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

**231** FAO-1784-2016 (O&M)

Date of decision: 14.03.2019

IFFCO TOKIO GENERAL INS CO LTD ...Appellant

Versus

KIRAN AND OTHERS ...Respondents

**CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**

Present : Mr. Neeraj Khanna, Advocate for the appellant.
Mr. Ashwani Arora, Advocate for the claimants.
Mr. GS Randhawa, Advocate for
Mr. Nitin Jain, Advocate for respondent No.4.
Mr. Sanjay Gupta, Advocate for respondent No.5.

****

**REKHA MITTAL, J. (Oral)**

The present appeal directs challenge against award dated 24.12.2015 passed by the Motor Accidents Claims Tribunal, Chandigarh whereby compensation has been assessed on account of death of Sandeep @ Dharam Pal in a motor vehicular accident that took place on 03.11.2014.

Counsel for the insurance company, at the outset, would inform that the appeal has been preferred to assail only quantum of compensation assessed by the Tribunal.

The Tribunal has awarded Rs.23,18,420/-, detailed hereunder:-

| | |
|---|---|
| 1. Annual income of the deceased after deduction of income tax | Rs.2,99,060/- |
| 2. Multiplier | 7 |
| 3. Loss of dependency | Rs.20,93,420/- |
| 4. Expenses on funeral | Rs.25,000/- |
| 5. Loss of consortium | Rs.1,00,000/- |
| 6. Loss of love and affection | Rs.1,00,000/- (Rs.50,000/- each to claimants No.2 and 3) |

Counsel for the insurance company would argue that the deceased was 62 years old at the time of occurrence. The claimants produced income tax returns marked as Ex.P6 to P8 but returns Ex.P6 and P7 were filed after death of Sandeep @ Dharam Pal. It is further argued that there is only one income tax return on record filed by the deceased and the same is Ex.P8 wherein annual income of the deceased was Rs.1,82,600/-. According to counsel, the Tribunal has wrongly placed reliance upon income tax return Ex.P6 for assessing annual income of the deceased to the tune of Rs.3,02,400/- and net income after deduction of income tax to the tune of Rs.2,99,060/-.

Another submission made by counsel is that compensation allowed under conventional heads needs to be restricted to Rs.70,000/- in the light of judgments of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270** and **Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034**. In addition, it is argued that the Tribunal has not made any deduction for personal and living expenses of the deceased.

Counsel for respondents No.1 to 3/claimants, on the contrary, would urge that the deceased was a highly educated person as he was Graduate in Science Law and Post Graduate in Law from Panjab University, Chandigarh. It is further argued that the deceased was in the teaching profession and the said factum has been recorded in the income tax returns, therefore, the two income tax returns filed subsequent to death of the deceased are liable to be taken into consideration for computing loss of dependency. In support of his contention, he has relied upon judgments of this Court **Pepsu Road Transport Corporation Ltd. Patiala and another Vs. Rekha Garg and others, FAO No.3022 of 2010, decided on 27.05.2010** and **New India Assurance Company Ltd. Vs. Sarita Rani and others, FAO No.1573 of 2008, decided on 04.03.2011.**

Perusal of the records would reveal that there is only one income tax return for the assessment year 2011-12 filed by the deceased in which he has shown his income to the extent of Rs.1,82,600/-. In one of the columns at page 2 of the return pertaining to nature of business or profession, it is described as teaching. The other two returns were filed subsequent to death of Sandeep @ Dharam Pal. In the return for assessment year 2013-14 income to the tune of Rs.2,45,600/- has been shown from business whereas in the next return for the assessment year 2014-15, income from business to the tune of Rs.3,02,400/- per annum has been reflected. The two returns filed subsequent to death of Sandeep shows income from business but no evidence has been adduced by the claimants if the deceased was involved in any business activity which was source of income or actually generated income reflected in the income tax returns. In this view of the matter, the claimants cannot derive any advantage to their contention from the judgments cited at bar. In the given scenario, it can be safely held that the Tribunal has wrongly relied upon the latest income tax return for assessing income of the deceased. Taking into consideration the income reflected in the income tax return for the assessment year 2011-12 filed by the deceased himself, annual income of the deceased is taken at Rs.1,82,600/-. A cut to the tune of 1/3rd would be applied for personal and living expenses of the deceased. The Tribunal has rightly applied multiplier of 7 and the same is affirmed. In this manner, loss of dependency is calculated at Rs.8,52,133/- [(1,82,600 x 7) – (1/3rd deduction for personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.70,000/- in the light of judgments of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270** and **Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034**, detailed hereunder:-

| | |
|---|---|
| 1. Loss of consortium | Rs.40,000/- |
| 2. Loss of estate | Rs.15,000/- |
| 3. Funeral expenses | Rs.15,000/- |

Total compensation is Rs.9,22,133/- and compensation assessed by the Tribunal is reduced to the extent of Rs.13,96,287/- (23,18,420 - 9,22,133). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

The appeal is partly allowed in the aforesaid terms.

14.03.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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