IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

268 XOBJC-37-CII of 2019 (O&M) in/and

FAO-2917-2018 (O&M)

Date of decision: 03.02.2020

IFFCO TOKIO GENERAL INSURANCE CO. LTD. ... Appellant

Versus

SMT. NARESH & OTHERS ...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Ms. Swati Batra, Advocate for the appellant.
Mr. Sumit Gupta, Advocate
for respondents No.1 and 2/cross objectors.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO No.2917 of 2018 and cross objections No.37-CII of 2019 as these have emerged out of the same award dated 13.04.2018 passed by the Motor Accidents Claims Tribunal, Karnal whereby compensation has been assessed on account of death of Salinder in a motor vehicular accident that took place on 09.03.2017.

FAO No.2917 of 2018 has been filed by Iffco Tokio General Insurance Co. Ltd. (hereinafter referred to as 'the insurance company') whereas the cross objections have been preferred by respondents No.1 and 2/claimants seeking additional compensation.

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

CM No.4430-CII of 2019 in XOBJC-37-CII of 2019

Prayer in this application is for condonation of delay of 171 days in filing the cross objections.

In view of averments made in the application supported by an affidavit of respondent No.1-Naresh coupled with that provisions of the Motor Vehicles Act, 1988 providing for compensation are benevolent social legislation, application is allowed and delay of 171 days in filing the cross objections is condoned subject to the condition that respondents No.1 and 2/claimants shall forgo interest for the period of delay, in case compensation is enhanced.

Main Case

The Tribunal awarded Rs.22,12,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.10,000/-
Addition in income for future prospects	40%
Multiplier	17
Deduction for personal expenses	1/4th
Loss of dependency	Rs.21,42,000/-
Expenses on funeral	Rs.15,000/-
Loss of estate	Rs.15,000/-
Loss of consortium	Rs.40,000/-

Counsel for the appellant would argue that income of deceased assessed is much more than minimum wage available at the relevant time. The claim has been filed by the widow, minor child and parents of the deceased but there is no material on record that father of deceased was dependent on his earning, therefore, deduction for personal expenses should be 1/3rd.

Counsel for the claimants, on the contrary, would argue that as father of the deceased was 65 years old, the Tribunal has rightly made deduction of 1/4th.

The Tribunal has assessed income of the deceased by taking into consideration the DC rates meant for payment of wages to employees out of contingency fund. There is no clear evidence adduced by the claimants with regard to avocation and income of the deceased. Taking a clue from notification issued by the State of Haryana fixing minimum wage at the relevant time, income of the deceased is assessed at Rs.8280/- per month. Addition in income for future prospects and multiplier applied by the Tribunal are correct and affirmed.

The Tribunal has deducted 1/4th for personal and living expenses of the deceased. Smt. Naresh, widow of the deceased appeared in the witness box. In cross examination, she has deposed that her husband has two more brothers who are labourers and living separately. Her father in law is living separately and goes for labour work. In the given scenario, Nanha Ram, claimant is not entitle to loss of dependency. Accordingly, deduction for personal expenses would be 1/3rd. In this manner, loss of dependency is calculated at Rs.15,76,512/- [(8280 x 12 x 17) + (40% future prospects) – (1/3rd deduction for personal expenses)].

Compensation under conventional heads is correct and affirmed.

In view of the above, total compensation is Rs.16,46,512/- and compensation assessed by the Tribunal is reduced to the extent of Rs.5,65,488/- (22,12,000 - 16,46,512). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

The appeal and cross objections stand disposed of in the aforesaid terms.

03.02.2020 **(REKHA MITTAL)**

ashok **JUDGE**

Whether speaking/reasoned: Yes / No

Whether reportable: Yes / No