IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 3313 of 2019(O&M)

Date of decision: 14.10.2019

IFFCO TOKIO General Insurance Co. Ltd. …..Appellant

VERSUS

Smt. Santosh Devi and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

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REKHA MITTAL, J.(Oral)

Challenge in the present appeal has been directed against award dated 20.02.2019 passed by the Motor Accidents Claims Tribunal, Narnaul (in short 'the Tribunal') whereby compensation has been assessed on account of death of Naresh Kumar in a motor vehicular accident that took place on 09.01.2017.

Counsel for the insurance company would inform that the appeal has been preferred to challenge quantum of compensation and findings of the Tribunal on issue No.3 pertaining to violation of terms and conditions of insurance policy.

With regard to quantum of compensation, it is argued that compensation allowed under conventional heads may be restricted to Rs.70,000/- in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270**. It is further argued that Tribunal has wrongly assessed income of the deceased at Rs.9000/- per month without any proof of income. The minimum wage at the relevant time was far below Rs.9000/- per month.

Another submission made by counsel is that the insured did not produce permit of the vehicle, thus, the insurance company was denied of an opportunity to verify the same.

The Tribunal has assessed income of the deceased at Rs.9000/- in view of observations made in para 16 of the award. It has been noticed that from the FIR and evidence on record, it transpires that deceased used to distribute newspapers but there is no cogent evidence regarding his income. On guess work, it was assessed at Rs.9000/- per month. Taking a clue from the notification issued by the State of Haryana fixing minimum wage at the relevant time, income of the deceased is assessed at Rs.8000/- per month. Other criteria adopted by the Tribunal for computing loss of dependency is correct and affirmed. Accordingly, loss of dependency is calculated at Rs.8,71,200/- [Rs.10,56,000/- (Rs.8000 x 12 x 11) + Rs.1,05,600/- (10% addition towards future prospects) – Rs.2,90,400/- (1/4th deduction towards personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants are entitle to Rs.70,000/- detailed hereunder:-

Loss of consortium	Rs.40,000/-
Funeral expenses	Rs.15,000/-
Loss to estate	Rs.15,000/-

In view of the above, total compensation comes to Rs.9,41,200/- and compensation awarded by the Tribunal is reduced to the extent of Rs.3,74,241/- (Rs.13,15,441/- - Rs.9,41,200/-). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an application before the Tribunal.

Counsel for the appellant, on asking of the Court, read written statement filed by the insurance company wherein the insurer raised specific defences with regard to driving licence and route permit though violation of terms and conditions of the policy constituting defence under Section 149 of the Motor Vehicles Act, 1988 has been pleaded. Indisputably, the insurance company filed an application calling upon the insured to produce copy of route permit and the same was dismissed by the Tribunal vide order dated 17.10.2018. There is nothing on record suggestive of the fact that the insurance company ever called upon the insured to produce copy of the permit or raised a specific plea that vehicle was plied without a valid permit. In the given circumstances, it is not open for the insurance company to raise a factual controversy for the first time in appeal. That being so, contention raised by counsel for the appellant with regard to non-producing of permit is not tenable.

In view of what has been discussed hereinbefore, the appeal is partly allowed in the aforesaid terms.

Before parting with this order, it is pertinent to mention that compensation assessed by the Tribunal has been reduced without notice to the claimants. They would be at liberty to file an appropriate application if they have any grievance to express. It is further clarified that in case the claimants file an appeal for enhancement, any observation made for disposing of appeal filed by the insurance company would not cause prejudice to their right.

OCTOBER 14, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**
Whether speaking/reasoned : yes/no
Whether reportable : yes/no