**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

FAO-3466-2023 (O&M)
Reserved on:- 12.10.2023
**Pronounced on:- 08.11.2023**

**IFFCO-TOKIO General Insurance Company Ltd.**

...Appellant

Versus

**Chander Parkash and others**

...Respondents

**CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI**

Present:- Mr. Abhimanyu Batra, Advocate
for the appellant-insurance company.

Mr. Nonish Kumar, Advocate
for respondent No. 1/caveator.

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**AMARJOT BHATTI, J.**

1. The appellant – IFFCO-TOKIO General Insurance Company Ltd. has filed present appeal against impugned Award dated 13.04.2023 passed by learned Motor Accident Claims Tribunal, Karnal vide which the claim petition filed by the claimant/respondent No. 1 seeking compensation on account of death of his son Neeraj in a motor vehicular accident under Section 166 of Motor Vehicles Act, 1988 was allowed and the claimant was granted compensation to the tune of Rs. 24,09,408/- along with interest at the rate of 9% per annum from the date of filing of the petition till actual realization, to be paid jointly and severally by the respondents.

2. Chander Parkash has filed claim petition under Section 166 of Motor Vehicles Act, 1988 to claim compensation on account of death of

his son Neeraj in a road side accident which took place on 03.07.2020. At the time of accident, Neeraj was 22 years old. He was a skilled worker and privately employed and used to earn Rs. 20,000/- per month. On the fateful day of 03.07.2020, Neeraj along with his father Chander Parkash was going from his house towards Koshalya Factory, Panipat on new motorcycle, which was being driven by Neeraj. At about 07:00 p.m, when they reached in front of Kripal Ashram, the offending motorcycle bearing registration No. HR-06AN-6373, which was being driven by its driver i.e. respondent No.1 in a rash and negligent manner came from the opposite side and by coming on the wrong side hit against the motorcycle of Neeraj. Due to the impact, Neeraj received serious injuries. He was shifted to ANTC Hospital, Panipat, from where he was taken to Ram Manohar Lohia Hospital, New Delhi and ultimately, on 04.07.2020, Neeraj succumbed to the injuries. Regarding this accident, F.I.R. bearing No. 178 dated 04.07.2020 under Sections 279/336/338 I.P.C. was registered at Police Station Sector 13/17, Panipat. Postmortem was conducted on the dead body. The claimant has suffered great loss on account of untimely death of his son. He claimed compensation to the tune of Rs. 50.00 lac along with interest at the rate of 18% per annum from the date of accident till its realization.

3. Notice of the claim petition was given to the respondents. The respondents No. 1 and 2 filed joint written statement taking preliminary objections regarding locus standi, cause of action, not coming to Court with clean hands. On merits, all the facts were denied for want of knowledge. It was submitted that no accident had taken place, as alleged. A false case has been registered by the claimant against the rider of

motorcycle in collusion with local police. It was admitted that the respondent No. 2 was the registered owner of motorcycle and the same was insured with respondent No. 3. However, it was denied that the said motorcycle was involved in the alleged accident. It was prayed that the claim petition filed against them may kindly be dismissed with costs.

4. The insurance company also appeared and filed the written statement taking preliminary objection that the claim petition was not maintainable as no accident had taken place, as alleged. It was further submitted that no intimation regarding the accident was ever given to insurance company by the owner of vehicle. The FIR in question was wrongly lodged by the police after the delay of 1 day without naming its driver at the instance of claimant in collusion with driver and owner of alleged motorcycle. It was denied that the deceased victim remained admitted in the hospital for any period and any amount was spent over transportation, last rites etc. The claimant be put to strict proof regarding income and occupation of the deceased. The manner of accident was also specifically denied. Therefore, it was prayed that the insurance company cannot be held responsible to pay the compensation.

