218 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1.**FAO-5559-2017 (O&M)**

IIFCO TOKIO General Insurance Company Limited
....Appellant

Versus

Paramjit Kaur and others
..Respondents

2.**FAO-8691-2017 (O&M)**

Paramjit Kaur and others
....Appellants

Versus

Gurjeet Singh and others
..Respondents

Date of decision: 13.09.2021

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Abhimanyu Kalsy, Advocate for the claimants

Ms. Swati Batra, Advocate for the Insurance Company

ANIL KSHETARPAL, J (Oral)

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

This order will dispose of two cross appeals; one filed by claimants whereas the other filed by the Insurance Company.

Late Sh. Manjit Singh, aged about 22 years, lost his precious life on 08.01.2016 in an automobile accident. The parents and unmarried sister of the deceased filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, for grant of compensation.

Respondent no. 2 contested the petition by taking a stand that no accident took place and a false FIR has been registered against him. Whereas respondent no.2 filed a separate written statement claiming that the claimants have no locus standi to file the claim petition and no accident took place. Respondent no.3 (insured) contested the petition by filing a separate written statement.

In order to prove the accident, the claimants examined PW1 Paramjit Kaur, the deceased's sister and Kuldeep Singh, alleged eye witnesses. Learned Motor Accident Claims Tribunal (hereinafter referred to as 'the Tribunal') after analysing the evidence held that the accident took place due to rash and negligent driving of Gurjeet Singh, the driver of bus no. PB-10CV-2682. The Tribunal has assessed the amount of compensation at Rs.9,97,000/-.

Before this Court, the correctness of the finding of the Tribunal, with regard to the accident having taken place due to rash and negligent driving of respondent no.1, is not disputed.

Heard learned counsel for the parties and with their able assistance perused the paper book. Learned counsel representing the claimants contends that the Tribunal has erred in assessing the income of the deceased at Rs.6,000/- per month, whereas as per the notification issued under the Minimum Wages Act, 1948, the minimum income on the date of accident of an unskilled labourer was Rs.6,935/-. The claimants have produced on file the salary certificate Ex.C-5 to prove that the deceased was working as Foreman in Mander Cattle Feed on a monthly salary of Rs.15,000/-. He further contends that the Tribunal has also erred in failing to award proper parental consortium at the rate of Rs.40,000/- each.

Per contra, learned counsel representing the Insurance Company contends that the Tribunal has correctly held that the claimants failed to prove the salary certificate as the employer of the deceased failed to bring on record any material, apart from the salary certificate, to prove that the deceased was getting salary of Rs.15,000/- per month. She further contends that the Tribunal has erred in adding 50% of the income towards future prospects although, it should be 40% as per ***'National Insurance Company Ltd. vs. Pranay Sethi and other'*** *2017 (10) SCC 450.*

In the present case, the Tribunal has assessed the income of the deceased at Rs.6,000/- per month. It is not in dispute that as per the minimum wages notified under the Minimum Wages Act, 1948, the amount should be Rs.6,935/-. In other words, it can be taken as Rs.7,000/- per month. The claimants have not produced any evidence to prove the income of the deceased @ Rs.15000/- per month except bald statement of the alleged employer, who has not been believed by the Tribunal. The deceased was unmarried and therefore, 50% cut is to be applied on account of the personal expenses. 40% of the income is to be added towards future prospects. Hence, the monthly dependency comes to Rs.4,900/- per month. The annual dependency comes to Rs.58,800/-. The Tribunal has applied multiplier of 18, correctness whereof is not disputed. Thus, the total amount comes to Rs.10,58,400/- Apart the claimants are entitled to Rs.15,000/- towards funeral expenses, Rs.15000/- towards loss of estate and Rs.80,000/- towards filial consortium (Rs.40,000/- each). Thus, total amount comes to Rs.11,68,400/-.

Accordingly, the award passed by the Tribunal is modified and the Insurance Company is directed to pay the amount within three months, which shall be paid in the same proportion as has been ordered by the Tribunal. Hence, the appeal filed by the claimants is partly allowed and appeal filed by the Insurance Company is dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

13.09.2021 **(ANIL KSHETARPAL)**
rekha **JUDGE**
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No