IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-705-2018 and
XOBJC-123-CII-2018
Reserved on:08.05.2023
Date of decision:11.05.23

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

Vs.

Ram Bai & others ... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Yogesh Gupta, Advocate for the appellant.

Mr. B.S. Bairagi, Advocate for respondents No.1 to 4.

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SUKHVINDER KAUR, J.

1. This order shall dispose of **FAO-705-2018 (IFFCO-TOKIO General Insurance Company Ltd. Vs.Ram Bai & others)** and **XOBJC-123-CII-2018 (IFFCO-TOKIO General Insurance Company Ltd. Vs.Ram Bai & others)** as both have arisen from a common award dated 07.09.2017.

2. By way of this appeal, appellant/insurance company seeks modification/setting aside of award dated 07.09.2017 in MACT Case No.131 of 2016 vide which the Tribunal has granted a total compensation of Rs.14,49,000/- on account of death of Vijender Singh in the accident in question along with interest @ 8% per annum from the date of the filing of the claim petition till realization.

3. Brief facts of the case are that on 28.08.2016 at about 8:00 A.M., Vijender Singh (since deceased) along with Satish Kumar were returning to

Barwala from village Nangly after meeting his relative by driving his motorcycle No.HR-80-7396 and Satish Kumar was pillion rider. When they reached near Jai Ganesh Brick Kiln near Village Bidhmara on Tohana-Hisar Road then a truck bearing registration No.HR39C/4432 (hereinafter to be referred to as 'the offending vehicle') bearing driven by its driver/Ramesh Kumar in a rash and negligent manner, came from the opposite side and struck against the motorcycle after coming on the wrong side. Due to the impact, both Vijender Singh (since deceased) and Satish Kumar fell down and received multiple injuries on their person. Both of them were shifted to Civil Hospital, Tohana by some passerby, but Vijender Singh died due to the injuries sustained in the accident. Post mortem examination was conducted over the body of the deceased Vijender Singh. The accident had been caused by respondent No.1-Ramesh Kumar by driving the offending vehicle, in a rash and negligent manner. In this connection, FIR No.201, dated 29.08.2016, under Sections 279/337/ 304-A/427 IPC was registered at Police Station Uklana. Investigation was conducted and during the investigation, respondent No.1 was found liable for causing the accident. After completion of all the necessary formalities, challan was presented against respondent No.1 and he was put to trial. It has been pleaded that the deceased Vijender Singh was 35 years old and he was running a milk dairy and doing the agricultural work and earning Rs.50,000/- per month. He was the only bread earner in the family and the claimants were dependent upon his income. He would have earned more in future if he had not died in that accident. It has also been pleaded that the claimants had spent more than Rs.2 lakhs on transportation, last rites etc. of the deceased. So all the claimants are jointly and severally liable to get the compensation for the death of Vijender in the accident. As such, an amount of Rs.50 lakhs as compensation along with interest @ 18% per annum from the date of accident till realization of the awarded amount was prayed for.

4. After notice, respondent Nos.1 and 2 appeared (owner and driver respectively) and filed joint written statement denying the factum of the accident in question and submitted that a false case was registered against respondent No.1. It has been alleged that respondent No.1-driver was having a valid and effective driving license at the time of the alleged accident and the offending vehicle was insured with respondent No.3/insurance company. Therefore, respondents No.1 and 2 are not liable to pay any compensation to the claimants and a prayer for dismissal of the claim petition was made.

5. A separate written statement was filed by respondent No.3/insurance company, taking preliminary objections therein, that the claimants have no *locus standi* to file the claim petition and the same is bad for mis-joinder and non-joinder of the necessary parties. The insurer also denied the factum of accident in the manner it has been alleged; that the vehicle was falsely involved in the accident in question; that respondent No.1 was neither holding a valid and effective driving license at the time of the accident nor the vehicle in question was being driven in terms and conditions of the insurance policy. On merits, age of the deceased, injuries sustained which resulted into death of Vijender Singh and amount spent on transportation, last rites etc. were denied. All other averments were denied and the amount of compensation claimed was stated to be on the higher side

and dismissal of the claim petition was prayed for.

6. On the basis of the pleadings of the parties, issues were settled. Both the parties adduced their respective evidence to discharge the onus behind the issues upon them.

7. After considering the evidence available on record and the submissions made on behalf of the parties, learned Tribunal has allowed the claim petition and awarded a sum of Rs.14,49,000/- as compensation to the claimants along with interest at the rate of 8% per annum from the date of filing of the petition till realization. All the respondents were held jointly and severally liable to pay the compensation.

