

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

XOBJC-25-CII-2016 (O&M) in/and
FAO No.4846 of 2015 (O&M)
Date of decision: 16.01.2020

Iffco Tokio General Insurance Co. Ltd.

... Appellant

Versus

Nirmal and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

Mr. Rakesh Nagpal, Advocate
for the claimants/cross objectors.

Mr. Rajesh Lamba, Advocate
for respondent No.5.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO No.4846 of 2015 and cross objections No.25-CII-2016 as these have emerged out of the same award dated 10.03.2015 passed by the Motor Accidents Claims Tribunal, Fatehabad whereby compensation has been assessed on account of death of Vishnu @ Bishnu Garg in a motor vehicular accident that took place on 08.09.2012.

FAO No.4846 of 2015 has been filed by Iffco Tokio General Insurance Co. Ltd. (hereinafter referred to as 'the insurance company') whereas the cross objections have been filed by the claimants seeking

enhancement of compensation.

CM No.2870-CII of 2016 in XOBJC-25-CII of 2016

Heard.

Allowed as prayed for. Delay of 44 days in filing the cross objections stands condoned.

Main Case

Counsel for the insurance company would inform that appeal has been filed to assail only quantum of compensation.

The Tribunal awarded Rs.43,75,580/-, detailed hereunder:-

Monthly income of the deceased	Rs.48,472/-
Multiplier	11
Deduction for personal expenses	1/3 rd
Loss of dependency	Rs.42,65,580/-
Expenses on funeral, transportation and last rites	Rs.10,000/-
Loss of consortium, love and affection	Rs.1,00,000/-

Counsel for the insurance company would argue that Tribunal should have taken into consideration net salary/carry home salary of the deceased for computing loss of dependency. 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 Ors., 2017 SCC 1270** and **Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034**.

Counsel for the claimants/cross objectors would argue that only statutory deduction of income tax can be taken into account for computing net annual income of the deceased. Claimants may be extended

benefit of addition in income for future prospects and appropriate multiplier.

The deceased was an employee of Punjab National Bank. Suresh Kumar Garg, Senior Manager, Punjab National Bank, Main Branch Fatehabad was examined to prove employment and salary of the deceased. As per details of salary mentioned in Ex.P2, gross salary of deceased in August 2012 was Rs.51,292.17 and annual salary is Rs.6,15,506/-. As has rightly been argued by counsel for the claimants, only deduction to be made is in respect of income tax. After deducting income tax of Rs.54,694/-, net annual income is Rs.5,60,812/-.

The deceased was due for retirement on 31.7.2017. Counsel for the parties, on instructions, would state that retirement age of an employee of Punjab National Bank is 60 years. As such, deceased was slightly more than 55 years at the time of occurrence. Accordingly, addition in income for future prospects would be @ 15%. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.47,29,514/- [(5,60,812 x 11) + (15% future prospects) – (1/3rd deduction for personal expenses)].

Under conventional heads, compensation allowed is modified to the effect that claimants shall be entitle to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.47,99,514/- and additional amount is Rs.4,23,934/- (47,99,514 - 43,75,580) payable with interest @ 7.5% per annum from the date of petition till realization.

Counsel for respondent No.5 would argue that insurance company has wrongly been given right of recovery against the insured after payment of compensation to the claimants, in view of findings recorded in para 16 of the award. It is further argued that though respondent No.5 has not filed cross objections to assail these findings but the same can be modified in exercise of jurisdiction under Order 41 Rule 33 of the Code of Civil Procedure.

The Tribunal, in para 16 of the award, has noticed that insurance company raised a plea to the effect that respondent No.2 therein committed a fraud as he obtained the insurance policy by mentioning year of manufacture of tractor as 2006 as against the actual year 1998. The Tribunal has further noticed that this fact is proved from testimony of Sahil Bhatia RW2 and documents Exs.R1 and Ex.R2.

Counsel for respondent No.5 has not disputed these factual findings recorded by the Tribunal. The insured did not appear in the witness box to say something with regard to model of the insured vehicle. The insurance company is entitled to defences available under Section 149(2) of the Motor Vehicles Act, 1988 (in short 'the Act'). Clause (b) of Section 149 (2) of the Act says that the policy is void on the ground that it was obtained by non-disclosure of a material fact or by a representation of fact which

was false in some material particular. In view of the above, the insurance company could be exonerated of liability to pay compensation but has been given right of recovery after payment of compensation to the claimants, keeping in view interest of the claimants. In these circumstances, findings of the Tribunal with regard to right of recovery in favour of the insurance company cannot be faulted with.

For the foregoing reasons, the appeal and cross objections are disposed of in the aforesaid terms.

16.01.2020
ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No