IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO No.4717 of 2013 (O&M)

Future Generali General Insurance Company Ltd.

...Appellant

Versus

Krishna Devi and others

...Respondents

(2) FAO No.5805 of 2013 (O&M)

Krishna Devi and others

...Appellants

Versus

Som Nath and others

...Respondents

Date of Decision: May 13, 2015

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sanjeev Goyal, Advocate
for the appellant (in FAO No.4717 of 2013) and
for respondent No.3 (in FAO No.5805 of 2013).

Mr.Ashwani Arora, Advocate
for the appellants (in FAO No.5805 of 2013) and
for respondents No.1 to 5 (in FAO No.4717 of 2013).

None for respondents No.6 and 7
(in FAO No.4717 of 2013) and
none for respondents No.1 and 2
(in FAO No.5805 of 2013).

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INDERJIT SINGH, J.

Both the above-mentioned FAOs are taken up together for disposal being arisen from same Award.

FAO No.4717 of 2013 has been filed by appellant-

Insurance Company challenging the impugned Award dated 06.08.2013 passed by learned Motor Accident Claims Tribunal, Mohali (hereinafter referred to as 'Tribunal'), vide which compensation of ₹16,96,630/- has been awarded to the claimants along with interest @ 6% per annum from the date of filing of the claim petition, if the payment is made within three months and on failure, interest @ 9% per annum till realization.

FAO No.5805 of 2013 has been filed by appellants-claimants challenging the above-said Award for enhancement of the compensation amount.

The common facts of both the cases, as stated in the claim petition filed by Krishna Devi and other claimants against Sh.Som Nath, driver of tractor trolley bearing registration No.PB-65R-1598 (offending vehicle), Payara Singh, owner and Future Generali General Insurance Company Ltd. Insurer of the offending vehicle, are that on 22.09.2012 at 9.15 P.M., Kuldeep Singh was coming from Dera Bassi to Zirakpur while driving car bearing registration No.CH-01AF-6156 followed by Harvinder Singh. When he reached on Ghaggar bridge and was in process of overtaking, then driver of tractor trolley bearing registration No.PB-65R-1598 suddenly turned his tractor trolley to his right and in that process, tractor struck against the car of the deceased. It is further stated in the claim petition that the aforesaid tractor was being driven in rash and negligent manner at high speed by Som Nath driver, as a result of which Kuldeep Singh received serious injures and thereafter died.

Upon notice, respondents driver and owner filed joint written statement, in which it is admitted that accident took place on 22.09.2012 but it occurred only due to rash and negligent driving of the driver of the car Kuldeep Singh himself and respondent-driver of the tractor was not at fault.

Insurance Company-respondent (in claim petition) also filed written statement and took the plea that deceased himself was at fault as he was overtaking the offending vehicle on the bridge.

Claimants examined Krishna Devi as PW-1, one of the claimant, PW-2 Harvinder Singh, eye witness and PW-3 Vishal Hans and closed the evidence.

On the other hand, respondents did not examine any witness.

Learned Tribunal after appreciating the evidence, held that the accident has taken place due to rash and negligent driving of respondent-driver Som Nath and awarded amount of ₹16,96,630/- along with interest while taking the annual income of Kuldeep Singh as ₹1,14,300/- and future prospects of 30% has been given. The deduction was made as 1/4th there being five claimants and multiplier of 15 has been applied. ₹25,000/- in lumpsum has been awarded on ground of funeral expenses, transport charges, loss of consortium and loss of estate.

Learned counsel for the Insurance Company has argued that it is a case of contributory negligence. In the present case, no FIR has been registered. The driver of the car was negligent as on the bridge he was overtaking and DDR has been got registered by one Prem Singh showing that there was no negligence on part of anyone. This DDR was stated to be attested by eye witness. Therefore, he argued that in this case, respondent-driver Som Nath was not negligent.

