IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2794-2018(O&M)
Date of decision:-22.5.2019

Iffco Tokio General Insurance Co. Ltd.

...Appellant

Versus

Jangir Singh and another

...Respondents

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

Present: Ms.Swati Batra, Advocate
for the appellant.

Mr.Sahil Mangla, Advocate for
Mr.Akash Vashisth, Advocate
for respondents No.1 to 4.

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H.S. MADAAN, J.

On account of death of Gurpreet Singh in a motor vehicular accident, which took place on 24.4.2017 at about 3:00 p.m. on Banur – Tepla Road village Rajgarh within the area of Police Station Shambhu allegedly on account of rash and negligent driving of Alto K10 car bearing registration No.PB-11-BD-6978 (hereinafter referred to as the offending vehicle) by respondent No.1 – Rajesh Kumar, his legal representatives namely father – Jangir Singh aged about 47 years, younger brother - Sukhdeep Singh aged about 17 years and grandmother – Smt.Surjit Kaur aged about 63 years had brought a claim petition under Section 166 of the Motor Vehicles Act against respondents i.e. Rajesh Kumar – driver, Kuldeep Singh – owner and Iffco Tokio General

Insurance Co. Ltd. - insurer of the offending vehicle, claiming compensation.

Notice of the claim petition was issued to the respondents, who put in appearance and offer a contest.

The Motor Accident Claims Tribunal, Patiala while allowing the claim petition, awarded compensation of Rs.15,42,000/- with interest @ 7% per annum from the date of filing of the claim petition till realization of the amount to the claimants/petitioners No.1 and 2 in equal shares payable by all the respondents jointly and severally. The manner in which the compensation is to be apportioned was also given in the award.

This award left the respondent No.3 - insurance company aggrieved and it has approached this Court by way of filing the present appeal praying that the same be accepted, the impugned award be set aside and the appellant – insurance company be absolved of its liability to pay compensation to the claimants/petitioners No.1 and 2.

Notice of the appeal was given to respondents and respondents No.1 to 4 have put in appearance through counsel whereas respondent No.5 did not appear despite service.

I have heard learned counsel for the parties besides going through the record.

The Tribunal on analysis of the evidence adduced before it in light of the facts and circumstances of the case has returned a clear finding that respondent No.1 – Rajesh Kumar was author of the accident by rash and negligent driving of the offending vehicle in which the deceased had lost his life. This finding is well reasoned one and does not call for any interference.

With regard to quantum of compensation, the Tribunal has observed that the deceased was studying in 10th class and as per version of the claimants, he was giving tuitions to the students upto 8th class earning Rs.15,000/- per month. But that contention was not accepted by the Tribunal in absence of any cogent and convincing evidence adduced by the claimants. However, observing that deceased was hale and hearty and he could have earned Rs.7,500/- per month even by doing labour work, the Tribunal took his notional income to be Rs.7,500/- per month. The age of the deceased was taken to be 16 years as per entry in the post-mortem report. The grouse of the insurance company is that the income so taken was on higher side. However, I do not find any force in that contention.

In view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** the Tribunal has rightly made addition of 40% towards future prospects. Doing that the monthly income of the deceased is taken as Rs.7,500 + 3,000 = Rs.10,500/-.

In terms of the ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77*** , where the deceased was a bachelor, deduction towards self-expenses is to be taken as 50%. Doing that the dependency of claimants No.1 and 2 comes out to Rs.5,250/- per month, annual dependency comes out to Rs.5,250 x 12 = Rs.63,000/-.

The Tribunal has used multiplier of 18, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs. 63,000 x 18= 11,34,000/-.

In view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors.***(supra), the claimants No.1 and 2 are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate and Rs.15,000/- as funeral expenses, total Rs.30,000/-. The total compensation comes out to Rs. 11,34,000 + 30,000 = 11,64,000/-.

The Tribunal has awarded compensation of Rs.15,42,000/-.

The Tribunal has wrongly awarded compensation of Rs.15,42,000 /-. The same is reduced to Rs.11,64,000/- payable by all the respondents jointly and severally. The claimants No.1 and 2 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.11,64,000/-. The directions regarding deposit of shares and other terms and conditions shall remain the same.

In case the appellant – insurance company has already deposited/paid the amount under the award passed by the Tribunal then it shall be entitled to recover the difference in amount from the claimants as per law by way of filing an execution application before the Motor Accidents Claims Tribunal, Patiala.

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

22.5.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No