In the High Court of Punjab and Haryana, at Chandigarh

F.A.O. No. 3436 of 2021 (O&M)

Date of Decision: 14.12.2021

New India Assurance Company Limited

... Appellant(s)

Versus

Jaspreet Kaur and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Lalit Garg, Advocate
for the appellant(s).

Anil Kshetarpal, J.

1. The insurance company assails the correctness of the award dated 09.09.2021, passed by the Motor Accident Claims Tribunal, Rupnagar (hereinafter referred to as "the Tribunal") while allowing the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the 1988 Act") on account of the death of late Sh.Kesar Singh in an automobile accident.

2. The learned counsel representing the appellant does not dispute the manner in which the accident took place and the findings of the Tribunal with regard to rash and negligent driving of Balwinder Singh (the insured). The learned counsel contends that the Tribunal has erred in including the amount earned by the deceased, from over time (working beyond the office time). He further contends that the Tribunal has failed to deduct the amount earned by the deceased as wash, mobile and IRUTPB allowances. He further contends that the Tribunal has erred while failing to deduct the income tax

payable.

3. Late Sh. Kesar Singh was working as a Conductor in the Chandigarh Transport Undertaking (a Public Sector Undertaking). The Tribunal has included the over time allowance earned by late Sh. Kesar Singh continuously for a period of two years. While assessing the amount of compensation under the 1988 Act, the Tribunal is required to assess the dependency, in order to work out the compensation payable. If late Sh.Kesar Singh was consistently earning by working over time (time beyond his office hours), then the amount earned by him was being used for the benefit of the family members. If that being the position while calculating the dependency, then such an amount is required to be taken into consideration. As already noticed, the over time allowance is being paid by the Public Sector Undertaking and the attention of the Court has not been drawn to any material to prove that such income was not earned by late Sh.Kesar Singh. In such circumstances, this Court expresses its inability to accept the first contention of the learned counsel.

4. The next argument is with regard to wash, mobile and IRUTPB allowances. The award passed by the Tribunal is also questioned with regard to the failure of the Tribunal, to exclude to deduct income-tax. On a Court question, the learned counsel admits that the attention of the Tribunal was not drawn to these aspects.

5. The learned counsel representing the appellant further submits that that Tribunal has erred in directing the insurance company to pay the interest @ 9% per annum if the payment is not paid within a period of two months. The Tribunal has only tried to ensure expedited payment to the

claimants. Moreover, the simple interest @ 9% cannot be said to be excessive.

6. Keeping in view the aforesaid facts, the appeal is disposed of with a liberty to the appellant to file an application before the Tribunal and invite its opinion on the said grounds.

7. The miscellaneous application(s) pending, if any, shall also stand disposed of.

(Anil Kshetarpal)
Judge

December 14, 2021
"DK"

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