IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

249 XOBJC-150-CII of 2018 (O&M) in/and

FAO No.4599 of 2017 (O&M)

Date of decision: 03.02.2020

NAVEEN KUMAR ... Appellant

Versus

AARTI AND ORS. ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Manu Loona, Advocate for
Mr. NK Malhotra, Advocate for the appellant.
Mr. Rajeev D. Sharma, Advocate for cross objectors/claimants.
None for respondents No.6 to 8.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO No.4599 of 2017 and cross objections No.150-CII of 2018 as these have emerged out of the same award dated 17.02.2017 passed by the Motor Accidents Claims Tribunal, Pathankot whereby compensation has been assessed on account of death of Roop Lal in a motor vehicular accident that took place on 09.10.2015.

FAO No.4599 of 2017 has been filed by registered owner of offending vehicle i.e. truck trolla bearing No.HR-69-A-7939 whereas cross objections have been filed by claimants seeking additional compensation.

CM No.15333-CII of 2018 in XOBJC-150-CII of 2018

Heard.

Allowed as prayed for. Delay of 22 days in re-filing the cross objections stands condoned.

CM No.13763-CII of 2017 in FAO No.4599 of 2017

Heard.

Allowed as prayed for. Delay of 12 days in filing the appeal stands condoned.

FAO No.4599 of 2017

Counsel for the appellant would argue that appeal has been filed to assail findings of the Tribunal recorded in para 28 of the award, on the basis whereof the insurance company has been given right of recovery.

The Tribunal, in para 27 of the award, has held that all the respondents No.1 to 3 therein shall be jointly and severally liable to pay compensation. In the succeeding para, the Tribunal has given right of recovery on the question of fitness certificate but without indicating as to against whom the insurance company shall have right of recovery. These facts show that Tribunal has adopted a very casual approach in recording findings. Not only this, the Tribunal has given right of recovery in favour of the insurance company on the question of fitness certificate but without examining provisions of Section 149 (2) of the Motor Vehicles Act, 1988 that deals with defences available to the insurer. Non-possessing of fitness certificate is not a defence available to the insurer, therefore, findings of the Tribunal giving right of recovery in favour of insurance company cannot be allowed to sustain and accordingly set aside. As a natural corollary, the insurance company shall be jointly and severally liable to pay compensation without any right of recovery.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

XOBJC-150-CII of 2018

The Tribunal awarded Rs.10,89,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.6000/-
Multiplier	16
Deduction for personal expenses	1/4th
Loss of dependency	Rs.8,64,000/-
Expenses on funeral	Rs.25,000/-
Loss of consortium	Rs.1,00,000/-
Loss of love and affection	Rs.1,00,000/-

The plea of claimants is that deceased was tyreman at monthly salary of Rs.45,000/-. They placed on record employment certificates Exs.P3 and P4, not per se admissible, but did not examine a witness to prove avocation and income of the deceased.

The deceased was 34 years old and left behind family consisting of his widow, three minor children and mother. Taking a clue from notification issued by the State of Punjab fixing minimum wage at the relevant time, income of the deceased is assessed at Rs.7000/- per month. Claimants shall be entitle to addition in income for future prospects @ 40%. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.14,11,200/- [(7000 x 12 x 16) + (40% future prospects) – (1/4th 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.14,81,200/- and additional amount is Rs.3,92,200/- (14,81,200 - 10,89,000), payable with interest @ 7.5% per annum from the date of petition till realization to minor children of the deceased in equal ratio, to be invested in fixed deposit till they attain majority or for a period of three years, whichever is later.

The cross objections are partly allowed in the aforesaid terms.

03.02.2020
ashok

(REKHA MITTAL)
JUDGE

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