231

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

****

FAO No.4980 of 2017 (O&M)
Date of Decision: 26.02.2019

IFFCO TOKIO General Insurance Company Ltd.

Appellant

Versus

Sarabjit Singh and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Yogesh Gupta, Advocate for the appellant.

None for respondents No.1 and 2-claimants inspite of service.

None for respondent No.3.

****

AVNEESH JHINGAN, J (Oral):

The insurer of Truck bearing registration No. PB-11BU-3021 [hereinafter referred to as 'offending vehicle'] is in appeal against award dated 30.03.2017 passed by the passed by the Motor Accident Claims Tribunal, Amritsar [for brevity 'the Tribunal'] being aggrieved of the quantum of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The brief facts of the case are that on 06.02.2016, Gurmeet Kaur was returning to Amritsar after attending Shagun

Ceremony at village Gaggomahal in Innova Car bearing registration No. PB-02S-456 [hereinafter referred to as 'car']. The car was being driven by her husband. On their way, the car was hit by a rashly and negligently driven offending vehicle. As a result of the impact, Gurmeet Kaur sustained grievous injuries and died at the spot. FIR No.13, dated 07.02.2016 was registered at Police Station Raja Sansi.

A claim petition was filed under Section 166 of the Act. The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to the rash and negligent driving of the offending vehicle. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

In the claim petition, it was pleaded that the deceased was 35 years old and was running a Karyana Store and also doing tailoring job. Her earning was claimed as ₹17,000/- per month i.e. ₹10,000/- from Karyana Store and ₹7,000/- from tailoring work. The claimants failed to substantiate the occupation and monthly earning of the deceased. The Tribunal assessed notional earning of the deceased as ₹8,000/- considering her to be a house-wife; 50% future prospects were awarded; 1/3rd deduction for self-expenses was made and multiplier of '16' was applied. The Tribunal awarded a sum of ₹17,61,000/- alongwith interest @ 7.5% per annum. The amount awarded included ₹25,000/- for funeral expenses, ₹1,00,000/- for loss of love and affection and ₹1,00,000/- towards loss of estate.

Learned counsel for the appellant contends that the Tribunal erred in awarding 50% future prospects as the deceased was considered as a housewife and her notional income was assessed. His grievance is that the amounts awarded under the conventional heads are on the higher side and no amount should have been awarded for loss of love and affection.

The contentions raised by learned counsel for the appellant that no future prospects are to be awarded deserves acceptance.

The claimants failed to prove the occupation and monthly earning of the deceased. She was considered as a house-wife and her notional income was assessed. In such circumstances, future prospects are not awarded.

There is another aspect to the matter, that once the deceased was considered as a house-wife and notional income was assessed, then deduction for self-expenses is not to be made. This Court in ***Paramjit Singh and another Versus Dilbagh Singh alias Bagga and others, 2013(4) PLR 328***, has held that no deduction for self expenses is to be made in case of notional income. Relevant para is quoted below:

> *"15. After the decision in Lata Wadhwa's case (supra), the notional income of the housewife is estimated according totheir age. The notional income of the housewife was takento be Rs.3,000/- per month if she had been between the age group of 34 to 59 at the time of accident. The only riddle which is to be solved by us is as to*

whether 1/3rd cut should be applied on the notional income or not? The answer to this question is couched in the aforesaid extracted paragraph of the judgment of Lata Wadhwa's case (supra), as in that case, the Supreme Court was searching for a modest notional income of the housewife who was not earning an income but rendering multifarious services while managing all the chores of the family. Since it is a case where the Courts are confronted with the notional income of the housewife on account of her multifarious services which not only includes rearing the children but also performing all matrimonial obligations, in our considered view, the deduction of 1/3rd out of her notional income is not warranted."

The contention raised by learned counsel for the appellant with regard to compensation awarded under conventional heads, deserves acceptance. In view of decision of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157,*** the claimants are entitled to ₹15,000/- each for funeral expenses and for loss of estate. ₹40,000/- are awarded to the spouse for loss of consortium. No amount is awarded for loss of love and affection.

There is no dispute regarding notional income of the deceased assessed by the Tribunal. In view of above discussion, the compensation is re-calculated as under:-

Monthly earning	₹8,000/-
Applying multiplier of '16'	₹15,36,000/-
Funeral Expenses	₹15,000/-
Loss of Estate	₹15,000/-
Loss of consortium to the spouse	₹40,000/-

Total	**₹16,06,000/-**

The award dated 30.03.2017 is modified to the extent that amount of ₹17,61,000/- awarded by the Tribunal is reduced to ₹16,06,000/-.

Vide order dated 08.03.2018, disbursement of compensation beyond ₹15,00,000/- was stayed. The claimants shall be entitled to the balance amount alongwith interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is allowed in the aforesaid terms.

As the claimants have not put in appearance inspite of service and the matter was adjourned twice, they would be at liberty to revive the appeal by moving an application, in case any grievance survives.

[AVNEESH JHINGAN]
JUDGE

February 26, 2019
pankaj baweja

1. Whether speaking/ reasoned : Yes
2. Whether reportable : Yes