IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO No.6470 of 2018 (O&M)
Date of decision: 15.10.2018

IFFCO TOKIO General Insurance Company Ltd. **...... Appellant**

Versus

Sunita and others **...... Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Vishal Aggarwal, Advocate for the appellant.

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ANIL KSHETARPAL, J. (ORAL)

Insurance Company is in the appeal against the award passed by the learned Motor Accident Claims Tribunal, Narnaul awarding compensation to the tune of Rs.48,72,700/- on account of death of late Sh. Desh Raj aged about 42 years. Only quantum of compensation has been challenged before this Court. With a view to prove income, the claimants have produced income tax returns which prove that the deceased was running a service station apart from having agriculture land and income therefrom. The income tax record has been produced for a continuous period of four years.

Learned counsel for the appellant-Insurance Company has submitted that it is not possible for a person to work at two different places which are unconnected. He has further submitted that the agriculture income would remain intact even if the deceased-Desh Raj has died because the agriculture land would remain as it is even after the death of the deceased. He submitted that only charges for managerial skills of the deceased could be awarded.

This Court has considered the submission. It will be noted that the widow-Sunita Devi when appeared as PW-3, learned counsel appearing for the Insurance Company did not cross-examine the widow on these aspects of the matter. The cross-examination is extracted as under:-

> *"I did not witness the accident. I cannot tell whether my husband used to maintain record regarding his working as well as his income. My husband Deshraj was graduate. Today, I have not brought any documents regarding qualification as well as age of the deceased. My husband was having DL but today I have not brought the same. I do not remember year of my marriage. I cannot tell how many years my husband was elder than me. I have no documents to justify working of the deceased. It is incorrect to suggest that deceased was not running Service Station as mentioned in my affidavit. It is incorrect to suggest that age of the deceased was more than 45 years. It is incorrect to suggest that deceased was not earning Rs.40,000/- per month. It is incorrect to suggest that petitioner No.5 was not dependent upon the deceased. It is incorrect to suggest that I have sworn a false affidavit and deposing falsely."*

From the reading of the aforesaid cross-examination, it is apparent that none of the aspects on which arguments have been addressed, were put to the claimant during her cross-examination. The appellant-Insurance Company has led no evidence. The statement of Smt. Sunita Devi, widow has gone unchallenged on these aspects.

Even otherwise this Court does not find any substance because the agriculture is not full time work. The work is always heavy at the time of sowing and harvesting of the crop. A person who has the energy can certainly manage the service station along with agriculture land. As regards, income from the agriculture land, no doubt the land would remain intact after the death of the deceased but income would always depend upon the facts and circumstances of each case. It was for the Insurance Company to produce some evidence or at least draw attention of the widow so to impeach her credence. Since no suggestion has been given, therefore, the Court cannot pass a judgment only on the basis of assumption. The deceased has left behind a widow, two minor children and old parents. In absence of evidence, the Court is left with no choice but to decide the case on the basis of the evidence available. The argument of learned counsel that only managerial charges could be awarded is also based on no evidence. In the considered view of this Court, such argument can only be examined once proper evidence is led. It is not proved on file that on account of death of the sole bread earner in the family who was also getting income from agriculture land, the family would continue to get the same income from the agriculture land. Since in the present case, no evidence has been produced by the appellant, therefore, this Court does not find any good ground to interfere.

Appeal is dismissed.

The statutory amount be remitted to the learned Motor Accident Claims Tribunal.

(ANIL KSHETARPAL)
JUDGE

15.10.2018
Dinesh Bansal

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