In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 18.9.2019

FAO- 5393 of 2017 (O&M)

IFFCO TOKIO General Insurance Company Limited

---Appellant

versus

Narinder Kaur and others

---Respondents

FAO- 5920 of 2018 (O&M)

Narinder Kaur and others

---Appellants

versus

Kamal Kumar and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Ravinder Arora, Advocate and
Mr. Neeraj Khanna, Advocate
for the insurance company

Mr. S.S.Chauhan, Advocate,
for the claimants

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Rekha Mittal, J.

This order will dispose of FAO Nos. 5393 of 2017 and 5920 of 2018 as these have emerged out of the same award dated 23.12.2016 passed by the Motor Accidents Claims Tribunal, Karnal whereby compensation has been assessed on account of death of Gurvinder Singh in a motor vehicular accident that took place on 6.8.2015.

FAO No. 5393 of 2017 has been filed by the 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 findings of the Tribunal on issue No. 1 and quantum of compensation.

CM No. 16971-CII of 2017 in FAO-5393 of 2017

Heard.

Allowed as prayed for. Delay of 48 days in filing the appeal stands condoned.

Main cases

Counsel for the insurance company would argue that FIR in respect of occurrence dated 6.8.2015 was lodged on 8.8.2015 by one Kulwinder Singh PW1 against unknown vehicle. It is argued that claimants examined Kikar Singh PW4 to discharge onus of issue No. 1 that accident is the result of rash and negligent driving of offending vehicle by Kamal Kumar, owner-cum-driver of offending vehicle.

With regard to compensation, counsel would argue that addition in income for future prospects and compensation under conventional heads may be modified in the light of judgments of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270** and **Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034.**

Counsel representing the claimants has supported findings on issue No. 1 attributing rashness and negligence to driver of offending vehicle. He would further argue that income of deceased assessed by the Tribunal is on lower side and merits enhancement, in view of materials on record. Deduction for personal expenses should be 1/3rd.

The Tribunal awarded Rs. 11,26,375/-, detailed hereunder:-

Monthly income of the deceased	Rs. 6000/-
Addition in income for future prospects	50%
Deduction for personal expenses	1/2
Multiplier	18
Standard deduction of income tax	48,600/-
Loss of dependency	Rs.8,74,800/-
Funeral expenses and transportation	Rs. 25000/-
Compensation on account of love and affection	Rs. 2,00,000/-
Medical expenses	Rs. 26,575/-

The claimants examined Kulwinder Singh author of FIR and Kikar Singh PW4 to prove that accident is the result of rash and negligent driving of offending vehicle by Kamal Kumar. Counsel for the insurance company has failed to point out any facts elicited in cross examination of Kikar Singh to discard or disbelieve his testimony. There is no material on record that offending vehicle has been indicted as a result of collusion between the claimants and Kamal Kumar (respondent No. 1 therein). In the given circumstances, I do not find any reason to interfere in the findings recorded by the Tribunal on the basis of materials on record.

This brings the Court to quantum of compensation. The plea of claimants is that deceased was working as 'Pathi' in Gurudwara, Ramgaria Bhawan, Railway Raod, Karnal and doing Ardas, kirtan, path and other religious activities thereby earning Rs. 12,000/- per month. They examined Mukhtiar Singh owner of Gurudwara Kalgidhar Sahib PW6 to substantiate their plea that deceased was working as 'pathi' in the gurudwara as well as doing out door services like path, kirtan etc. However, Mukhtiar Singh did not produce any documentary evidence even to establish that deceased was working as a 'pathi' in the gurudwara under him. At the same time, the Tribunal did not reject plea of the claimants that deceased was performing religious ceremonies like path, kirtan, ardas etc. Taking a clue from notification issued by the State of Haryana fixing minimum wage at the relevant time coupled with materials on record, income of deceased is assessed at Rs. 7500/- per month. Future prospects and multiplier applied are correct and affirmed. As the deceased was unmarried and claim has been filed by his mother and younger brother, deduction for personal expenses is also correct and affirmed. There would be no deduction of income tax as income is not taxable. In this manner, loss of dependency is calculated at Rs.12,15,000/-[7500 x12x18= 16,20,000 + 8,10,000(50%) = 24,30,000 – 12,15,000(1/2)].

Under conventional heads, compensation allowed is modified to the effect that claimants shall be entitle to Rs. 30,000/-, detailed hereunder:-

Expenses on funeral	Rs. 15,000/-
Loss of estate	Rs. 15,000/-

Amount of Rs. 26,575/- allowed towards medical expenses is affirmed.

Total compensation is Rs. 12,71,575/-(12,45,000 + 26,575) and the additional amount is Rs. 1,45,200/- (12,71,575- 11,26,375), payable with interest @ 7.5% per annum from the date of petition till realization exept for the period of delay of 154 days in refiling the appeal, to mother of the deceased, to be invested in fixed deposit for a period of two years.

The appeal filed by the insurance company is dismissed whereas appeal filed by the claimants is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

18.9.2019

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