IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 19.12.2019

FAO No.4873 of 2017 (O&M)

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

Versus

Master Dilshan and others ... Respondents

FAO No.5229 of 2018 (O&M)

Master Dilshan and others ... Appellants

Versus

Anil Kumar and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Ajay Singla, Advocate
for the insurance company.

Mr. Ashish Gupta, Advocate
for the claimants (FAO No.4873 of 2017).

Mr. Rajesh Dhiman, Advocate for
Mr. Rahul Deswal, Advocate
for the claimants (FAO No.5229 of 2018).

Mr. Ravi Dutt Sharma, Advocate
for the owner.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.4873 of 2017 and 5229 of 2018 as these have emerged out of the same award dated 09.01.2017 passed by the Motor Accidents Claims Tribunal, Karnal whereby compensation has been assessed on account of death of Gurbaj Singh in a motor vehicular accident which took place on 16.06.2015.

FAO No.4873 of 2017 has been filed by IFFCO TOKIO General Insurance Company Limited (hereinafter referred to as 'the insurance company') whereas the other appeal has been filed by the claimants seeking enhancement of compensation.

Counsel for the insurance company would inform that appeal has been filed to assail quantum of compensation and findings of the Tribunal on issue No.1.

CM No.14762-CII of 2017 in FAO No.4873 of 2017

Heard.

Allowed as prayed for. Delay of 82 days in filing the appeal stands condoned.

Main Cases

The Tribunal awarded Rs.26,09,618/-, detailed hereunder:-

Monthly income of the deceased	Rs.9560/-
Addition in income for future prospects	50%
Deduction for personal expenses	$1/4^{th}$
Standard deduction of income tax	10%
Multiplier	17
Loss of dependency	Rs.19,74,618/-
Expenses on funeral and transportation	Rs.25,000/-
Loss of consortium	Rs.1,00,000/-
Reimbursement of medical expenses	Rs.1,10,000/-
Loss of love and affection to claimants No.1 to 4	4 lakh

Counsel for the insurance company would argue that Dr.

Nipun Kalra, Medical Officer, PHC Sagga RW2 was examined to prove medico legal examination of Gurbaj Singh who had deposed that patient was drowsy. Smell of alcohol was present in his breathe. It is argued that in view of aforesaid observations of Dr. Nipun Kalra, contributory negligence is liable to be attributed to the deceased.

With regard to compensation, he would submit that income of the deceased assessed by the Tribunal is on higher side. Addition in income for future prospects and compensation under conventional heads may be modified in the light of judgments of Hon'ble 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**.

Counsel representing the claimants, on the contrary, has supported findings of the Tribunal on issue No.1 and prays for grant of additional compensation.

Counsel representing the registered owner of the vehicle would argue that since driver of offending vehicle was proceeded against ex parte, copy of his driving licence could not be brought on record.

The contention raised by the insurance company that contributory negligence is liable to be attributed to the deceased, in the light of observations made by Dr. Nipun Kalra is patently misconceived and liable to be rejected. There is no material on record that blood samples were analysed to know extent of alcohol in order to say that since the deceased was under the influence of alcohol, he should also be held liable for the accident. In this view of the matter, I do not find any reason to interfere in findings of the Tribunal on issue No.1 whereby negligence has been attributed to driver of the offending vehicle.

The plea of claimants is that the deceased was an agriculturist and doing dairy business. They did not produce any document with regard to ownership or possession of agricultural land by the deceased. They have also failed to substantiate their plea with regard to dairy business by the deceased. Taking a clue from notification issued by the State of Haryana fixing minimum wage at the relevant time, income of the deceased is assessed at Rs.6000/- per month. Claimants shall be entitle to addition in income for future prospects @ 40%. Multiplier applied by the Tribunal is correct and affirmed.

The claim has been filed by the widow, minor child and parents of the deceased. The father of the deceased is stated to be 55 years old. There is no evidence that father of the deceased had any disability to render him dependent upon his married son. As such, admissible deduction for personal expenses would be 1/3rd. Deduction qua income tax allowed by the Tribunal cannot be allowed to sustain and accordingly set aside. In this manner, loss of dependency is calculated at Rs.11,42,400/- [(6000 x 12 x 17) + (40% future prospects) – (1/3rd deduction for personal expenses)].

Under conventional heads, compensation allowed 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/-

Reimbursement of medical expenses to the tune of Rs.1,10,000/- allowed by the Tribunal is affirmed.

Total compensation is Rs.13,22,400/- and compensation assessed by the Tribunal is reduced to the extent of Rs.12,87,218/- (26,09,618 – 13,22,400). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal. As the appeal (FAO No.5229 of 2018) has been decided on merits, applications for condonation of delay are of academic relevance.

The appeals are disposed of in the aforesaid terms.

19.12.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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