5. From the pleadings of the parties, following issues were framed by the Tribunal on 22.09.2021 :-

> *(1) Whether accident in question took place on 03.07.2020 at about 07:00 p.m. in front of Kirpal Ashram, within the area of P.S. Sector 13/17 Panipat due to rash and negligent driving of offending motorcycle bearing registration No. HR-06-AN-6373 on the part of respondent No. 1 Rakesh Kumar, resulting into death of Neeraj?*

OPP

*(2) If issue No. 1 is proved, whether the claimant is entitled to any compensation, if so how much and from whom? OPP*

*(3) Whether the claim petition is not legally maintainable in the present form? OPR*

*(4) Whether the claimant has got no locus standi and cause of action to file the claim petition? OPR*

*(5) Whether the claim petition is bad for mis-joinder and non-joinder of necessary parties? OPR*

*(6) Whether the respondent No. 1 was driving the offending vehicle in violation of the terms and conditions of the insurance policy and is not having a valid driving license on the alleged date of accident? OPR(3)*

*(7) Relief.*

6. In order to prove the claim petition, the petitioner/claimant Chander Parkash himself stepped into the witness box as PW-1. Thereafter, learned counsel for petitioner/claimant tendered documents i.e. copy of FIR as Ex.P-1, copy of report under Section 173 Cr.P.C. as Ex.P-2, copy of Postmortem Report of deceased victim Neeraj as Ex.P-3, final bill issued by Arora Hospital/Arora Neuro Surgery and Trauma Centre, Panipat as Ex.P-4, copy of Aadhar card of deceased victim as Ex.P-5.

7. In order to rebut the case of the petitioner/claimant, respondents No. 1 and 2 examined Head Constable Satish as RW-1. They have also tendered documents i.e. copy of recovery memo of offending motorcycle as Ex.R-1, copy of driving license of respondent No. 1 as Ex.R-2, verification report of driving license of respondent No. 1 as Ex.R-3, verification report of driving license No. 21664/D/GNR as Ex.R-4, Form 24 (Motor Vehicle Registration) of registration No. HR-06-AN-6373

as Ex.R-4 and copy of insurance policy of motorcycle bearing No. HR-06-AN-6373 as Ex. R5/R6.

Thereafter, respondent No. 3 tendered document i.e. copy of insurance policy of motorcycle bearing registration No. HR-06AN-6373 as Ex.R-6.

8. After hearing the arguments advanced by learned counsel for all the parties, the claim petition filed by the claimant was allowed by passing Award dated 13.04.2023, as detailed therein. Feeling aggrieved of this Award, the present appeal has been preferred by appellant – IFFCO-TOKIO General Insurance Company Ltd.

9. I have heard the arguments of learned counsel for the appellant as well as learned counsel representing the contesting respondent. The learned counsel for insurance company argued this appeal firstly on the ground that the accident had taken place on account of the negligence of deceased victim Neeraj. The liability cannot be fastened on the respondents (appellant and respondents No. 2 and 3 in this appeal) alone. It has come on record during cross-examination of Chander Parkash claimant as PW-1 that the accident took place in the middle of the road and at the same time, Neeraj was not wearing helmet. In case the deceased victim was wearing helmet then he would not have suffered serious head injury which resulted into his death.

Secondly, the learned counsel for insurance company raised the issue that quantum of compensation awarded by the learned Motor Accident Claims Tribunal, Karnal by passing impugned Award dated 13.04.2023 is towards higher side. The Tribunal has failed to consider that there is no documentary proof to establish the income of deceased victim

Neeraj. There is sole testimony of Chander Parkash father of the deceased victim as PW-1 who during his cross-examination clearly stated that he is unable to produce any document on record regarding employment and income of the deceased. In the absence of any evidence on record, the learned Motor Accident Claims Tribunal, Karnal has assessed the income of deceased Neeraj to the tune of Rs. 15,340/- per month by relying upon the income of unskilled labourer as per rates prevalent and prescribed by Deputy Commissioner, Karnal. In-fact, the deceased victim at the most could have been considered as unskilled labourer and his income should have been assessed as per Minimum Wages Act which are revised from time to time by the State of Haryana. The accident took place on 03.07.2020 and in the year 2020, the minimum wages of unskilled labourer at the most can be considered as Rs. 9,024/- per month. The learned counsel for insurance company has put reliance on the judgment of Coordinate Bench in **FAO No. 799 of 2018 (O&M)** and another **FAO No. 809 of 2018 (O&M)**, titled "**United India Insurance Company Limited Versus Preeti and others**" and another FAO titled "**United India Insurance Company Limited Versus Rekha Devi and others**", **decided on 24.08.2023**, where the income of deceased in that case was taken as Rs. 5,812/- per month as per minimum wages existing at that time. He has also relied another judgment of Coordinate Bench in **FAO No. 8504 of 2017 (O&M)**, **decided on 09.03.2023**, titled "**IFFCO-TOKIO General Insurance Company Limited Versus Saroj and others**" along with connected FAO, where again the income of deceased victim was reconsidered and was taken as Rs. 5,886/- per month instead of Rs. 9,000/- per month.

