IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3224-2017(O&M)
Reserved on:-4.7.2023
Date of Pronouncement:-11.7.2023

IFFCO TOKIO General Insurance Company Ltd.

...Appellant

Versus

Vijay Kumar and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Neeraj Khanna, Advocate
for the appellant.

Mr.Ishaan Aggarwal, Advocate for
Mr.Sudhir Aggarwal, Advocate
for respondents No.6 and 7.

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<u>H.S. MADAAN, J.</u>

1. Briefly stated, facts of the case are that one Sheo Ram died in a motor vehicular accident, which took place on 4.2.2015 at about 3:30 p.m. in the area of Panchgaon KMP Flyover National Highway – 8, statedly on account of rash and negligent driving of canter bearing registration No.HR-55F-7616 (hereinafter referred to as the offending vehicle) by respondent No.1 Satbir; formal FIR No.36 dated 7.2.2015 for the offences under Sections 279 and 304-A IPC was registered with regarding to the accident.

2. The legal representatives of the deceased, namely, his major sons - Vijay Kumar and Ajay Kumar, married daughter – Smt.Sanju, widow- Smt.Pinki and father - Sher Singh, all residents of village Joniawas, Sub Tehsil Dharuhera, District Rewari, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against the respondents i.e. Satbir – driver, Sidharth – owner and IFFCO TOKIO General Insurance Company Ltd., Delhi – insurer of the offending vehicle, claiming compensation.

3. On being given notice, all the three respondents appeared and contested the claim petition.

4. After contest, the claim petition was accepted by the Motor Accident Claims Tribunal, Rewari (hereinafter referred to as the Tribunal) and vide award dated 1.9.2016, compensation of Rs.21,92,264/- was granted as per the details below:

Income of the deceased per month	Rs.14,000/-
Add 30% for the loss of future income	Rs.4200/-
Total income	Rs.18,200/-
Less 1/3rd (deducted for personal expenses of deceased)	Rs.12,134/-
Net loss of annual income	Rs.1,45,608/-
Multiplier	13
Loss of dependency (1,45,608 x 13)	Rs.18,92,904/-
Loss of consortium to widow, petitioner No.4	Rs.1,00,000/-
Medical Expenses	Rs.1,74,360/-
Funeral expenses	Rs.25,000/-
Total	Rs.21,92,264/-

5. The compensation was payable with interest @ 9% per annum from the date of filing of the claim petition till actual realization.

The liability of respondents No.1 to 3 to pay the amount of compensation to claimants/petitioners was held to be joint and several.

6. This award left the respondent No.3 - insurance company aggrieved and it has approached this Court by way of filing the present appeal praying that the same be accepted, the impugned award be set aside and the appellant – insurance company be absolved of its liability to pay compensation to the claimants.

7. Notice of the appeal was given to the respondents and respondents No.6 and 7 have put in appearance through counsel.

8. I have heard learned counsel for the parties besides going through the record.

9. Learned counsel for the appellant – insurance company has confined his arguments to the quantum of compensation awarded submitting that the compensation so awarded is on higher side. He has submitted that the date of birth of the deceased was 10.10.1959, as such he was aged 56 years on the date of accident i.e. on 4.2.2015 but the Tribunal has wrongly taken his age as 50 years, resultantly a higher multiplier of 13 has been used instead of 11 and future prospects have wrongly been granted to the extent of 30% instead of 10%.

10. These arguments are strongly rebutted by learned counsel for the respondents No.6 and 7.

11. The Tribunal referring to the evidence available on the record by giving convincing reasons has taken the age of the deceased to be 50 years relying upon copy of postmortem report Ex.P2 and the medical record from Rockland Hospital Ex.PW2/A. I do not find any reason to

disagree with the Tribunal in that regard. Therefore, I do not see any reason to take age of the deceased to be 56 years and then to use multiplier of 11, making addition to income of the deceased to the extent of 10% towards future prospects instead of 30% as granted by the Tribunal. The Tribunal relying upon the testimony of PW5 Gyan Chand, Manager of M/s Surender Enterprises, Joniawas, who had brought the salary record of deceased Sheo Ram, proving the authority letter Ex.PW5/A, salary certificate Ex.PW5/B, attendance record for the month of January 2015 Ex.PW5/C, attendance record of the month of February, 2015 Ex.PW5/D, copy of wages register for the month of February 2014 Ex.PW5/E, copy of wage register of February, 2015 Ex.PW5/F, the letter of ESUC Ex.PW5/G and letter of EPF Ex.PW5/H, has rightly taken the monthly income of the deceased as Rs.14,000/-, making addition of Rs.30,000/- towards future prospects. Considering the number of the dependent family members, deduction of $1/3^{rd}$ has been made and multiplier of 13 has rightly been used.

12. However, loss of consortium to the widow has been granted to the extent of Rs.1 lakh instead of Rs.40,000/- in terms of judgment ***Shri Ram General Insurance Co. Ltd. Versus Bhagat Singh Rawat & Ors., Civil Appeal Nos.2410-2412/2023 [@ SLP[C] Nos.11669-11671/2020]***. This amount is accordingly reduced to Rs.40,000/-.

13. The medical expenses of Rs.1,74,360/- have been granted keeping in view the testimony of PW2 Ayan Shah, Senior Executive of Rockland Hospital, Manesar, who had proved the bill of Rs.2,32,387/- Ex.PW2/A out of which a relative of Sheo Ram had paid Rs.1,50,000/-

only. PW3 Jitender Pal Singh, Clerk, Artemis Hospital, Gurgaon had proved the hospital bills Ex.PW3/A for Rs.24,160/- and Ex.PW3/B for Rs.200/-.

14. Although learned counsel for the appellant has contended that a sum of Rs.1,74,360/- was wrongly awarded to the claimants since that amount had been paid/reimbursed under the ESI scheme but he could not point out to any clear and cogent evidence available on record to show that as a matter of fact the respondents had not adduced any oral evidence. No clear cut admission in that regard by any of the PWs is there. Therefore, this contention of learned counsel for the appellant cannot be accepted. It is found that medical expenses of Rs.1,74,360/- were rightly granted.

15. With regard to the funeral expenses of Rs.25,000/- granted to the claimants, those are on somewhat higher side and are reduced to Rs.15,000/- in view of ratio of judgment ***Shri Ram General Insurance Co. Ltd. Versus Bhagat Singh Rawat & Ors.***(supra).

16. However, no compensation under the head loss of estate has been granted. The claimants are awarded a sum of Rs.15,000/- under that head.

17. No other point was argued.

18. Doing that the compensation comes out to be Rs.21,37,264**/-** [21,92,264 – 125000(100000 and 25000) + 40,000 + 15,000 + 15,000].

19. The Tribunal has wrongly awarded compensation of Rs.21,92,264/-. The same is reduced to Rs.21,37,264/-. Other terms and conditions with regard to rate of interest, mode of payment and

apportionment as directed in the original award shall remain the same. However, the amount payable to the claimants shall stand reduced proportionately. The excess amount if received by the claimants be returned by them otherwise the appellant – insurance company shall be entitled to recover it by filing an execution application before the Tribunal.

20. With such modification, the appeal is allowed partly with costs.

Since the main appeal stands allowed partly, the miscellaneous application(s), if any, stand disposed of accordingly.

11.7.2023 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No