

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

226

FAO-1348-2016

Date of Decision : July 24, 2019

IFFCO TOKIO GENERAL INSURANCE CO LTD

.....Appellant

VERSUS

KRISHANA DEVI AND ORS

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present : Ms. Vandana Malhotra, Advocate
for the appellant.

Mr. Saurabh Kapoor, Advocate for
Mr. Ashit Malik, Advocate
for respondents No.1 to 3.

None for respondent No.4.

NIRMALJIT KAUR, J. (Oral)

The present appeal has been filed by the Insurance Company against the award dated 13.8.2015 passed by the Motor Accident Claims Tribunal, Karnal vide which a compensation of Rs.17,26,900/- alongwith interest @ 12% per annum from the date of filing of the claim petition till realization has been granted.

While praying for setting aside the said award vide which the excessive amount has been granted, learned counsel for the appellant submitted that there was no documentary evidence qua the income to be taken at Rs.8100/- per month. The minimum wages prevalent at the time of accident was Rs.5341/-. However, the said argument has no merit in view of the fact that this Court does not deem it proper to reduce the

income as assessed by the Tribunal. Rs.8100/- means just about Rs.270/- per day which by no stretch of imagination can be said to be excessive earning at the behest of an able bodied person. In the present case, the deceased was said to be a mason although the deceased was held to be an unskilled labourer.

The second argument raised by learned counsel for the appellant is qua the deduction applied only to the extent of 1/4th on self expenses whereas it should have been 1/3rd as both the sons of the deceased were major. Taking into account that the deceased was survived by his wife, mother and father as well as two sons, one of the sons was just about 22 years of age and as per the statements of the claimants' witnesses, they were sole dependent on their father and were not earning. No interference is called for in the deduction so applied by the Tribunal.

The third argument raised by learned counsel for the appellant is that the tractor in question was attached to the trolley. At the time of the accident, the policy was only with respect to the tractor and no premium was taken qua the trolley. As also that the driver-respondent No.1 was not holding a valid and effective driving licence to drive the tractor and trolley. The said argument too deserves to be rejected as already held by the Tribunal. The detailed discussion is taken place qua issue No.3 and the findings recorded in paras No. 33 and 34 holding therein that the trolley attached to the tractor comes within the definition of any equipment attached to the tractor and shall be taken as part of

tractor which stands covered under the insurance policy placed on record as Annexure R4. At the same time, the copy of the driving licence shows that he has a valid driving licence and was meant for M.C. with gear LMV, NT, LMV and tractor only. This Court finds no reason to disagree with the said finding so recorded by the Tribunal.

The last argument raised by the learned counsel for the appellant is qua the amount of compensation awarded under the head of consortium to spouse as well as loss of love and affection for sons, widow, father and mother of the deceased. The Tribunal awarded Rs.1 lac for loss of consortium for the spouse and Rs.7 lacs towards loss of love and affection for sons, widow, father and mother of deceased as well as Rs.1 lac towards loss of estate. As per the judgment rendered by the Hon'ble Apex Court in the case of **National Insurance Company Limited vs. Pranay Sethi and others**, 2017 AIR(SC) 5157, the claimants are entitled only to the extent of Rs.70,000/- under the conventional heads. Therefore, the amount of Rs.9,25,000/- was excessive. There is merit in the said argument. However, taking into account the judgment rendered by the Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram and others**, 2018(4) R.C.R.(Civil) 333, wherein Rs.40,000/- has been granted towards loss of filial and consortium, Rs.40,000/- is granted to each of the claimants under this head. Which amounts to only Rs.2 lacs. Therefore, this Court finds that the amount of Rs.7 lacs are required to be deducted from the impugned award dated 13.8.2015 under this head. Accordingly,

the amount of Rs.17,26,900/- minus Rs.7,00,000/- i.e. total amount of Rs.10,26,900/- be deposited if not already deposited within two months from today.

The present petition is disposed of in the above terms.

July 24, 2019
ajay-1

(NIRMALJIT KAUR)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No