IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 7294/2017

Date of decision:12.12.2022

Iffco Tokio General Insurance Co. Ltd.

………………Appellant

Vs.

Smt.Pooja and others

…………………Respondents

**CORAM HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr.Sachin Ohri, Advocate for the appellant

Mr. SK Yadav, Advocate for the respondents/claimants.

**Nidhi Gupta, J.**

This is an appeal filed by the Insurance Company against the Award dated 20.7.2017 passed by Motor Accident Claims Tribunal, Narnaul (hereinafter referred to as 'the Tribunal') whereby learned Tribunal has granted a total compensation of Rs.30,56,008/- to the claimants/respondents No. 1 to 4 herein, in claim petition No. MACT 05/2016 under Section 166 of the Motor Vehicles Act,1988. Claimants/ respondents No. 1-4 herein are the widow, minor daughter, mother and father respectively of the deceased Rinku Yadav.

Learned Tribunal on the basis of the pleadings and evidence led by the parties concluded that the deceased Rinku Yadav had died in a motor vehicular accident that took place on 6.12.2015, due to rash and negligent driving of offending Truck bearing registration No. HR-69A/7029 (hereinafter referred to as 'the offending vehicle') by respondent no.5-Naresh, and owned by respondent no.6-Jitender Panwar, and insured by the appellant. At the time of accident, the age of the deceased was taken to be 22 years. It was the case of the claimants before the learned Tribunal that the deceased was a Computer Programmer and used to do agricultural work and dairy farming and thus used to earn Rs.20,000/- per month from all sources. Claimants produced certificate issued by Centre for Advanced Technologies, Pune. The Tribunal assessed the income of the deceased to be Rs.11,856/- per month as fixed vide Punjab Government letter No.7084-F-41/6057 dated 21.11.1941. The learned Tribunal applied an increase of 50% to the income of the deceased by way of future prospects in view of the fact that he was below 40 years of age. Accordingly, the total income of the deceased was assessed to be Rs.17,784/- per month and annual income was assessed to be Rs.2,13,408/-. Deduction of 1/4th was made as there were four claimants/dependents and their annual dependency was assessed to be Rs.1,60,056/-. The deceased being 22 years of age multiplier of 18 was applied, and total compensation worked out to be Rs.28,81,008/- (Rs.1,60,056x18). Consortium of Rs.1 lac was awarded to claimant-respondent no.1 being widow of the deceased, and Rs.25,000/- was granted on account of transportation and funeral and last rites of the deceased. On the above basis Tribunal worked out total compensation to be Rs.30,56,008/- with interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount. Owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

Learned counsel for the appellant-Insurance Company inter alia submits that the learned Tribunal is in patent error in taking income of the deceased to be Rs.11,856/- as per DC rate as it has not been proved on record that the deceased was in fact a Computer Programmer. It is further submitted that the DC rate is for contractual employees in which DA is also included and therefore, income of the deceased should have been taken to be Rs.6406/- or maximum Rs.7000/- per month which was admissible to skilled labourer under Minimum Wages Act as per relevant notification issued by the State of Haryana. The second ground on which the learned counsel for appellant assails the impugned Award is that the Tribunal was in error in assessing future prospects @ 50%, which as per law laid down in **Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram, 2018 (18) SCC 130; Sarla Verma vs. Delhi Transport Corporation (2009) AIR (SC) 3104; and National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680**, and given the fact that the age of the deceased was below 40 years should have been assessed @ 40%. Further, it is very fairly stated by the learned counsel for the Insurance Company that only Rs.1,75,000/- granted by the Tribunal under the conventional heads should have been Rs. 1,90,000/- as per above said law on the issue. It is further submitted that this Court vide order dated 10.11.2017 has stayed recovery of compensation beyond Rs.20 lakhs and therefore, whatever has been deposited may be taken as final compensation.

On the other hand, learned counsel for the respondents/claimants submits that the deceased was a Computer Programmer is evident from Ex. P-16 which is the Computer Programmer Certificate issued by the Centre for

Advanced Technologies, Pune. It is stated that therefore, the learned Tribunal is in no error in taking the income of the deceased as per DC rate. In support of his contention, learned counsel relies upon judgment of this Court in FAO 782/2022, decided on 11.3.2022 titled 'National Insurance Co. Ltd. V Meena Devi and others'. It is further submitted that the Tribunal is in error as income of the deceased has been taken on lower side as the Tribunal has not considered/ discussed Ex.P-16 wherefrom it is evident that the deceased held a Diploma in Software application. It is further submitted that the learned Tribunal has not granted any consortium and only Rs. 1 lac by way of consortium has been granted to the widow of the deceased. It is conceded that future prospects @ 40% could have been awarded instead of 50%.

In rebuttal, learned counsel for the appellant Insurance Company submits that there is no judgment of the Hon'ble Supreme Court which allows DC rates. In similar facts and circumstances as per law laid down by the Hon'ble Supreme Court only minimum wages should be granted.

I have heard learned counsel for the parties.

A perusal of Ex. P-16 upon which reliance is placed by the counsel for the claimants/respondents shows that the said Diploma was issued in January 2009. Admittedly, age of the deceased at the time of death in the year 2015 was 22 years old. Therefore, when the said Diploma was purportedly issued to the deceased his age would have been only 16 years which is admitted to be highly unlikely. Learned counsel for the respondents/claimants is unable to controvert this fact that evidently Ex. P-16 is unreliable document.

I, accordingly allow this appeal and the compensation admissible to the respondents/claimants is re-assessed as follows: -

| | |
|---|---|
| Date of accident | 6/12/2015 |
| Income as per Minimum Wages Act | Rs.8000/- per month |
| Age of the deceased | 22 years |
| Future prospects @ 40% | 8000 + 3200 = 11,200 |
| Dependents | 4 |
| Deduction of 1/4$^{th}$ | 11200 /4 = 2800/- |
| Monthly income after deduction | 11200-2800 = 8400/- |
| Annual dependency after application of Multiplier of 18 | 8400x12x18= Rs.18,14,400/- |
| Other heads/conventional heads | 40,000x4 = Rs.1,60,000/- |
| Funeral expenses | 15,000/- |
| Loss of Estate | 15,000/- |
| Grand total | 20,04,400/- |

Accordingly, claimants are held entitled to compensation as calculated above which, as stated by ld. Counsel for the appellant already stands disbursed to the claimants.

Appeal is accordingly disposed of in above terms. Pending applications if any stand disposed of.

**12.12.2022** **(Nidhi Gupta)**
Joshi **Judge**

**Whether speaking/reasoned Yes**
**Whether reportable Yes/No**

RAJINDER PARSHAD JOSHI
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I attest to the accuracy and
integrity of this document