125 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-517-2022 (O&M)
Date of decision: 14.03.2022

IFFCO TOKIO General Insurance Company Limited

....Appellant

Versus

Sushma Devi and others ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Swati Batra, Advocate for the appellant

ANIL KSHETARPAL, J (Oral)

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

The Insurance Company calls into question the correctness of the award passed by the Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as 'the Tribunal') while allowing the claim petition filed under Section 166 of the Motor Vehicles Act, 1988, on account of death of late Sh. Shiv Kumar, aged 29 years in an automobile accident. The Tribunal, after assessing the income of the deceased at the rate of Rs.35,000/- per month, has ordered payment of Rs.76,87,000/- to the widow, minor daughter and parents of the deceased.

Heard learned counsel representing the appellant and with her able assistance perused the judgment passed by the Tribunal and examined the record of the Tribunal, which was requisitioned. Learned counsel representing the appellant has contended as under:-

i) The Tribunal has erred in assessing the income of the deceased at the rate of Rs.35,000/- per month as it was found that except

Income Tax Return, Ex.P-19, the remaining returns were never filed.

ii) The Tribunal has erred in deducting 1/4th of the income for self and living expenses of the deceased, particularly, when total family members excluding the father of the deceased were four.

iii) She further contends that the Tribunal has erred in awarding loss of consortium at the rate of Rs.40,000/- each to widow, parents and the minor daughter of the deceased.

As regards, the first argument of the learned counsel representing the appellant, it may be noted that income tax return, Ex.P-19, is with respect to the assessment year 2016-17. As per the aforesaid return, the net income of the deceased was Rs.4,18,365/- per annum after excluding the expenses. If the amount of Rs.4,18,635/- is divided, the monthly income comes to Rs.34,886.25. The aforesaid return was uploaded on 12.07.2016 whereas the accident took placed on 21.03.2019. The Tribunal has also ignored the remaining income tax returns as its correctness was doubted by the Insurance Company. There is no doubt about the genuineness of Ex.P19, income tax return filed in July, 2016. There is further no evidence to prove that the income of the deceased came down after 2016. The deceased was a young boy of 29 years, who was running a mobile repair shop. He was an income tax payee. In such circumstances, there is no substance in the first argument.

The second argument of the learned counsel representing the appellant is with respect to deduction on account of self and living expenses. It may be noted here that even if the father of the deceased, who is aged about 65 years, is excluded still the total family members including the deceased were four. In such circumstances, the Tribunal has correctly ordered deduction of 1/4th from the income of the deceased for self and living expenses.

The next argument is with regard to loss of consortium to each of the claimants at the rate of Rs.40,000/-. No doubt, a Five Judges Bench in ***'National Insurance Company Ltd. vs. Pranay Sethi and other'*** *2017 (10) SCC 450* held that the total amount of loss of consortium can be Rs.40,000/- only. However, subsequently, this judgment has been explained in **Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others 2018 (4) RCR(Civil) 333, New India Assurance Co. Ltd. vs. Somwati and others Civil Appeal No.3093 of 2020, decided on 07.09.2020 and United India Insurance Company Ltd. vs. Satinder Kaur @ Satwinder Kaur and others, (2020) SCC Online 410.** In all these judgments, it has been held that loss of consortium is allowed to child, widow and each of the parents. In view thereof, no ground to interfere is made out.

Hence, dismissed.

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

14.03.2022 **(ANIL KSHETARPAL)**
rekha **JUDGE**
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No