IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3355 of 2016 (O&M)
Date of decision: 08.04.2019

Iffco Tokio General Insurance Co. Ltd. ... Appellant

Versus

Veena Rani and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Rajneesh Malhotra, Advocate for the appellant.

Mr. Ashwani Arora, Advocate for respondents No.1 to 4.

Mr. HS Maan, Advocate for
Mr. Rajinder Goyal, Advocate respondents No.5 and 6.

****

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 05.03.2016 passed by the Motor Accidents Claims Tribunal, SAS Nagar, Mohali whereby compensation has been assessed on account of death of Bhagwan Dass in a motor vehicular accident that took place on 12.02.2015.

Counsel for the insurance company would inform that the appeal has been preferred to assail quantum of compensation and insurance company being entitle to be exonerated of liability to pay compensation as driver of offending vehicle was not possessing a valid licence. However, he would inform that the question of driving licence has been answered by the Tribunal in favour of the insurance company to the effect that insurance company shall have right of recovery against driver and owner of offending vehicle, in view of its findings on issue No.4.

The Tribunal has awarded Rs.65,33,427/- (rounded of to Rs.65,34,000/-) , detailed hereunder:-

1. Annual income of the deceased	Rs.6,75,460/-
2. Addition in income for future prospects	15%
3. Multiplier	11
4. Deduction for personal expenses	1/4th
5. Loss of dependency	Rs.64,08,427/-
6. Expenses on funeral	Rs.25,000/-
7. Loss of consortium	Rs.1,00,000/-

To assail quantum of compensation, it is argued that the Tribunal has applied deduction of 1/4th for personal and living expenses of the deceased in a case wherein three sons of the claimants are adult aged 29, 27 and 24 years, therefore, admissible deduction should be more. He has further challenged addition for future prospects and compensation under conventional heads by relying upon judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**.

Counsel representing the claimants, on the contrary, has supported findings of the Tribunal with regard to deduction for personal and living expenses of the deceased.

The plea of insurance company to have an escape of liability to pay compensation on the premise that driving licence possessed by the driver having been found to be fake, is patently misconceived when examined in the light of judgment of Hon'ble the Supreme Court **National**

Insurance Company Ltd. Vs. Swaran Singh and others, 2004 ACJ 1. However, the Tribunal has allowed right of recovery against the driver and registered owner of the vehicle. For want of privity of contract between the insurer and driver, right of recovery given against the driver cannot be allowed to sustain and accordingly set aside. However, recovery right given against the insured shall remain intact as there is no challenge against the same.

This brings the Court to quantum of compensation assessed by the Tribunal. The application for compensation has been filed by the widow and three adult sons of the deceased. Counsel for the appellant has failed to point out any materials on record that sons of the deceased are gainfully employed and were not dependent on their father. This apart, even if sons of the deceased had their independent source of income, they cannot be denied compensation at least substantial amount in respect of loss of estate. In the given circumstances, I do not find merit in contention of the insurance company that deduction for personal and living expenses allowed by the Tribunal needs modification/reduction. However, admissible increase for future prospects would be 10%, in the light of judgment in **Pranay Sethi and others's case (supra)**. In this manner, loss of dependency is calculated at Rs.61,29,799/- [(6,75,460 x 11) + (10% future prospects) – (1/4th 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/-, 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.61,99,799/- and compensation assessed by the Tribunal is reduced to the extent of Rs.3,33,627/- (65,33,427 - 61,99,799). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

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

08.04.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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