8. Feeling dissatisfied with the award dated 07.09.2017, the appellant-insurance company has preferred the instant appeal.

9. I have heard learned counsel for the parties and have also perused the relevant record.

10. Counsel for the appellant/insurance company in FAO-705-2018 has contended that the alleged offending vehicle was not involved in the accident and the said vehicle has been implanted by the claimants in collusion with the owner and alleged driver of the alleged offending vehicle, pillion rider of the motorcycle being driven by the deceased and the police. He has contended that the deceased while driving his motorcycle met with an accident with some unknown vehicle and FIR was lodged on the next day against the unknown driver of the unknown vehicle, but later on, after 25 days of the alleged accident, the alleged offending vehicle was falsely involved on the false statement of the pillion rider of the motorcycle, being driven by the deceased. He has further contended that the claim petition was

filed by the claimants for getting undue compensation from the appellant/insurance company. Tribunal has wrongly held that the alleged offending vehicle was involved in the accident in question and its alleged driver was negligent and has wrongly affixed the liability upon the appellant/insurance company. By relying upon the decision of this Court in **Udham Singh Vs. Satya Dev** passed in **FAO-3595-2012**, decided on 29.11.2016, he has contended that in order to succeed in the claim petition, the claimants are required to establish the involvement of the vehicle and the negligence on the part of the driver, which is not established in the present case. He has also argued that the Tribunal has fell in error by considering the age of the deceased as 35 years and by applying the multiplier of 16 for the purpose of assessing the compensation. The Tribunal failed to consider that admitted age of the widow of the deceased was 43 years as it was so written while recording her testimony in the Court. So deceased was more than 45 years of age and considering his age to be between 46-50 years, the relevant multiplier of 13 was to be applied. He has contended that Tribunal has also wrongly assessed the income of the deceased as Rs.8,500/- per month, when the claimants have failed to place on record any document regarding occupation or income of the deceased. So the income of the deceased that has been assessed is on the higher side and deserves to be reduced. He has submitted that the Tribunal has also wrongly allowed compensation of Rs.50,000/- to each of the claimants under the head of loss of love and affection and Rs.1 lakh as loss of consortium to claimant No.1. Funeral expenses of Rs.25,000/- that have been granted are also on the higher side. The rate of interest that has been granted at the rate of 8% per annum is also deserves to be reduced being on the higher side and has prayed that the appeal may be allowed.

11. On the other hand, learned counsel for the cross-objectors/ claimants has contended that the offending vehicle was actually involved in the accident and the same has not been implanted to seek compensation wrongly. He has further contended that the income of the deceased has been claimed by the claimants as Rs.50,000/- per month. But the Tribunal has treated the deceased as a labourer and his income has been assessed as Rs.8500/- per month, which is on the lower side and is required to be enhanced. He has vehemently contended that the Tribunal has also not granted the compensation for future prospects and loss of estate to which the claimants are entitled. However the age of the deceased has been rightly taken to be 35 years by the Tribunal and correct multiplier of 16 has been applied accordingly. Age of the claimant/respondent No.1 was inadvertently written as 43 years while recording her statement in the Court, infact she was 34 years old at that time. He has contended that the rate of interest that has been awarded by the Tribunal is also required to be enhanced and should be at the rate of 18% per annum. He has urged that the compensation granted by the Tribunal is required to be enhanced accordingly and the appeal filed by the insurance company is liable to be dismissed.

12. The foremost submission of the appellant/insurance company is that the offending vehicle was not involved in the accident in question and the same has been implanted by the claimants in collusion with respondents No.1 and 2 pillion rider Satish Kumar and the police. Perusal of the record reveals that the FIR Ex.P3 was registered in this case without any inordinate

delay on the next day and it is containing the details regarding happening of the accident in question and it has also been mentioned therein when both the injured Vijender Singh and Satish Kumar were shifted to Civil Hospital, Tohana. Vijender Singh was declared dead and injured Satish Kumar was referred to Sarvodya Hospital for better treatment. Copy of the challan Ex.P2 has also been placed on record which shows that after registration of the FIR regarding the present accident, the matter was investigated by the police and it was found that respondent No.1 was driving the offending vehicle at the time of the accident. During the investigation, statement of injured Satish Kumar was also recorded by the police who has specifically disclosed the number of the offending vehicle to the police. Tribunal has rightly pointed out that while appearing in the witness box PW1 has corroborated his statement Ex.P6 suffered before the police and deposed that the accident had taken place due to rash and negligent driving of the offending vehicle by respondent No.1. Testimony of this witness has not been shattered even during his cross-examination. The Tribunal has, thus, rightly held that in view of these circumstances of the present case and from the evidence led on record, the involvement of the offending vehicle and its driver in the accident in question stands proved and contention of learned counsel for the appellant that offending vehicle was falsely involved in the present accident stands falsified. No complaint regarding the false implantation was ever made and there is no such material on record from which it can be made out that the offending vehicle has been falsely implanted by the claimants in the present case. So, finding of learned Tribunal on issue No.1 does not require any interference.

