IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.143

Case No. : FAO-4383-2023 (O&M)

Date of Decision : August 21, 2023

Bharti Axa General Insurance Company
now merged with ICICI Lombard General
Insurance Company Ltd. .... Appellant

vs.

Smt. Harbans Kaur and others .... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Vishal Aggarwal, Advocate
for the appellant.

* * *

GURBIR SINGH, J. :

1. The present appeal has been filed against the Award dated 11.05.2023, passed by learned Motor Accident Claims Tribunal, Panchkula (for brevity – the Tribunal), in case bearing No. MACP/45/2020.

2. The learned Tribunal held that Shingara Singh died in a road side accident caused by respondent no.5 Bimal Singh @ Rinku, while driving Car bearing registration No.HR-49-H-4267 in a rash and negligent manner. The income of deceased Shingara Singh was taken as Rs.18,000/- per month. Accordingly, Award was passed and a sum of Rs.36,55,000/- was awarded as compensation to the claimants-respondents no.1 to 5. The appellant Insurance Company and respondent no.6 were jointly held responsible to pay the amount of compensation along with interest. It has further been held by the Tribunal that primary responsibility to pay the compensation amount was upon the appellant Insurance Company.

3. Learned counsel for the appellant has argued that it is a case of contributory negligence. The FIR was recorded in a stereo-type manner. Shingara Singh (since deceased) was crossing the road at about 11:15 PM. A pedestrian is also required to take proper care on the road and especially, at night. It is further argued that Shingara Singh (since deceased) was not an income-tax assessee. He was not filing any income tax return. The claimants produced pass-book of the deceased wherein certain amount has been shown to be deposited from time to time. The said pass-book was not duly proved since no bank official of the concerned Bank was examined. Even at that point of time, a skilled driver was earning about Rs.10,000/- per month. So, compensation assessed by the learned Tribunal is quite excessive and the impugned Award is liable to be modified.

4. I have heard submissions of learned counsel for the appellant and perused the case file.

5. The claimants examined Jaswinder Singh as PW-2, who witnessed the accident. He is the author of the FIR. He duly proved the FIR as Ex.P-9. Even challan has been presented against the driver of the offending vehicle and he is facing the trial in the case. Even if the car is going on the road, then also, driver of the car is expected to take proper care to avoid hitting the vehicle to the pedestrians. Learned Tribunal has come to the conclusion that the deceased was crossing the road from zebra crossing. In such circumstances, the driver of offending vehicle was required to take extra care and to wait for such person to cross the road and then to move forward. Therefore, I am of the considered opinion that learned Tribunal has rightly held that the respondents before the Tribunal have failed to prove that it is a case of contributory negligence.

6. Admittedly, the deceased was the owner of Eicher Truck bearing registration No.HR-68-A-3825. The proceedings before the Tribunal are summary in nature. The strict provisions of Code of Civil Procedure (CPC) and the Indian Evidence Act are not applicable to such proceedings. The claimants have proved the pass-book of the deceased as Ex.P-12, showing various entries of different dates about depositing of different amounts in the account of the deceased. There is no rebuttal to the said evidence. The learned Tribunal, on the basis of evidence, came to the conclusion that notional income of the deceased could be assessed at Rs.40,000/- per month. However, keeping in view the fact that the transport vehicle, from which earning could be made, was still with the claimants, income of the deceased was taken at Rs.18,000/- per month.

7. The Tribunal is always required to make some guess work for assessing the income of the deceased. It is not the case of the claimants that the deceased was an income-tax assessee or was filing the income-tax returns. So, there was no question of proving income-tax returns before the Tribunal. In any case, a person, who owns a transport vehicle, is not expected to earn less than Rs.18,000/- per month from such a vehicle. The income of owner of transport vehicle cannot be equated with income of driver of such vehicle. Thus, I am of the view that income of the deceased, assessed by the learned Tribunal, is in accordance with law and there is no ground to disagree with the same.

8. No other point has been raised.

9. In view of the above discussion, the present appeal, being devoid of any merit, is hereby dismissed.

10. Pending applications, if any, shall stand disposed of along with this judgment.

August 21, 2023 **(GURBIR SINGH)**
monika **JUDGE**

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