IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 2817 of 2019
Date of decision: 2.5.2019

Iffco-Tokio General Insurance Company Ltd.
.. Appellant

v.

Kirti and others
.. Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Amit Goyal, Advocate for the appellant.

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AVNEESH JHINGAN, J. (Oral)

Aggrieved of the award dated 5.2.2019 passed by the Motor Accident Claims Tribunal, Rewari (for short, 'the Tribunal'), the insurer of car bearing registration No. HR-26-DB-2000 (hereinafter referred to as 'the offending vehicle') has filed the present appeal.

The widow, two minor children and father of Sanjeev Kumar (deceased) filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'). The driver, owner and the insurer of the offending vehicle were arrayed as respondents before the Tribunal.

The facts necessary for adjudication of the present appeal are that on 9.9.2017, Sanjeev Kumar was riding a motorcycle bearing registration No. HR-36V-7619. On his way, the offending vehicle struck the motorcycle, as a result of the impact, he sustained grievous injuries. He was taken to Government Hospital, Rewari where he succumbed to the injuries. The accident was witnessed by one Devender Kumar, who was coming in his car bearing registration No. HR-36T-4010. FIR No. 278 dated 10.9.2017 was registered at Police Station Khol.

In the claim petition, it was pleaded that the deceased was 27 years old. He was running a Laboratory in the name of Ganga Ram Path Lab, Nangal Mundi. His earning was claimed as ₹30,000/- per month. The qualification certificates were exhibited before the Tribunal as Ex. P4, Ex. P15 and Ex. P16 to establish that the deceased was a laboratory technician and having knowledge of computer. The claimants failed to prove the monthly earning of the deceased. The Tribunal assessed his monthly earning as ₹10,000/-, 40% future prospects were awarded, 1/4th deduction for self expenses was made and multiplier of '17' was applied. The Tribunal awarded a sum of ₹22,12,000/- along with interest @ 9% per annum. The amount awarded included ₹70,000/- under the conventional heads.

The Tribunal considering the facts and appreciating the evidence adduced held that the accident was caused due to rash and negligent driving of the offending vehicle. The driver, owner and the insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

The contention raised by learned counsel for the appellants is that the offending vehicle was implanted as the accident took place at 10.30 PM on 9.9.2017 but the FIR was registered on 10.9.2017 at 10.40 AM. Challenge is to the monthly income assessed of the deceased. It is argued that the claimants failed to prove the monthly earning of the deceased, the income should have been assessed as of minimum wages of the unskilled labourer. The counsel submits that father of the deceased was not dependent, hence, 1/4th deduction for self expenses was wrongly made. The grievance is to the rate of interest i.e. @ 9% per annum awarded by the Tribunal.

The contentions raised by learned counsel for the appellants are not well founded.

The accident was witnessed by Devender Kumar. He deposed before the Tribunal as PW-1. He proved that the accident was a result of rash and negligent driving of the offending vehicle. FIR was recorded on his statement. The number of the offending vehicle was duly mentioned in the FIR. The accident took place at 10.30 PM on 9.9.2017. Sanjeev Kumar was taken to the hospital, FIR was registered at 10.40 AM on 10.9.2017. The contention raised that there is delay in lodging the FIR and the offending vehicle is implanted cannot be accepted more so when the deposition of the eye-witness was not rebutted by the insurer.

The deceased was 27 years old at the time of accident, a duly qualified young man who was trained laboratory technician and having good knowledge of computer. It was claimed that he was running his own laboratory, albeit the claimants failed to prove the monthly earning of the deceased, in such circumstances, he cannot be equated with an unskilled labourer. The minimum wages is one of the yardstick to be taken into consideration while assessing the income. The minimum wages for the skilled labourer at the relevant time were ₹9994/-, the income assessed by the Tribunal cannot be said to be on the higher side, the deceased was survived by a young widow and two minor children aged 2 years and one year.

The deceased was survived by four dependents. No plea was raised by the insurer before the Tribunal that father was not dependent on the earning of the deceased, in such circumstances, 1/4th deduction made for self-expenses is in consonance with the decision of the Supreme Court in **Sarla Verma and others v. Delhi Transport Corporation and another, (2009) 6 SCC 21.**

The Tribunal awarded interest @ 9% per annum. In the claim proceedings, interest is to be awarded as per Section 171 of the Act. Keeping in view the facts in entirety and considering the bank's rates prevalent at the relevant time, no interference is called for in the interest rate awarded by the Tribunal.

The appeal is hereby dismissed.

(AVNEESH JHINGAN)
JUDGE

2.5.2019
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No