Therefore, the income of deceased victim Neeraj has been wrongly assessed as per Deputy Commissioner rate i.e. Rs. 15,340/- per month. Under these circumstances, the compensation awarded by the learned Motor Accident Claims Tribunal, Karnal requires re-calculation. The rate of interest awarded by the learned Motor Accident Claims Tribunal, Karnal is also towards the higher side. The compensation awarded by the Tribunal needs modification accordingly.

10. On the other hand, the learned counsel for respondent No. 1 /claimant argued that Neeraj the deceased victim was his son who was 22 years of age at the time of accident. He was working in a private company and earning Rs. 20,000/- per month. The claimant has suffered great loss on account of untimely death of his son. His income was to increase with the passage of time. There is no fixed rule that the income of deceased could have not been assessed as per the Deputy Commissioner rate prevailing at that time. The learned Motor Accident Claims Tribunal, Karnal rightly considered the income of deceased as unskilled labourer at the rate of Rs. 15,340/- per month which was according to Deputy Commissioner rate prevailing at that time. The compensation awarded by the learned Motor Accident Claims Tribunal, Karnal is neither excessive nor unjustified.

The learned counsel for respondent No. 1 further pointed out that the accident as well as rash and negligent riding on the part of respondent No. 1 was duly proved on record. The findings given by the learned Motor Accident Claims Tribunal, Karnal pertaining to Issue No. 1 are not challenged by respondents No. 1 and 2 who had contested the claim petition. It was respondent No. 1 the driver of offending motorcycle who could have deposed regarding the manner of accident. Therefore, the findings given by the learned Motor Accident Claims Tribunal, Karnal pertaining to Issue No. 1 does not require any interference. It is prayed that the appeal preferred by the insurance company may kindly be dismissed.

11. I have considered the arguments and have gone through the record carefully. In this case, Chander Parkash respondent No. 1 /claimant filed this claim petition under Section 166 of Motor Vehicles Act vide which the learned Motor Accident Claims Tribunal, Karnal has awarded compensation to the tune of Rs. 24,09,408/- along with interest @ 9% per annum from the date of filing of petition till realization against the respondents No. 1 to 3 who were held liable jointly and severally. In order to prove the facts of the case regarding accident as well as quantum of compensation, the claimant Chander Parkash has stepped into the witness box as PW-1. He categorically stated that on the day of accident i.e. 03.07.2020, he along with his son were going on their new motorcycle and when they reached in front of Kirpal Ashram, the offending motorcycle bearing registration No. HR-06-AN-6373 ridden by respondent No. 1 came at a high speed rashly and negligently and hit against the motorcycle driven by his son Neeraj. His son received serious injuries on his head and ultimately he succumbed to the injuries on 04.07.2020. The statement of Chander Parkash as PW-1 has remained unrebutted. The copy of FIR No. 178 dated 04.07.2020, Police Station Sector 13/17, Panipat is Ex.P-1. Copy of challan report is Ex.P-2 and copy of Postmortem Report of deceased Neeraj is Ex.P-3. The respondent No. 1 i.e. rider has not stepped into the witness box to disprove these facts. The learned counsel for insurance company has led emphasis on the cross-examination of Chander

Parkash PW-1 where he stated that his son was not wearing helmet and the accident had taken place in the middle of the road. Firstly, the entire statement of Chander Parkash is to be seen including the cross-examination. This witness during his cross-examination categorically stated that the accident took place due to the driving of offending motorcycle who came on the wrong side of the road and hit their motorcycle. Therefore, single line recorded in cross-examination cannot be taken into consideration to reach at any conclusion. Even if it is admitted that the deceased victim was not wearing helmet, that can be violation of traffic rules. It will not help the case of respondents (in MACP case) in any manner. Moreover, the findings given by learned Motor Accident Claims Tribunal, Karnal regarding Issue No. 1 are not challenged by the rider or owner of offending motorcycle. Considering the aforesaid factual position, I do not find any reason to interfere in the findings given by the learned Motor Accident Claims Tribunal, Karnal regarding Issue No.1 and the same are accordingly, upheld.

