IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5242-2017(O&M)
Date of decision:-10.7.2019

IFFCO TOKIO General Insurance Company Ltd.

...Appellant

Versus

Neelam and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

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

None for respondents No.1 to 3.

Respondent No.4 ex-parte.

Mr.Rakesh Nagpal, Advocate
for respondents No.5 and 6.

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H.S. MADAAN, J.

On account of death of Sh.Jagdish son of Sh.Harikesh, resident of village Kichhana, District Kaithal in a motor vehicular accident, which took place on 29.3.2016 in the area of village Kichhana statedly on account of rash and negligent driving of truck trailer bearing registration No.HR-56-3965 (hereinafter referred to as the offending vehicle) by Dharambir – respondent No.1, legal representatives of deceased Jagdish, namely, Neelam, aged about 36 years – wife, Master Gaurav and Master Sorav aged about 14 and 11 years, respectively – minor sons and Smt.Chhoti Devi aged about 66 years – mother had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against the respondents i.e. Dharambir – driver, Jogi Ram – registered owner and Iffco Tokio General Insurance Company Ltd. - insurer of the offending vehicle, claiming compensation to the tune of Rs.50 lakhs along with interest

On getting notice, respondents No.1 to 3 had appeared. Respondents No.1 and 2 had filed joint written statement, whereas respondent No.3 filed separate written statement.

On the pleadings of the parties, following issues were framed:

1. Whether the accident dated 29.3.2016 resulting in death of Jagdish son of Harikesh occurred on account of rash and negligent driving of vehicle No.HR-56-3965 by respondent No.1? OPP.
2. Whether the claimants are entitled to compensation, if so to what extent and from whom? OPP.
3. Whether the vehicle in question was being driven in violation of terms and conditions of insurance policy, if so its effect? OPR-3.
4. Relief.

The parties were afforded adequate opportunities to lead evidence.

After hearing arguments, vide Award dated 15.3.2017, the claim petition was partly accepted by Motor Accidents Claims Tribunal, Kaithal and compensation of Rs.32,62,500/- along with interest @ 7.5% per annum from the date of filing of the petition till its realization besides cost of the claim petition was awarded to the claimants payable by all the respondents jointly and severally. The manner in which the compensation is to be apportioned is also given in the award.

The respondent No.3 – insurance company felt aggrieved by the said Award and has approached this Court by way of filing an appeal praying that the same be accepted, the impugned award be set aside and the claim petition be dismissed qua the appellant – insurance company.

Notice of the appeal was issued to the respondents. Initially respondents No.1 to 3 have appeared through counsel but subsequently, there was no representation on their behalf. Respondent No.4 not appeared despite service, as such she was proceeded against ex-parte.

I have heard learned counsel for the appellant and respondents No.5 and 6 besides going through the record.

The Tribunal on analysis of the evidence brought before it had come to the conclusion that Dharambir – respondent No.1 was author of the accident by his rash and negligent driving of the offending vehicle resulting in death of Jagdish. The offending vehicle was owned by Jogi Ram – respondent No.2 and insured with Iffco Tokio General Insurance Company Ltd. - respondent No.3 at the relevant time, as such all the three respondents were made liable to pay the compensation.

The Tribunal had taken the age of deceased to be 38 years, his avocation as a Salesman at Satya Filling Station, Khanori Road, Kaithal and earning Rs.15,000/- per month. The Tribunal had determined the age of deceased as 38 years in view of the same being entered in the postmortem report Ex.P5, whereas the date of birth of deceased was mentioned as 1.1.1980 in his Adhar Card. The accident had taken place on 29.3.2016, in that way, he was aged a little more than 36 years at the time of accident. However, claimant No.1 - Neelam appearing as PW1 had stated that her husband was aged about 38 years at the time of his death in the accident, therefore age of deceased was taken to be 38 years. While considering the avocation of the deceased and his monthly income, the Tribunal has taken into consideration the fact that in FIR Ex.P6, the occupation of the deceased is recorded as Salesman in Kaithal, Petrol Pump and PW3 Tarsem Chand, Manager, HP Satya Filling Station, Khanori Road, Kaithal had brought the record relating to salary of deceased proving his salary certificate Ex.P1 and attested copy of ledger salary account statement as Ex.P2. No fault can be found with the Tribunal in doing so.

However, the Tribunal has added 50% of the said amount towards future prospects. But in view of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** when the deceased is aged less than 40 years, an addition of 40% is to be made towards future prospects. Doing that the monthly income of the deceased is taken as Rs.15,000 + 6000 = Rs.21,000/-.

Keeping in view the number of dependents upon the deceased, in terms of the ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77***, 1/4th of the amount is to be deducted towards personal expenses. Doing that the dependency of claimants comes out to Rs.15,750/- per month, annual dependency comes out to Rs. 15,750 x 12 = Rs.1,89,000/-.

The Tribunal has used multiplier of 15, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs.1,89,000 x 15 = 28,35,000/-.

The Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses, Rs.1,00,000/- on account of loss of consortium to claimant No.1 – Neelam and Rs.1,00,000/- to minor claimants No.2 and 3 on account of loss of love and affection. However, in view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors.***(supra), the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-. The total compensation comes out to Rs. 28,35,000 + 70,000 = 29,05,000/-.

The Tribunal has wrongly awarded compensation of Rs.32,62,500/-. The same is reduced to Rs.29,05,000/-. The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization on the amount of Rs.29,05,000/-. Other terms and conditions in the original award shall remain the same. Since the amount has been reduced, the directions with regard to release of compensation amount to the claimants in cash and with regard to deposit in the form of FDR shall stand modified proportionately. Amount if paid in excess be refunded by the claimants at the earliest.

With such modification, the appeal is allowed partly with costs.

10.7.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No