

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 27.03.2019

1. FAO No.4491 of 2018 (O&M)

IFFCO TOKIO General Insurance Co. Ltd.

..... Appellant

Versus

Som Dutt and others

..... Respondents

2. FAO No.5059 of 2018 (O&M)

Som Dutt (since deceased) through his LRs

..... Appellant

Versus

Durgesh Kumar Yadav and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vishal Aggarwal, Advocate
for the appellant (in FAO-4491-2018)
for respondent No.3 (in FAO-5059-2018).

Mr. Arjun Kundra, Advocate
for the appellant(s) (in FAO-5059-2018)
for respondent No.1 in FAO-4491-2018).

Mr. Baljeet Benipal, Advocate
for respondent No.3 (in FAO-4491-2018).

ANIL KSHETARPAL, J. (ORAL)

CM-15195-CII-2018 in FAO-4491-2018

Application is allowed and the delay is condoned.

Main Cases

Vide this judgment, FAO No.4491 of 2018 and FAO No.5059 of 2018 filed by the Insurance Company as well as the claimants shall stand disposed of.

Insurance Company claims that since late Sh. Som Dutt died after a period of almost 11 months from the date of the accident, therefore, death is not due to motor vehicular accident which took place on 14.08.2015. On the

other hand, claimants claim enhancement of the compensation.

Learned counsel appearing for the appellant-Insurance Company has submitted that no post-mortem report has been brought on file to determine as to what was the cause of death after a period of 11 months. He has also referred to the statement of claimant-Pooja Rani (widow) of late Sh. Som Dutt who has stated that she cannot produce any medical proof which shows that the death has occurred due to injury suffered in the motor vehicular accident. He has also referred to the statement of PW-3-Dr. Jenin Gurnani who has stated that the patient was discharged from Post Graduate Institute of Medical Sciences on 22.08.2015 and therefore, learned Motor Accident Claims Tribunal has erred in arriving at a conclusion that the death took place due to the motor vehicular accident.

On the other hand, learned counsel appearing for the claimant has submitted that Dr. Jenin Gurnani, Senior Resident, Department of Neurosurgery, PGI, Chandigarh has specifically stated that the injury suffered by the deceased in a motor vehicular accident was dangerous to life. He has also drawn attention of the Court to Ex.P-15 which is a case summary record of late Sh. Som Dutt who was referred by the local hospital to PGI, Chandigarh with cervical spinal fractures and weakness in legs and arms. He remained admitted in PGI till 22.08.2015. In the case summary, it has been noted that “patient has been explained the risk and benefits of operative management and opts for conservative treatment.” Thereafter, he was referred to Orthopedics Surgeon for further management. Learned counsel has further drawn attention of the Court to Ex.P-9 which is an OPD slip issued by the Punjab Health Systems Corporations, Civil Hospital Nawa Sahar wherein patient is shown to have been admitted on 31.08.2015. In the aforesaid OPD slip, it has been noted by the Doctor that the patient is referred from PGIMER

to District Hospital for nursing care. The diagnosis is paraplegia. It has been noticed that he has also developed bedsores. Further, thereafter treatment was from the regional spinal injury. Ex.P-13 proves that the patient remained under treatment from 07.11.2015 to 13.02.2016. Ex.P-22 is a receipt issued by a private physiotherapist clinic proving that late Sh. Som Dutt was receiving physiotherapy treatment from a trained physiotherapist.

Keeping in view the aforesaid evidence, this Court is called upon to decide as to whether late Sh. Som Dutt had died due to motor vehicular accident after a period of 11 months or not. In the considered view of this Court, once there is a medical record available which shows continuous treatment and there is no record that late Sh. Som Dutt had improved during this time or there was any other reason for his death after a period of 11 months, the obvious inference is that late Sh. Som Dutt died due to injury suffered in motor vehicular accident. If one carefully reads the statement of the Doctor who has been examined as PW-3, he has specifically mentioned that the injury was dangerous to life as declared by the PGI in its records. No doubt, no post-mortem report has been proved, as there was none but the evidence which has come on record leads to the only conclusion that late Sh. Som Dutt died in a motor vehicular accident, therefore, learned Motor Accident Claims Tribunal has not committed any error in awarding the amount on account of death. At this stage, it must be noticed that initially, the claim petition was filed on 06.10.2015 when late Sh. Som Dutt was alive, thereafter, since he died during pendency, the claim petition was amended.

As regards the claim for enhancement, learned Motor Accident Claims Tribunal has assessed the income of the deceased as unskilled labour, although, he was a driver fit to drive heavy commercial vehicles having valid driving licence. Even at the time of accident, he was driving a Canter. The

accident took place in August, 2015, therefore, Motor Accident Claims Tribunal erred in treating a driver of a heavy commercial vehicle equivalent to unskilled worker. However, no documentary evidence has been produced to prove the income. Even the employer has not been examined.

Keeping in view the aforesaid facts, this Court is left with no choice but to apply some guess work keeping in view the fact that the accident is not old and the driver was resident of Punjab, the income of the deceased is assessed at Rs.11,000/-. Learned Motor accident Claims Tribunal has applied a cut of 1/4th which is in accordance with law and need no revision.

Hence, the compensation payable is re-worked as under:-

<i>Heads</i>	<i>Compensation awarded by MACT, Panchkula</i>	<i>Compensation awarded by High Court</i>
Income assessed	Rs.9320/-	Rs.11,000/-
– Deduction	(1/4 th) 2330 9320 – 2330 = Rs.6990/-	(1/4 th) 2750 11,000 – 2750 = Rs.8250/-
+ Future prospects	(25%) Rs.1748/- 6990 + 1748 = Rs.8738/-	(25%) Rs.2063/- 8250 + 2063 = Rs.10,313/-
Annual dependency	8738 x 12 = Rs.1,04,856/-	10313 x 12 = Rs.1,23,756/-
Multiplier (14)	1,04,856 x 14 = 14,67,984/-	1,23,756 x 14= 17,32,584/-
Conventional Heads i) Loss of Estate ii) Consortium iii)Funeral expenses	Rs.15,000/- Rs.40,000/- Rs.15,000/- (Rs.70,000/-)	Rs.15,000/- Rs.40,000/- Rs.15,000/- (Rs.70,000/-)
Total Compensation	Rs.15,37,984/-	Rs.18,02,584/-
Enhanced Compensation		(18,02,584 – 15,37,984) Rs.2,64,600/-

The enhanced compensation shall be payable along with interest @ 7.5% per annum from the date of the petition till realization.

The pending miscellaneous applications, if any in both the appeals, shall stands disposed of accordingly.

Both the appeals are disposed of.

(ANIL KSHETARPAL)
JUDGE

27.03.2019
Dinesh Bansal

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No