(108) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.15886 of 2018 (O&M)
Date of decision: 07.01.2019

IFFCO TOKIO General Insurance Company Ltd.
…… Appellant

Versus

Promila and others
….. Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Vishal Aggarwal, Advocate of the appellant.

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B.S. WALIA, J. (ORAL)

[1] Challenge by the Insurance Company is to award dated 05.09.2018 granting compensation of ₹ 43,11,776/- to the respondents/claimants on account of death of Jasbir Singh in a motor vehicular accident on 26.07.2017. Challenge is on the ground that salary of ₹ 1, 40,000/- per annum could not be proved from the income-tax return, besides, it was a case of contributory negligence as the accident had occurred on account of a head on collision.

[2] I have considered the submissions of learned counsel for the appellant but am unable to agree with the same.

[3] A perusal of the award reveals that the respondents/claimants stated that the deceased was working as a 'Munim' (i.e. Accountant) with M/s Zamidara Trading Company, Commission Agent Shop No.144, New Grain Market, Ismailabad and was earning ₹ 1,40,000/- per annum, besides, was doing agricultural work, milk diary and was earning ₹ 35,000/- per month from aforesaid sources, however, the learned Motor Accidents Claims

Tribunal, Kurukshetra (hereinafter referred to as 'the Tribunal') ignored the claim on the basis of salary and relied exclusively on the income-tax returns of the deceased produced on record by PW-4 Sandeep Kumar, Multi Tasking Staff, Kurukshetra who brought the original record of income tax returns relating to the deceased pertaining to assessment years 2014-15 and 2015-16 (i.e. Ex.P1 and Ex.P2) along with acknowledgement Ex.P3 and Ex.P4. Gross annual income of the deceased from business for the assessment year 2015-16 was ₹ 2,56,500/-. The claim qua salary income of the deceased from employment with M/s Zamidara Trading Company was not shown in the income tax returns (i.e. Ex.P1 to Ex.P4). There are no signatures on the ledgers nor the ledgers have been prepared by PW-3 Charan Singh. As such copies of ledgers (Ex.P5 to Ex.P7) were insufficient to prove salary income of the deceased.

[4] The learned Tribunal has not taken the salary income of the deceased into account while awarding compensation. The plea that income from business as shown has not been proved, consequently, the said income depicted in the income tax return could not have been taken into account for compensation, does not merit acceptance since apart from claiming salary which the deceased was earning as 'Munim' (i.e. Accountant), it was claimed that the deceased was doing agricultural work as well as work of milk diary and was thereby earning ₹ 35,000/- per month from aforesaid sources. The deceased had filed income tax returns for the assessment years 2014-15 and 2015-16 (i.e. Ex.P1 and Ex.P2) along with Indian Income Tax Return Verification form Ex.P3 and Ex.P4. The same was produced on record by PW-4 Sandeep Kumar, Multi Tasking Staff, Kurukshetra who brought the original record of the income tax returns relating to the deceased

which establishes that as per income tax record Ex.P2/Ex.P4, gross annual income of the deceased for the assessment year 2015-16 was ₹ 2,56,500/-. It is not the case of the appellant that the returns were filed after the death of Jasbir Singh deceased or that the same were not accepted. Learned counsel has failed to point out any ground on the basis of which the income-tax returns filed by the deceased were to be ignored while assessing the compensation payable to the respondents/claimants. Income tax returns filed by the deceased in the normal course are the best evidence which could have been relied upon by the respondents/claimants and were, accordingly, rightly taken into account by the learned Tribunal for assessing the compensation payable while rejecting the claim on the basis of salary of Rs.1,40,000/- per annum which was claimed as being paid to the deceased by M/s Zamidara Trading Company, Commission Agent, Shop No.144, New Grain Market, Ismailabad, District Kurukshetra. In the light of the aforementioned position, gross total income shown in Ex.P2/Ex.P4 (i.e. the last return filed by deceased) i.e. Rs.2,56,500/- was rightly taken as the annual income of the deceased.

[5] In support of the plea that it was a case of contributory negligence, learned counsel has produced copy of the site plan in court today. A copy thereof duly signed by him is taken on record as Mark – ‘A’. By referring to the site plan, learned counsel contended that mark ‘A’ is the point where the accident took place. A perusal thereof reveals that both the vehicles were going from Ismailabad which is on the lower side of the page towards point ‘A’. Once that be so then it is quite apparent that it was not a case of head on collision. The deceased was going on a motorcycle on the correct side towards Ambala while the offending vehicle which was coming

from Ismailabad was also going towards Ambala. A perusal of paragraph No.14 of the award reveals that the driver of the car hit the side of the car with the motorcycle at the time of crossing it and as a result thereof, the motorcycle fell on the road. It is, therefore, apparent that it was not a case of head on collision but the driver of the offending car struck the side of the car in the motorcycle which was going on the correct side of the road as a result of which, the motorcycle fell down and the deceased sustained injuries and eventually succumbed to the same. Besides, the driver of the offending car did not step into the witness-box to controvert the testimony of PW-1, Karam Singh as per whom the accident had been caused due to the negligence of the driver of the offending Alto car. Thus, the plea of contributory negligence is also bereft of merit.

[6] No other point has been argued.

[7] In the circumstances, I do not find any ground whatsoever to interfere with the award passed by the learned Tribunal.

[8] Dismissed in limine.

(B.S. Walia)
Judge

07.01.2019
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1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.