IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.121

FAO No.399 of 2021 (O&M)
DATE OF DECISION: April 23, 2021

UNITED INDIA INSURANCE COMPANY LIMITED
..APPELLANT

VERSUS

SURINDER KAUR AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. D.P. Gupta, Advocate, for the appellant.

*****

SUDHIR MITTAL, J. (ORAL)

An accident took place on 05.03.2017 in which Rajinder Singh passed away. He was travelling in Mahindra XUV vehicle which struck against a trolla parked on the road side. The claimants approached the MACT, Amritsar who has awarded an amount of ₹60,22,540/- as compensation. Aggrieved, the insurance company has preferred this appeal.

Learned counsel for the appellant has raised two fold submissions (i) that negligence of the driver of the trolla was not proved and (ii) the compensation as assessed is excessive.

In support of the first argument, learned counsel for the appellant has submitted that as per the version of the eye-witness, a Swift Car came from behind and over took the Mahindra XUV in which the deceased was travelling. On account of the same, the driver of the Mahindra XUV became un-nerved and hit the trolla parked on the left side.

Thus, the negligence was on the part of the driver of the Mahindra XUV and not on the part of the driver of the trolla. Regarding the second argument, it has been submitted that income tax returns Ex.P-2 & P-3 were not proved on the record and thus, they could not have been relied upon for assessing the income of the deceased. Even if they were to be taken into consideration, the amount of tax should have been reduced by the Tribunal from the annual income before giving benefit of future prospects. On the contrary, the Tribunal gave benefit of future prospects and then reduced the income tax which has resulted in award of higher compensation. It is also argued that the claimants, some of whom are the married sons, are running the business of the deceased and thus, dependency has been wrongly calculated.

With the assistance of learned counsel for the appellant, I have gone through the impugned award. Perusal thereof shows that eye-witness PW-2 Dalbir Singh has proved negligence on the part of the trolla. The trolla was parked on the metaled portion of a busy National Highway and this in itself was a negligent act on the part of the driver. Reference to the FIR wherein it has been stated that the driver of the Mahindra XUV took the vehicle on the left side to save the same cannot be said to be a negligent act as any prudent driver would try to take his vehicle to the left side in case he senses any threat from the right side. The threat from the right side in this case was the attempt by the Swift vehicle to overtake. This would not absolve the driver of the trolla of his negligence in parking his vehicle on the metaled portion of a busy National Highway. Thus, the argument is rejected.

Regarding the income tax returns Ex.P-2 & P-3 not having been proved, _ it only needs to be said that proceedings before the Tribunal are not governed by strict rules of evidence. The claimants being the family members were in possession of the income tax record of the deceased and they produced the same. Thus, the argument is liable to be rejected. Regarding the dependency having been wrongly calculated on account of the claimants carrying on with the business of the deceased, no law has been brought to my notice to substantiate this argument. The same has not even been raised before the learned Tribunal and thus, I cannot permit the same to be raised for the first time in appeal. Non-reduction of income tax from the annual income before giving benefit of future prospects, would not lead to any material difference in the quantum of compensation. Learned counsel for the appellant has very fairly submitted that if the income tax were deducted from the annual income before giving the benefit of future prospects, the total compensation would come to ₹59,41,679/-. This is a difference of less than ₹1 lac and for this much amount, I do not deem it appropriate to issue notice to the claimants.

For the aforementioned reasons, the appeal has no merit and is dismissed.

April 23, 2021 **(SUDHIR MITTAL)**
Ankur **JUDGE**

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No