After going through the evidence on record as well as the findings given by the Tribunal, I find that in the present case, accident has been admitted. Eye witness has appeared to depose that Som Nath has turned the tractor trolley when the driver of the car was overtaking the tractor. This evidence given by the eye witness remained un-rebutted on the file. Som Nath driver has not come to the witness box to rebut this evidence. There is nothing on the record to show that driver of the car was negligent. Neither evidence has been produced by the respondents to show contributory negligence of the car driver (deceased) nor there is anything in the cross-examination of the eye-witness to infer that deceased himself was negligent. Nothing has been shown to this Court as to how the car driver was negligent. The mere fact that FIR has not been registered and only DDR has been got registered by one Prem Singh, will not prove that Som Nath driver of tractor trolley was not negligent. Otherwise also, the respondents have not shown to this Court as to how the accident occurred if the driver of tractor trolley was not negligent. They have not given the fact that any other vehicle was also on the bridge or car struck behind the tractor trolley etc. Therefore, in view of the evidence on record, the Tribunal has correctly reached to the conclusion that the accident has taken place due to rash and negligent driving of Som Nath. The DDR has been got registered by Prem Singh but he has not been examined as a witness and the contents of the DDR have not been put to the eye witness Harvinder Singh to confront him with the same.

In view of above, I do not find any merit in the appeal filed by the appellant Insurance Company and therefore, FAO No.4717 of 2013 stands dismissed.

As regarding second appeal, i.e. FAO No.5805 of 2013, which was filed for enhancement of the compensation, I find that PW-1 Krishna Devi, widow of Kuldeep Singh has deposed that Kuldeep Singh was a properly dealer and earning ₹25,000/- per month and is stated to be paying installment of car loan to the tune of ₹7,086/- per month to the Indus Bank and tuition fee to the tune of ₹6,900/- of the minor children and the deceased was stated to be paying ₹22,000/- per month to the claimants.

The Tribunal found that no document has been produced and proved on record that deceased was property dealer. Copy of bank statement, copy of letter of the Indus Bank regarding car loan and copy of the statement of bank account of Kuldeep Singh with HDFC Bank, copy of bank account of Kuldeep Singh with Kotak Mahindra Bank and copy of school fees are proved by the claimants. The income tax return Ex.P4 has been placed on the record, in which the income of the deceased has been shown as ₹1,14,300/- per annum.

Keeping in view the income tax return and age of the deceased Kuldeep Singh as 40 years at the time of accident, the Tribunal gave 30% increase in his income in view of the law laid down by the Hon'ble Supreme Court in ***Smt.Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77*** and keeping in the fact that there are five claimants, therefore, deduction of 1/4th was made. The multiplier was applied as 15 keeping in view the age of the deceased. As the income has been taken as per the income tax return and 30% future prospects has been given as per law and deduction was also made as 1/4th keeping in view the number of dependents, therefore, the Tribunal has correctly computed the compensation to the tune of ₹16,71,637.5/- which was given in round figure of ₹16,71,630/-.

The Tribunal has wrongly given ₹25,000/- in lumpsum on ground of loss of consortium, funeral expenses, transport charges etc. As per the law laid down by the Hon'ble Supreme Court in ***Rajesh and others vs. Rajbir Singh and others, 2013(3) RCR (Civil) 170***, at least ₹25,000/- should be given as funeral expenses and ₹1 lac as loss of consortium. Therefore, the claimants are entitled to ₹25,000/- as funeral expenses and ₹1 lac on ground of loss of consortium. The claimants are further entitled to ₹10,000/- as loss of estate, ₹ 1 lac on the ground of loss of love and affection. Therefore, the compensation of ₹16,96,630/- awarded to the claimants is enhanced by ₹2,10,000/-.

The argument of learned counsel for the appellants-claimants that on the basis of agriculture income, no compensation has been allowed, I find that no jamabandi has been produced on the record, therefore, the Tribunal has not given any compensation on behalf of agriculture income.

Learned counsel for the appellants-claimants has cited judgment passed by this Court in ***Subhash Chand and others vs. Satya Rani, 2014(5) RCR (Civil) 265***. I have gone through this cited judgment and the same having distinguished facts will not apply in the present case as in that case the driver of tractor trolley has suddenly applied the brakes and accident occurred but in the present case, the facts are different.

In view of the above discussion, the appellants-claimants are held entitled to enhancement of ₹2,10,000/- along with the interest as awarded by the Tribunal from filing of claim petition till actual payment. The enhanced amount be disbursed to the claimants proportionately as per Award of the Tribunal. Therefore, FAO No.5805 of 2013 is allowed accordingly.

May 13, 2015 **(INDERJIT SINGH)**
Vgulati **JUDGE**