error in awarding a sum of Rs.3,25,000/-. Learned counsel for the respondents-claimants does not object to this argument of learned counsel for the appellant.

Taking into consideration these facts, the appeal is partly allowed. The compensation awarded on account of conventional heads is reduced from Rs.3,25,000/- to Rs.70,000/- as held by the Constitutional Bench judgment reported as *National Insurance Company Ltd. Vs. Pranay Sethi, 2017(4), RCR (Civil), 1009.* As regards the deduction on account of income tax, the compensation shall stands reduced to the extent of income tax payable on the income assessed. However, the Executing Court is directed that while calculating the actual amount payable, deduct the income tax payable on the income assessed.

With these observations, the appeal is partly allowed.

(ANIL KSHETARPAL)
JUDGE

19.02.2018
Dinesh Bansal

Whether speaking/reasoned Yes / No
Whether Reportable Yes / No