IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1058 of 2019 (O&M)
Date of Decision: February 06, 2019

IFFCO-TOKIO General Insurance Company Ltd. ...... Appellant(s)

Versus

Raj Kaur and others ..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Ms. Swati Batra, Advocate
for the appellant.

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LISA GILL, J.

This appeal has been filed by the insurance company challenging award dated 26.07.2018, passed by learned Motor Accidents Claims Tribunal, Kaithal (hereinafter referred to as 'the Tribunal) on the sole ground that income of the deceased has been incorrectly assessed on the basis of his income tax return for the year 2015-2016.

Learned counsel for the appellant argued that reliance has been wrongly placed by the learned Tribunal on the income tax return for the year 2015-2016 (Ex. P-8) to assess the notional income of the deceased to be Rs.2,65,900/- per annum. It is vehemently argued that first and foremost there is no evidence to show that the deceased was running a mechanic shop though ownership of two trucks by the deceased is not denied and moreover, in any case, it is the loss of services to which the claimants are best entitled to. On that account reliance should not have been placed on the said income tax return, by the learned Tribunal, to assess the income of the deceased. It is thus prayed that income as assessed by the Tribunal should be reduced and compensation awarded be reworked accordingly.

I have heard learned counsel for the appellant and have gone through the photocopy of the record produced in Court today.

There is no dispute that Naresh Kumar alias Naresh Singh lost his life in the motor vehicle accident, which took place on 29.9.2017 due to the rash and negligent driving of the offending vehicle by its driver-Harjant Singh. Deceased was 43 years old at the time of the accident. Claimant-widow Raj Kaur who deposed as PW-1 specifically stated that her husband was running a shop of gas welding and gas cutter in front of the State Bank of Patiala, Cheeka in the name and style of 'Naresh Radiators'. He was claimed to be owner of two trucks, earning a sum of Rs.32,000/- per month. PW-3 Vijay Singh, Tax Assistant from the Income Tax Office, Kaithal proved the income tax return of Naresh Kumar (deceased) for the assessment year 2015-2016 (Ex. P-8). PW-3 stated that the income tax return of Naresh for the assessment year 2016-2017 was declared invalid and not refiled, though he could not give the reason for its invalidity.

Learned Tribunal proceeded to assess income of the deceased on the basis of the income tax return (Ex. P-8) for the assessment year 2015-2016. Income was accordingly assessed as Rs. 2,65,900/- per annum. 25% increase on account of future prospects afforded and a total sum of Rs.35,59,850/- has been awarded as compensation, the detail of which is as under:-

1.	Loss of income	Rs.34,89,850/-
2.	Loss of estate	Rs. 15,000/-
3.	Loss of consortium	Rs. 40,000/-
4.	Funeral expenses	Rs. 15,000/-
	Total	**Rs.35,59,850/-**

Deceased Naresh Kumar is claimed to be running a shop of gas welding and radiator repair. There is nothing on record to rebut the same or to show that the said work would be continued by the widow and she would continue to be in receipt of the proceeds of the work conducted in the shop. In the peculiar facts and circumstances of the case, I do not find any merit in the argument raised by learned counsel for the appellant that it is merely the loss of services of the deceased to which the claimants would be entitled to and they would keep getting the proceeds from the mechanic shop and running of the trucks. There is no infirmity in assessment of income of the deceased on the basis of the income tax return for the assessment year 2015-2016, which is duly proved on record.

No other argument has been raised.

Learned counsel for the appellant is unable to point out any illegality, perversity or infirmity in impugned award dated 17.01.2014 passed by learned Motor Accidents Claims Tribunal, Kaithal which calls for any interference by this Court.

There is a delay of 42 days in filing and 14 days in refiling of the present appeal. Keeping in view the fact that the matter has been decided on merits, the question of delay in filing/refiling of this appeal is rendered academic. Applications are, accordingly, disposed of.

Accordingly, this appeal is dismissed in limine with no order as to costs.

February 06, 2019. **(LISA GILL)**
Sunil **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No