13. Perusal of the award reveals that in the absence of any evidence regarding income of the deceased Rs.50,000/- per month, the income of the deceased was taken as that of a labourer and was assessed at the rate of Rs.8500/- per month. Though, it has been claimed by the claimants that deceased was earning Rs.50,000/- per month by running a milk dairy and doing the agricultural work, but in the absence of any evidence to prove this plea, the Tribunal has rightly held that the income of the deceased cannot be taken as Rs.50,000/- per month. There is no such evidence on record from which it can be proved that he was earning that much from running the milk dairy and agricultural work. Infact there is no evidence regarding running the milk dairy and cultivation. Thus, the Tribunal has rightly treated him as a labourer and has rightly assessed his income at the rate of Rs.8500/- per month.

14. The Tribunal has taken age of the deceased to be 35 years. I do not find any substance in this contention of the learned counsel for the appellant that as the age of the claimant No.1 Ram Bai, widow of the deceased has been written as 43 years, while recording her testimony in the Court, so, it is to be presumed that deceased was between 46-50 years of age. Copy of Aadhar Card of claimant No.1 has been produced on record wherein her date of birth is shown as 04.02.1983. So it appears that inadvertently while recording her testimony, her age was mentioned as 43 years. Otherwise also, as per the post mortem report Ex.P7, age of the deceased Vijender Singh was mentioned as 35 years. As no contrary evidence to the same has been brought on record by the respondents, so the Tribunal has rightly considered the age of the deceased to be 35 years. By

considering the fact, that deceased left behind widow, two minor children and his aged mother, $1/4^{th}$ of the income has been rightly deducted towards his personal expenses. The annual dependency has been taken as 8500 X 12 = 1,02,000 and after deducting $1/4^{th}$ of the above said annual income, the annual dependency has been considered as Rs.76,500/- (102000 – 25500). To quantify the amount of compensation, multiplier of 16 has been adopted by the Tribunal and after applying the above multiplier of 16, the amount of compensation has been worked out to be Rs.12,24,000/- (76500 X 16).

15. So from the perusal of award, it is revealed that nothing has been granted by the Tribunal on account of future prospects. As per the ratio of law laid down by the Hon'ble Apex Court in **National Insurance Company Limited Vs. Pranay Sethi, 2017(4) RCR (Civil) 1009,** 40% of addition in the established income was required to be made. After making addition of 40% in the monthly income, the income of the deceased comes to Rs.11,900/- (8500+3400). After deducting $1/4^{th}$ of the total income of the deceased towards personal expenses, the monthly income comes to Rs.8,925/- (11900-2975) and in this manner, the annual dependency comes to Rs.1,07,100/-.

16. As deceased was 35 years old at the time of his death in the accident, so keeping in view the ratio of law laid down in the case of **Pranay Sethi (supra)** after applying the multiplier of 16, the total dependency is worked out as Rs.17,13,600/- (107100 X 16).

17. The Tribunal has granted Rs.25,000/- as transportation and funeral charges. Rs.50,000/- to each of the claimants No.2 to 4 have been granted on account of loss of love and affection and claimant No.1-Ram Bai

widow of the deceased has been held entitled to Rs.50,000/- on account of loss of consortium. But in view of the ratio of law laid down in the case of **Pranay Sethi (supra),** claimants are entitled to get compensation under the conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses. As such, the claimants are held entitled to Rs.70,000/- under these conventional heads.

18. Thus, the claimants are held entitled to a total compensation of Rs.17,83,600/- (1713600 + 70000). The Tribunal has granted the interest at the rate of 8% per annum on the amount of compensation from the date of filing of the claim petition till realization, which appears to be slightly on the higher side and as such, it is reduced to at the rate of 7.5% per annum from the date of filing of the petition till realization. The compensation in this case will be shared in the same proportion as has been held in the award by the Tribunal and the enhanced amount will be subject to the same terms and conditions as given in the relief clause of the award by the Tribunal.

19. Accordingly, the instant appeal i.e. FAO-705-2018 and Cross Objections i.e. XOBJC-123-CII-2018 are partly allowed.

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

(SUKHVINDER KAUR)
JUDGE

11.05.2023
harjeet

1. Whether speaking/reasoned? Yes/No
2. Whether reportable? Yes/No