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

**1. FAO No.5057 of 2017 (O&M)**
**Date of Decision: 12.09.2018**

**The New India Assurance Co. Ltd.......Appellant**
**Vs**
**Sunita Aggarwal and others .....Respondents**

**2. FAO No.7396 of 2017 (O&M)**

**Smt. Sunita Aggarwal and another......Appellants**
**Vs**
**Sukhmal Chand and others .....Respondents**

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

Present: Mr. Vinod Gupta, Advocate
for the appellant in FAO No.5057 of 2017 and
for respondent No.2 in FAO No.7396 of 2017.

Mr. Ashwani Arora, Advocate
for the appellants in FAO No.7396 of 2017 and
for the respondents in FAO No.5057 of 2017.

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***<u>RAJ MOHAN SINGH, J.</u>***

[1]. By this common order FAO Nos.5057 and 7396 of 2017 (O&M) are being decided. Both the appeals have arisen from the same award dated 14.03.2017 passed by the Motor Accidents Claims Tribunal, Chandigarh (hereinafter to be referred as 'the Tribunal'), therefore, for brevity common facts are being recorded.

[2]. The accident took place on 17.01.2016 at about 5.30

p.m., when Nikhil Aggarwal (since deceased) was going from Chopta to Rishikesh on his motorcycle. Aman Bansal was pillion rider on the said motorcycle. When they reached in the area of village Baagwan, the offending truck belonging to respondent No.1, driven by respondent No.3, came from behind in a rash and negligent manner and struck against the motorcycle of deceased Nikhil Aggarwal. As a result of that impact, the occupants of the motorcycle fell down on the road. Nikhil Aggarwal died at the spot, whereas Aman Bansal received injuries. FIR was registered under Sections 279, 337, 338, 304-A IPC at police station Laltha Patto, District Tehri Garhwal, Uttrakhand against driver of the offending vehicle.

[3]. A claim petition was filed by the parents of deceased Nikhil Aggarwal. Complainant Surender Kumar Aggarwal, father of the deceased appeared as PW-1, whereas eyewitness Aman Bansal appeared as PW-2. Mr. Aashish Saxena, Assistant Manager, Human Resources, Snapdeal appeared as PW-3 and Mr. Tarsem Singh, Deputy Manager, ICICI Bank appeared as PW-4.

[4]. Respondents tendered copy of permit, copy of registration certificate, copy of Insurance policy and copy of fitness certificate of the offending vehicle as Ex.R-1 to R-4, besides tendering driving licence of the driver as Ex.R-5. After

tendering, load receipt Ex.P-6, respondents closed their evidence.

[5]. Satender Tamta, Sub Inspector was examined as RW-1, who tendered certified copy of report under Section 174 Cr.P.C. as Ex.R-7 and copy of site plan as Ex.R-8 and certified copy of report under Section 173 Cr.P.C as Ex.R-9. Copy of Insurance policy was tendered as Ex.R-10 before closure of evidence of the respondents.

[6]. The Tribunal held the accident in question took place due to rash and negligent driving by driver of the offending vehicle. As regards submission of cancellation report by RW-1 Satender Tamta, Investigating Officer, the same was held to be on account of shoddy investigation done by the police. The Investigating Officer in his cross-examination admitted that the site plan was prepared by him at the instance of driver of the offending vehicle/truck. Place of occurrence was not even photographed and no mechanical test of the vehicle was got done. Even after registration of the FIR, the vehicle in question was released by RW-1 Satender Tamta to the owner of the vehicle without there being any order passed by the competent Court. The cancellation report was not accepted by the competent Court and the same was ignored by the Tribunal while assessing the compensation in favour of the claimants.

[7]. It was further observed by the Tribunal that no evidence was led by owner, driver and Insurance Company. The driver of the offending vehicle namely Sunil did not appear in the witness box. Even owner of the vehicle did not step into the witness box. The statement made by PW-2 Aman Bansal virtually went unrebutted. The motorcycle of the deceased was ahead of the offending vehicle/truck on downward incline and it was held to be sole responsibility of the driver of the offending vehicle to keep his vehicle at a safe distance so as to avoid any impact with the motorcycle going ahead of the truck. Driver and owner of the truck did not come forward to deny the negligence of driver of the truck. Adverse inference was drawn by the Tribunal against them. The cause of death of deceased Nikhil Aggarwal was head injury with haemorrhagic shock. The Tribunal held that the accident was the result of sole negligent driving by driver of the offending vehicle.

