

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO NO.2571 OF 2019 (O&M)
DATE OF DECISION: 03.07.2019

IFFCO TOKIO GENERAL INSURANCE CO. LTD.

...APPELLANT..

VERSUS

LAKSHMI AND ORS.

...RESPONDENTS..

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

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

RAMENDRA JAIN, J. (ORAL)
CM-12153-CII-2019

Through this application under Order 6 Rule 17 read with Section 151 CPC, prayer has been made for amendment of grounds of appeal.

Heard.

For the reasons mentioned in the application, same is allowed. Amended grounds of appeal is taken on record, subject to all just exceptions. Be tagged at appropriate place.

CM stands disposed of.

Main case

Appellant-Insurance company has filed the instant appeal against award dated 05.02.2019 passed by Motor Accident Claims Tribunal, Panipat, (for short, "Tribunal") whereby, fixing its joint and severe liability, the claimants were awarded compensation of ₹15,32,500/- along with interest @ ₹ 7.5 % per annum from the date of

filing of petition till actual realization, in a petition under Section 166 of the Motor Vehicle Act, 1988 (for brevity, "Act"), filed by respondents-claimants No.1 to 5.

Briefly, in the night of 02.06.2016, deceased-Funan along with his brother Mithai Lal, while traveling in a three wheeler bearing registration No.HR-67B-8690, were returning from Faridpur to Panipat. A dumper bearing registration No.HR-67A-4411 driven by respondent No.6 in high speed, rash and negligent manner came from the side of village Pundri and struck against their three wheeler from its right side. As a result thereof, three wheeler, in which, deceased-Funan travelling turned turtle, on account of which, Funan sustained multiple injuries. He died on the next date. The matter was reported to the police. Consequently, FIR No.0287 dated 03.06.2016, under Sections 279 and 304-A IPC, was registered on the next date at Police Station Gharaunda. Respondents No.1 to 5 being legal heirs of dependants of deceased-Funan filed claim petition under Section 166 of the Act, for grant of compensation on account of his death, which Id. Tribunal, after holding trial accepted and granted compensation in the aforesaid manner in the opening part of the judgment, vide award dated 05.02.2019.

Learned counsel contends that Id. Tribunal has wrongly and illegally taken the income of the deceased @ ₹10,000/- per month, without any documentary evidence. According to the prevalent period, as per notification of Haryana Government, minimum wages of an

unskilled worker were around ₹7976/-. Therefore, taking of monthly income of the deceased to ₹10,000/- per month is on higher side, according to the circular issued by the State Government. Ld. Tribunal has also failed to appreciate that there was no iota of evidence qua involvement of the alleged offending vehicle bearing registration No. HR-67A-4411, because the author of the FIR, Mithai Lal PW-2, is none else, but real brother of deceased-Funan, who lodged FIR against an unknown vehicle, registration number of which, he could not jotted down due to darkness. How and in what circumstances, the aforesaid dumper was involved is unexplained on the file. There is a collusion in between respondents No.1 to 5-claimants and respondent No.6 and 7, who are driver and owner of the alleged offending dumper, to extract compensation from the insurance company, in illegal manner.

Having given thoughtful consideration to the submissions made by learned counsel for the appellant, this Court finds the instant appeal being devoid of any merit for the reasons to follow:-

PW3 ASI Bahadur Singh, who investigated the impugned accident, during investigation found involvement of the aforesaid dumper for causing the accident in question, resulting into death of Funan. This witness categorically testified in this respect. There is no rebuttal to the statement of this witness, nor the insurance company counter/contradict the aforesaid version. Hence, the same has gone unchallenged. Resultantly, the involvement of aforesaid dumper was well-proved on the record.

Widow of the deceased namely, Lakshmi as PW-1 specifically testified that her husband was working in a Carpet Factory. Considering her deposition, Id. Tribunal has considered the deceased-Funan as skilled workman. The wages of which, as per circular of State Government, relied upon by learned counsel for the appellant at the prevalent time was ₹ 9233/-. Therefore, there is not much difference in the prevalent wage and monthly income of the deceased taken by Id. Tribunal at ₹10,000/-. The minimum wages of a workman varies from location to location in different jobs. The wages of skilled or unskilled workmen may be less in some factories or it may be higher, considering the hazards and nature of production/job in a factory. The appellant-insurance company did not lead any evidence to rebut the stand of PW-1 Lakshmi that her husband was working in a Carpet Factory and his salary as ₹10,000/-. Therefore, Id. Tribunal has not committed any illegality in taking the income of the deceased as ₹10,000/-, completely, ignoring the income of the deceased, as disclosed by his wife @ ₹15,000/-.

In view of discussion above, the appeal is dismissed.

03.07.2019

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**(RAMENDRA JAIN)
JUDGE**

**Whether speaking/reasoned
Whether reportable**

**Yes/No
Yes/No**