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

Date of Decision: 26.08.2016

1 FAO No.5154 of 2013 (O&M)

Umesh Sood and another
......Appellants
Versus

The New India Assurance Company Ltd and others
.....Respondents

2 FAO No.5751 of 2013 (O&M)

Soni Devi and others
......Appellants
Versus

Major Singh and others ....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Rajbir Singh, Advocate
for the appellants in FAO No.5154 of 2013 and
for respondents No.1 and 2 in FAO No.5751 of 2013.

Mr. Kulwinder Singh, Advocate for
Mr. Sanjeev Goyal, Advocate
for the appellants in FAO No.5751 of 2013.

Mr. D.K. Prajapati, Advocate
for respondent No.1-Insurance Company in
FAO No.5154 of 2013.

Mr. Neeraj Khanna, Advocate
for respondent No.3 in FAO No.5751 of 2013.

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RAJ MOHAN SINGH, J.

[1]. Vide this common judgment FAO No.5154 of 2013 titled as Umesh Sood and another Vs. The New India Assurance Co. Ltd and others and FAO No. 5751 of 2013 titled as Soni Devi and others Vs. Major Singh and others are being decided.

[2]. Since both appeals have arisen out of the same accident, therefore, facts are being taken from FAO No.5154 of 2013.

[3]. This is an appeal filed by the owner and the driver of offending vehicle against the award dated 01.08.2013 vide which the claim petition was allowed and recovery rights were granted to the Insurance Company in the ratio of 75% and 25% from the appellant-owner and driver of the offending vehicle.

[4]. Claimants Soni Devi and others filed claim petition under Section 163-A of the Motor Vehicles Act (for short 'Act') for grant of compensation to the tune of Rs.5,00,000/- on account of death of Priya Kumari aged 7 years in a vehicular accident.

[5]. The accident in question took place on 29.03.2012 at about 2:00 PM. Deceased Priya Kumari after leaving the school bus at her stop was standing on the berm of the road and her mother was also standing on the other side of the road. When

Priya Kumari was crossing the road to reach her mother, all of a sudden the offending bus being driven by appellant No.2 came from SLIET college side and struck against the deceased Priya Kumari. She received multiple injuries including grievous injuries on her person. She was taken to Civil Hospital, Sangrur. She was referred to Rajindra Hospital, Patiala and from there, she was referred to PGI, Chandigarh, however, father of the deceased took her to CMC, Ludhiana for her treatment, where she died on 30.03.2012 due to accidental injuries. The claimants alleged that an amount of Rs.50,000/- was spent on her treatment. It was also alleged that the bus was being driven rashly and negligently by appellant No.2.

[6]. The Tribunal in terms of Schedule attached to Section 163-A of the Act assessed an amount of Rs.15,000/- per annum as income of non-earning person. The deceased was 7 years of age and was student of second class. The notional income of the deceased was calculated to be Rs.15,000/- per annum as per Schedule attached to Section 163-A of the Act and as per ratio laid down in ***National Insurance Company Ltd Vs. Farzana and others, 2009 ACJ 2763***. Keeping in view the age of victim i.e. 7 years, a multiplier of 15 was applied. Therefore, an amount of Rs.2,25,000/- was calculated as loss of dependency. In this way, claimants were held entitled to

Rs.2,25,000/- along with interest @ 7.5 % per annum on the amount of compensation from 30.04.2012 i.e. 30 days from the accident till the date of passing of the award. The respondents were directed to make the payment of compensation to the claimants within a period of 2 months from the said date, failing which the claimants were held entitled to interest @ 7.5 % per annum on the amount of compensation from 30.04.2012 till the date of final realisation of amount. The award of compensation was to be shared by the claimants in equal shares. The amount of compensation payable to minors was ordered to be deposited in the shape of FDRs in some nationalized bank. Recovery rights were granted to the Insurance Company in the ratio of 75% and 25% from the appellant-owner and driver of the offending vehicle.

[7]. I have heard learned counsel for the parties.

[8]. During the course of proceedings in this Court, it was claimed by the appellants that the driver of the offending vehicle was having a valid driving licence. The factum of valid licence could not be proved before the Tribunal as driver did not step into the witness box, nor his driving licence could be produced on record.

[9]. This Court vide order dated 11.02.2014, set aside the findings recorded under issue No.4 by the Tribunal and remitted

the case back to the Tribunal to decide the said issue afresh after giving one effective opportunity to the appellant to prove the driving licence and 2 effective opportunities to the Insurance Company to lead evidence in rebuttal thereof. Other respondents and claimants were not required to be heard for that purpose. Both the parties were directed to appear before the Tribunal on a fixed date and the Tribunal was directed to send a report to this regard.

[10]. Pursuant to the order dated 11.02.2014 passed by this Court, the Tribunal has sent a report vide memo dated 07.08.2014 and found that Major Singh driver of the offending vehicle was holding a valid driving licence, therefore, issue No.4 was accordingly decided in favour of Major Singh driver of Bus No.PB-13-N-9799.

[11]. In view of aforesaid report more particularly when no objections were filed against the said report, this Court has to take the report to be lawful. Accordingly, grant of recovery rights to the Insurance Company has to be reversed on the said premise. FAO No.5154 of 2013 is accordingly allowed. The amount of compensation has to be answered by the Insurance Company.

[12]. In the second appeal i.e. FAO No.5751 of 2013, the issue is with regard to enhancement of compensation. An

amount of Rs.2,25,000/- has already been ordered by the Tribunal along with interest. Learned counsel for the appellants submitted that in view of ***R.K. Malik Vs. Kiran Pal, 2009(3) RCR (Civil) 403***, the claimants-appellants are entitled to compensation towards future prospects of the minor deceased. In case of death of minor, the Hon'ble Apex Court held that the claimants are entitled to compensation towards future prospects and grant Rs.75,000/- towards future prospects of the child. Besides grant of compensation towards future prospects amount of compensation can be assessed towards non-pecuniary loss as held in ***R.K. Malik's case (supra)***. In this way, an amount of Rs.1,50,000/- is to be assessed over and above the award of Rs.2,25,000/- as assessed by the Tribunal.

[13]. In view of aforesaid, appeal is allowed in the aforesaid terms. All the claimants are held entitled to claim the enhanced amount in equal ratio. Directions towards interest and deposit of amount of minor in fixed deposits would remain the same as ordered by the Tribunal.

[14]. With the aforesaid observations, both the appeals are disposed of.

26.08.2016 **(RAJ MOHAN SINGH)**
Prince **JUDGE**

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No