IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
-.-

Date of decision: 06.02.2019

FAO No. 8632 of 2015 (O&M) and Xobj 37 CII of 2016

IFFCO TOKIO General Insurance Company Limited ....Appellant

versus

Zoe Singh and others . ...Respondents

FAO No. 8655 of 2015 (O&M) and Xobj 120 CII of 2016

IFFCO TOKIO General Insurance Company Limited ....Appellant

versus

Raj Kumar alias Raju and others ....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present : Mr. Ankur Gupta, Advocate
for the insurance company
Mr. Sumit Gupta, Advocate
for respondents No. 1 to 3/cross objectors
Mr. Rakesh Sharma, Advocate
for respondent No. 5
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Rekha Mittal, J. (Oral)

This order will dispose of aforesaid appeals and cross objections as these have emerged out of same award dated 07.08.2015 passed by the Motor Accidents Claims Tribunal, Karnal (in short, 'the Tribunal') whereby compensation has been assessed on account of death of Ram Pal Singh and damage to vegetables/fruit shop of Raj Kumar in a motor vehicular accident that took place on 15.01.2014.

Appeals have been filed by the insurance company whereas cross objections have been filed by the claimants.

FAO 8632 of 2015 and Xobj 37 CII of 2016

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

The Tribunal has awarded Rs.21,62,084.00, detailed underunder:-

Annual income of the deceased	Rs.2,39,514.00
Addition in income for future prospects	Nil
Deduction for personal expenses	1/3rd
Multiplier	9
Loss of dependency	Rs.14,37,084.00
Loss of consortium	Rs.1,00,000.00
Loss of love and affection for sons and widow	Rs.5,00,000.00
Loss of estate	Rs.1,00,000.00
Funeral expenses	Rs.25,000.00

Counsel for the insurance company would argue that income of the deceased assessed by the Tribunal is on higher side and needs to be re-assessed as there is no evidence on record that the deceased was owner or in possession of agricultural land. Compensation allowed under conventional heads is liable to be restricted to Rs.70,000.00.

Cousnel for the claimants/cross objectors, on the contrary, would argue that the claimants produced on record income tax returns for the past six years and in all the returns, income from agriculture had been shown. It is further argued that in cross examination of witnesses of the claimants, no such issue was raised by the insurance company that the deceased did not have agricultural land.

Verbally, the Registry was directed to requisition original records from the concerned Tribunal for kind puersal of the Court.

Perusal of latest income tax return Ex.P18 would reveal that gross total income shown in Col. B1 is Rs.2,23,390.00 and on second page under the head 'Statement of taxable income and computation Estimated' income from Retail Trading and Job Work of M/s R.P. Technicals is Rs.2,23,390.00. There is also reference to estimated agricultural income to the extent of Rs.60,000.00 which is not taxable.

Counsel for the claimants has failed to point out any materials on record that the deceased was actually owner of agricultural land much less had been cultivating the same himself in order to extend benefit of loss of his services to look after agricultural land. That being so, income of the deceased to the extent of Rs.2,23,390.00 shall be taken into consideration for computing loss of dependency. The Tribunal has rightly applied multiplier of 9 and deduction for personal expenses to the extent of 1/3rd. As per date of birth recorded in the income tax return, the deceased was born on 22.03.1955, therefore, he was less than 60 years of age in January 2014 when the unfortunate occurrence took place. As such, claimants shall be entitle to addition in income for future prospects at the rate of 10%. In view of the above, loss of dependency is calculated at Rs.14,74,441.00 (Rs.20,10,510.00 *i.e.* 2,23,390 x 9 + Rs.2,01,151.00 (10% addition) – Rs.7,37,220.00 (1/3rd deduction)

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.70,000.00 (Rs.40,000.00 for loss of consortium, Rs.15,000.00 each qua loss to estate and funeral expenses), in the light of judgments of Hon'ble the Supreme Court ***National Insurance Company Limited v. Pranay Sethi and others, 2017 SCC 1270*** and ***Sebastiani Lakra and others vs. National Insurance Company Limited and another, 2018 AIR (SC) 5034.***

Total compensation is Rs15,44,441.00 and compensation awarded by the Tribunal is reduced to the extent of Rs.6,17,643.00. The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate appliction before the Tribunal.

Counsel for the insurance company has also raised contention that the Tribunal has allowed interest at the rate of 12% per annum but Bank rate was much less than 12%. I do not intend to interfere in the interest allowed by the Tribunal.

For foregoing reasons, the appeal preferred by the insurance company is partly allowed in the aforesaid terms. As a natural corollary, cross objections filed by the claimants are dismissed leaving the parties to bear their own costs.

FAO 8655 of 2015 and Xobjc 120 CII of 2016

The sole submission made by cousnel for the insurance company is that the Tribunal has awarded a sum of Rs.1,06,570.00 on the basis of report prapared by Shri R K Kamboj (PW4) qua cost estimation for reconstruction of vegetables and fruit hut, repair of damaged portion of shop of Shri Raj Kumar. In the said estimation, Shri R K Kamboj has also included value/damage of electronic kanta, juicer, counter of vegetables and fruits, damaged glazed door etc. It is further argued that the Tribunal has failed to appreciate that bills Ex P9 to P12 pertain to the items in regard whereof reference has been made in report Ex PW4/B while assessing the damage caused to the shop of Raj Kumar and items lying therein. According to counsel, if the award is allowed to sustain, it would amount to giving double of the benefit in respect of Bills Ex P9 to P12.

Counsel for the claimant/cross objectors has supported assessment made by the Tribunal.

I have gone through the award and original records particularly report Ex PW4/B and bills Ex P9 to P12.

Perusal of the report and bills aforesaid leaves no manner of doubt that value of these bills is already included in the estimate prepared by Shri R K Kamboj, therefore, the claimant is not entitle to reimbursement of bills pertaining to items in regard whereof estimate has already been prepared by Shri R K Kamboj in order to say that the claimant has suffered damage to the tune of Rs.63,600.00. In this view of the matter, the claimant shall be entitle to a sum of Rs.63,600.00 on the basis of report Ex. PW4/B. As a natural corollary, compensation awarded by the Tribunal is reduced to the extent of Rs.42,970.00 (Rs.1,06,570.00 – Rs.63,600.00). The insurance company shall be entitle to recover excess amount, if already paid, by filing an appropriate application before the Tribunal.

For the foregoing reasons, the appeal filed by the insurance company is partly allowed in the aforesaid terms. As a natural corollary, cross objections preferred by the claimant are dismissed.

(Rekha Mittal)
Judge

06.02.2019
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