

In the High Court of Punjab and Haryana at Chandigarh

FAO No. 5347 of 2019 (O&M)

Date of Decision: 2.9.2019

IFFCO TOKIO General Insurance Company Limited

---Appellant

versus

Pinkesh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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

Rekha Mittal, J.

Challenge in the present appeal has been directed against award dated 4.5.2019 passed by the Motor Accidents Claims Tribunal, Gurugram (in short “the Tribunal”) whereby compensation has been assessed on account of death of Birender @ Virender in a motor vehicular accident that took place on 9.9.2016.

The sole submission made by counsel for the appellant is that the Tribunal has assessed age of the deceased to be 55 years as against plea of the claimants in the claim application as well as in testimony of Pinkesh PW1 that deceased was 59 years of age. It is further submitted that if the deceased is held to be 59 years, admissible multiplier would be 9 in place of 11 allowed by the Tribunal. To bring home his contention with regard to age of deceased mentioned in the claim application and testimony of Pinkesh PW1, counsel has invited attention of the court towards claim

application (Annexure A-1) and opening line of para 19 of the award wherein the Tribunal has noticed that Pinkesh PW1 had deposed that his deceased father was 59 years of age.

I have heard counsel for the appellant and perused the paper book particularly the award.

Perusal of Annexure A-1 copy of claim application reveals that in para 3 claimants have mentioned age of deceased to be 59 years. The Tribunal has noticed in para 19 that Pinkesh PW1 in his affidavit Ex. PW1/A has deposed that his father was aged 59 years at the time of accident. However, the Tribunal has relied upon post mortem report Ex. P4 to say that deceased was 55 years at the time of accident with the observations that post mortem report is conclusive proof to ascertain age of deceased. This observation made by the Tribunal, presided over by an officer of the rank of Additional District Judge is quite strange rather totally misconceived. Rather there is nothing on record suggestive of the fact that age of deceased in the post mortem report was mentioned on the basis of any documentary evidence much less information given by family members of deceased. In this view of the matter, the Tribunal has grossly erred by assessing age of deceased at 55 years in place of 59 years. That being so, age of deceased is held to be 59 years. Accordingly, admissible multiplier would be 9 in place of 11. In this manner, loss of dependency is calculated at Rs. 7,21,710/- $[8100 \times 12 \times 9 = 8,74,800 + 87,480 (10\%) = 9,62,280 - 2,40,570 (1/4^{\text{th}})]$

Total compensation is Rs. 7,91,710/- (7,21,710 + 70,000) and compensation allowed is reduced to the extent of Rs. 1,60,490/- (9,52,200- 7,91,710/-).

Before parting with this order, it is pertinent to mention that compensation has been reduced without notice to the claimants. The claimants would be at liberty to file an application before this Court if they have any grievance to express. It is further clarified that any observations made hereinbefore shall not cause prejudice to the claimants if they prefer an appeal for enhancement.

A copy of this order be sent to the Presiding Officer of the Tribunal concerned for guidance in future.

(Rekha Mittal)
Judge

2.9.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No