[8]. Under issue No.2, the Tribunal held that the deceased was 23 years of age and was working as Analyst with Snapdeal, 362-363 ASF Center, Udyog Vihar, Phase-IV, Gurgaon and was drawing a salary of Rs.1,50,000/- per month. The date of birth of the deceased as per his Secondary School Examination Certificate was 21-07-1992. In *post mortem* report also the age of the deceased was recorded as 23 years. No evidence to the

contrary was produced by the owner, driver and Insurance Company to show that the deceased was more than 23 years of age at the time of accident. Age was accordingly assessed to be 23 years at the time of accident.

[9]. As per testimony of PW-3 Aashish Saxena, Assistant Manager, Human Resources, Snapdeal, Nikhil Aggarwal was appointed through Campus recruitment on 01.07.2015. His annual package was Rs.18 lakhs and CTC included fixed compensation/fixed annual salary which was Rs.10,00,000/-. According to last pay slips for the period July 2015 to December 2015, Nikhil Aggarwal was drawing a gross salary of Rs.71,283/- out of which an amount of Rs.6447/- was deducted towards income tax, therefore, his net monthly income was Rs.64,836/-. Therefore, monthly income of the deceased was assessed to be Rs.64,836/-. In view of age of the deceased to be 23 years, future prospects towards increase was applied to the tune of 50%, thereby making gross monthly income of the deceased to be Rs.97,254/- (64836 + 32418) i.e. Rs.11,67,048/- per annum for the purposes of compensation. The deceased was unmarried at the time of his death, therefore, in view of ***Sarla Verma vs. Delhi Transportation Corporation, 2009 ACJ 1298 (SC)*** 50% of the assessed income was deducted towards personal expenses of the deceased, therefore,

assessed income of the dependency of the claimants came out to be Rs.5,83,524/- per annum. In view of age of the deceased, multiplier of 18 was applied in view of ***Sarla Verma's*** case (supra). With the application of the multiplier, the amount of compensation came out to be Rs.1,05,03,432/- (5,83,524 x 18).

[10]. In addition to the aforesaid amount, an amount of Rs.10,000/- towards loss of estate and Rs.25,000/- towards funeral expenses were awarded. The total amount of compensation came to be assessed as Rs.1,05,38,432/-. The vehicle was held to be duly insured and all the respondents i.e. owner, driver and Insurance Company were held jointly and severally liable to make payment of the aforesaid compensation to the claimants along with interest @ 7½% per annum from the date of application till final realization of the amount. Counsel fee was also assessed as Rs.2200/- along with memorandum of costs prepared by the Tribunal.

[11]. Learned counsel for the Insurance Company has vehemently submitted that the Investigation Officer of the criminal case i.e. RW-1 Satender Tamta stated that the case was false and after investigation, the police has submitted the cancellation report.

[12]. Learned counsel further submitted that as per pay slip of the deceased, the amount shown towards house rent

allowance was the reimbursable amount and should not have been relied while computing the monthly income of the deceased.

[13]. I have considered the submissions made by learned counsel for the parties.

[14]. Perusal of the testimony of RW-1 Satender Tamta would show that he was not present at the time of accident. He did not get the mechanical test of the offending vehicle/truck conducted. He recorded the statement of complainant-Surender Kumar Aggarwal regarding accident as well as statement of Aman Bansal pillion rider of the motorcycle besides recording statements of 3-4 persons. The witness prepared the site plan as per the dictation of driver of the offending vehicle which was allegedly corroborated by the police officials, who were present there. He did not record statement of the police officials and the driver of the offending vehicle/truck. The driver of the offending vehicle after the accident allegedly remained with the vehicle, still his statement was not recorded by the witness. The witness did not summon any photographer to take photographs of the alleged accident. The witness was informed about the accident at the police station by the police officials and thereafter he arrived at the spot. The vehicle was released by him without there being any orders passed by the competent

Court. The deposition made by the witness is suggestive of the fact that despite the fact that he did not see the occurrence, he endorsed the finding that the motorcyclist was trying to overtake the truck and in that process he fell down from the motorcycle while trying to enter motorcycle from mettled road to *kacha* portion. The aforesaid admissions made by RW-1 Satender Tamta made the Tribunal to disbelieve his version and the versions of the police officials in filing the cancellation report.

[15]. Even as per Ex.R-7 which appears to be the inquest proceedings prepared by the Investigating Officer, name of Aman Bansal was shown besides recording some statements of other persons in the context of innocence of the driver of the offending vehicle. The signature appearing in the aforesaid inquest proceedings, if compared with the signature of Aman Bansal on his affidavit while appearing as PW-2 would show difference in the signatures. Perusal of Ex.R-9 would show that the statements of the witnesses recorded during the course of investigation have not been attached with the challan. The investigation conducted by the police was held to be a shoddy investigation and was not relied by the Tribunal. In my considered opinion, the statement of RW-1 Satender Tamta and the investigation conducted by the Police have been rightly discarded by the Tribunal while deciding the claim petition.

