*2024:PHHC:036360*

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

**260** **FAO-2758-2017 (O&M)**
**Date of Decision : 13.03.2024**

IFFCO TOKIO GENERAL INSURANCE .... Appellant

VERSUS

RAJ JATIANA AND OTHERS .... Respondents

**260-A** **FAO-5593-2017 (O&M)**
**Date of Decision : 13.03.2024**

RAJ JATIANA AND OTHERS .... Appellants

VERSUS

RAM NARESH AND OTHERS .... Respondents

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Rajneesh Malhotra, Advocate and
Ms. Manvi Verma, Advocate
for the appellant-Insurance Company in FAO-2758-2017 and
respondent No.3-Insurance Company in FAO-5593-2017.

Mr. Gaurav Sharma, Advocate
for claimant-respondents No.1 to 3 in FAO-2758-2017 and
for the claimant-appellants in FAO-5593-2017.

**ALKA SARIN, J. (ORAL)**

1. This order shall dispose off the two above noted appeals being FAO-2758-2017 preferred by the Insurance Company challenging the award on the ground that it was a case of contributory negligence as also challenging the quantum of compensation awarded to the claimants; and FAO-5593-2017 preferred by the claimant-appellants for enhancement of compensation awarded vide award dated 04.01.2017 passed by the Motor Accident Claims Tribunal, Karnal (hereinafter referred to as 'the Tribunal').

2. The Tribunal in the present case had awarded the following compensation :

| Sr. No. | Heads | Compensation Awarded |
|---|---|---|
| 1 | Annual income | Rs.18,53,367/- |
| 2 | Future prospects 50% (less income tax @30%) | [Rs.18,53,367/- + Rs.6,48,679/-] Rs.25,01,946/- |
| 3 | Deduction 50% | [Rs.25,01,946/- - Rs.12,50,973] = Rs.12,50,973/- |
| 4 | Multiplier of 18 | [Rs.12,50,973/-x 18] = Rs.2,25,17,514/- |
| 5 | Funeral expenses | Rs.25,000/- |
| 6 | Loss of love and affection | Rs.1,00,000/- |
| 7 | **Total Compensation** | **Rs.2,26,42,514/-** |
| 8 | **Interest** | **@ 9% per annum** |

3. Learned counsel for the Insurance Company would contend that that the present was a case of a head-on collision and hence it ought to have been held to be a case of contributory negligence. Learned counsel would further contend that the compensation as awarded by the Tribunal is on the higher side and not as per the judgment laid down by the Hon'ble Supreme Court.

4. *Per contra*, learned counsel for the claimants has contended that the Tribunal while computing the income of the deceased has taken the income to be Rs.18,53,367/- after arriving at an average of the income of three financial years. Learned counsel would further contend that as per the Income Tax Returns for the year 2013-14, the last drawn salary of the deceased was Rs.27,99,371/- out of which Rs.6,74,317/- was deducted against TDS/income tax and hence the net inhand income of the deceased

was Rs.21,25,054/-. It is further the contention that the ground of contributory negligence was not even raised by the Insurance Company before the Tribunal.

5. Heard.

6. In the present case, undisputedly, the deceased was working with Air India as a Pilot. The claimants have produced on record the Income Tax Returns of the deceased i.e. Ex.P-8 for the assessment year 2012-13 and Ex.P-7 for the assessment year 2013-14 vide which the deceased had received the gross income of Rs.27,99,371/-. The Tribunal while computing the salary held that there were certain arrears payable to the deceased for the previous year and hence the last drawn salary cannot be taken as the salary in the hands of the deceased and assessed the income of the deceased as Rs.18,53,367/- per annum. Once the Income Tax Returns had been placed on the record and have been duly proved, there was no reason for the Tribunal to disbelieve the salary as reflected in the Income Tax Returns. The income of the deceased is hence assessed as Rs.21,25,054/- after deduction of income tax/TDS. The Tribunal has rightly applied deduction of 50% since the deceased was a bachelor. The Tribunal has rightly made an addition of 50% towards future prospects. The multiplier of '18' has also rightly been applied. However, the amount awarded under the conventional heads i.e. loss of estate and funeral expenses and under the head loss of consortium are not in accordance with the law laid by the Hon'ble Supreme Court in the cases of **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]**, **Magma General Insurance Company Limited vs.**

**Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 SCC 130]** and **N. Jayasree & Ors. vs. Cholamandalam M.S General Insurance Company Ltd. [2021(4) RCR (Civil) 642]**. Accordingly, the claimants would be entitled to Rs.18,000/- (Rs.15,000+20% increase) towards loss of estate and Rs.18,000/- (Rs.15,000+20% increase) towards funeral expenses and the claimants would also be entitled to Rs.48,000/- each (Rs.40,000+20% increase) towards loss of consortium.

The argument of the learned counsel for the Insurance Company that it is a case of contributory negligence, since it was a head on collusion, deserves to be rejected. The ground of contributory negligence was neither pleaded nor proved before the Tribunal and hence the Insurance Company cannot be permitted to raise the same at this stage.

7. Accordingly, the reworked compensation is as under :

| **Sr. No.** | **Heads** | **Compensation Awarded** |
|---|---|---|
| 1 | Annual income | Rs.21,25,054/- |
| 2 | Deduction 50% | [Rs.21,25,054/- - Rs.10,62,527/-] = Rs.10,62,527/- |
| 3 | Future prospects @ 50% (Less income tax @ 30%) (Rs.5,31,264/- - Rs.1,59,379/-) | [Rs.10,60,527+ Rs.3,71,885] = Rs.14,32,412/- |
| 4. | Multiplier 18 | [Rs.14,32,412/- x 18] = Rs.2,57,83,416/- |
| 5 | Loss of estate | [Rs.15,000+20% increase] Rs.18,000/- |
| 6 | Funeral expenses | [Rs.15,000+20% increase] Rs.18,000/- |
| 7 | Loss of Consortium :<br>(i) Filial | [48,000 x 2] Rs.96,000/- |
| 8 | **Total Compensation** | **Rs.2,59,15,416/-** |

8. The amount in excess of and over and above the amount awarded by the Tribunal shall attract interest @ 7.5% per annum from the date of filing of the claim petition till the realization of the entire amount. The amount shall be apportioned between the claimants as directed by the Tribunal.

9. In view of the above discussion, the award passed by the Tribunal is modified accordingly and both the appeals being FAO-2758-2017 and FAO-5593-2017 are disposed off. Pending applications, if any, also stand disposed off.

**13.03.2024** **(ALKA SARIN)**
*Aman Jain* **JUDGE**

*NOTE: Whether speaking/non-speaking: Speaking*
*Whether reportable: YES/NO*