12. The other aspect of the present case is the quantum of compensation awarded by the learned Motor Accident Claims Tribunal, Karnal. It is rightly pointed out by the learned counsel for insurance company that the learned Motor Accident Claims Tribunal, Karnal has considered the income of deceased Neeraj to the tune of Rs. 15,340/- per month, as per the Deputy Commissioner rate. It is rightly pointed out that Deputy Commissioner rates are available for payment of wages to the employee out of contingency fund created by the State to meet exigency. The minimum wages are assessed by the Government from time to time which are uniformly applicable throughout the State. In the case in hand,

Chander Parkash PW-1 merely stated that his son Neeraj, aged about 22 years was privately employed. He was a skilled worker and earning Rs.20,000/- per month. During cross-examination, he admitted that he does not have any proof regarding the employment and the income of his son. The claimant has failed to produce any document on record to establish the educational qualification of late Neeraj. Therefore, in the absence of any convincing evidence on record, in my opinion, the monthly income of late Neeraj assessed by the learned Motor Accident Claims Tribunal, Karnal to the tune of Rs. 15,340/- per month is undoubtedly towards the higher side. At the same time, there is no fixed rule to assess the income of deceased as per minimum wages revised from time to time. The facts and circumstances of each case has to be considered. No restriction can be imposed on the Tribunal for assessing the income in order to give just and fair compensation to the dependents. Therefore, the minimum wages fixed by the State and revised from time to time can only be a guiding factor to assess the income of deceased. Therefore, keeping in mind the aforesaid criteria, the income of deceased victim who was a young boy of 22 years of age is considered as Rs. 9,100/- per month. As there is no proof regarding employment, therefore, by applying authority cited in "**National Insurance Company Limited versus Pranay Sethi and Ors.**", ***2017(4) R.C.R.(Civil) 1009***, 40% increase in income considering the future prospects comes out to be Rs. 3,640/- and monthly income is taken up as Rs. 12,740/- and the annual income is taken as Rs.1,52,880/-. The deceased was unmarried, therefore, 1/2 income is deducted towards personal expenditure and the dependency of the father is taken as Rs. 76,440/-. By applying the authority cited in ***2009 ACJ 1298***

***Supreme Court of India***, in case titled "**Smt. Sarla Verma and others Vs Delhi Transport Corporation and another**", the multiplier of 18 is appropriate to be applied in this case and with this multiplier, the amount of compensation comes out to be Rs. 13,75,920/- which the claimant is entitled to receive. So far as compensation under the other conventional heads is concerned i.e. loss to estate Rs. 15,000/-, funeral expenses Rs.15,000/-, medical expenditure Rs. 60,000/-, the same are not disputed by the learned counsel for insurance company, thus rightly awarded by the learned Motor Accident Claims Tribunal, Karnal. In this case, no compensation has been awarded on account of loss of filial consortium. By applying the authority cited in "**Magma General Insurance Company Limited versus Nanu Ram alias Chuhru Ram and others**", in ***Civil Appeal 9581 of 2018, decided on 18.09.2018***, the father is granted Rs.44,000/- towards filial consortium. After considering the aforesaid heads, the amount of compensation comes out to be Rs. 15,09,920/-, which the claimant is entitled to receive from the respondents who are liable to pay jointly and severally in terms of Award passed by the learned Motor Accident Claims Tribunal, Karnal. The rate of interest granted by the learned Motor Accident Claims Tribunal, Karnal at the rate of 9% per annum is also towards the higher side and considering the prevailing rate of interest in the banks, the same is reduced from 9% per annum to 7% per annum from the date of filing of the claim petition till actual realization of the amount. The excess amount in case received by respondent No. 1 /claimant, then the insurance company is at liberty to recover the same, accordingly.

With this observation, the appeal preferred by the appellant – IFFCO-TOKIO General Insurance Company Ltd. is partly accepted with the aforesaid modification.

Pending application(s), if any, shall stands disposed of.

The photocopy of record received from the Tribunal be sent back to the concerned quarter.

08.11.2023 **(AMARJOT BHATTI)**
*lalit* **JUDGE**

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