[16]. With regard to argument that the house rent allowance was a reimbursable amount and should not have been relied. Perusal of the record would show that no such argument was raised before the Tribunal and no such evidence was brought on record by the Insurance Company. Raising of plea for the first time before the High Court cannot be accepted as the evidence produced by the Insurance Company is silent with regard to the aforesaid plea. Even documents Mark 'A' to Mark 'F' cannot be treated to be the documents in the aforesaid context, particularly when PW-3 Aashish Saxena while appearing in the witness box has not deposed in the aforesaid context, nor he was cross-examined specifically on the aforesaid issue in his cross-examination. Statement of PW-3 would show that the witness has specifically deposed that HRA is also a component of salary and the same was paid to the employee. There was no direct contact between the employer and landlord of the deceased. In view of above, the plea of learned counsel for the Insurance Company cannot be accepted.

[17]. Aman Bansal while appearing as PW-2 has supported the case of the claimants being an eyewitness. The police tried to misuse the papers got signed from the witness. According to his testimony, the police did not reach at the spot. The police

came to know about the accident only in the hospital. The witness narrated the manner in which the accident had taken place. The lodging of FIR belatedly would also indicate the inaction on the part of police, who tried to help the local persons i.e. driver and owner of the vehicle.

[18]. Statement of PW-1 Surender Kumar Aggarwal is in consonance with the case pleaded on behalf of the claimants. The deceased was having higher prospects. As per unofficial GMAT score report, he secured 99 percentile in the Graduate Management Programme.

[19]. The submission made by learned counsel for the Insurance Company in respect of non-applicability of future prospects to the tune of 50% on estimated income towards future prospects cannot be accepted inasmuch that as per bunch of cases decided by the Hon'ble Apex Court in SLP (Civil) No.22134 of 2016 titled '***Hem Raj vs. The Oriental Insurance Company Limited and Ors****.'* the ratio of ***National Insurance Co. Limited vs. Pranay Sethi, 2017 SCC 1270*** was endorsed and it was held that there was no bar to future prospects at level higher than 25% in case the deceased is above 40 years or 50% in case the deceased is below 40 years. The standardization will result in increase on the basis of actual evidence led by the parties to the satisfaction of the Tribunal

wherein it was found that the deceased was 23 years of age with defined future prospects. The Tribunal has made the assessment of income by adding the component of future prospects as per ratio of ***National Insurance Co. Limited vs. Pranay Sethi,'***s case. The view expressed in ***Hem Raj's*** case was upheld in ***Suresh Chandra Bagmal Doshi & Anr. vs. The New India Assurance Company Limited & Ors., 2018(2) 190 PLR 783***.

[20]. In the appeal i.e. FAO No.7396 of 2017 filed by the claimants for enhancement, it can be noticed that on the basis of material on record, the monthly salary of the deceased was taken to be Rs.71,283/- from which an amount of Rs.6447/- was deducted towards income tax. Hence, the net income of the deceased was taken to be Rs.64,836/- per month to which future prospects to the tune of 50% was added, thereby making the gross income Rs.97,254/- per month. In this way, annual income of the deceased was calculated as Rs.11,67,048/-. Since the deceased was unmarried, therefore, deduction to the tune of 50% was applied towards his personal expenses. In this way the annual dependency of the claimants was held to be Rs.5,83,524/-. Keeping in view the age of the deceased, multiplier of 18 was applied and in this way the amount of compensation came to be calculated as Rs.1,05,03,432/- to

which an amount of Rs.35,000/- towards loss of estate and funeral expenses was added. In this way total amount of compensation was assessed to be Rs.1,05,38,432/- along with interest @ 7½% per annum from the date of filing of claim petition till final realization of the amount. In my considered opinion, no increase in the amount of compensation is possible on any of the parameters as argued by learned counsel for the appellants. The assessment made by the Tribunal is based on correct appreciation of evidence.

[21]. For the reasons recorded hereinabove, I find no justification to interfere in both the appeals i.e. FAO No.5057 of 2017 filed by the Insurance Company and FAO No.7396 of 2017 filed by the claimants. Both the appeals are accordingly dismissed.

September 12, 2018 **(RAJ MOHAN SINGH)**
*Atik* **JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No