IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

221 FAO-1843-2015 (O&M)
Date of Decision : 28.11.2019

Oriental Insurance Company Ltd. .... Appellant

Versus

Parvati and others .... Respondents

2. FAO-4357-2016 (O&M)

New India Assurance Company Ltd. .... Appellant

Versus

Lovely Garg and others ...... Respondents

3. FAO-4657-2017 (O&M)

United India Insurance Company Ltd. .... Appellant

Versus

Paramjit Kaur and others ...... Respondents

4. FAO-6598-2017 (O&M)

New India Assurance Company Ltd. .... Appellant

Versus

Veer Kaur and others .... Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Ms. Priya Deep, Advocate for
Mr. Ashwani Talwar, Advocate
for the appellant in FAO-1843-2015
for respondents No.1 and 2 in FAO-4657-2017.

Mr. Ashwani Arora, Advocate
for respondents No.l and 2 in in FAO-1843-2015

Ms. Manju Sharma, Advocate for
Mr. G.S.Verma, Advocate
for respondents No.1 and 2 in FAO-6598-2017.

Mr. S.P.S.Aulakh, Advocate
for respondents No.3 and 4 in FAO-6598-2017

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NIRMALJIT KAUR, J. (ORAL)

All the above mentioned appeals filed by the appellant-Insurance Company seeking modification of the award shall stand decided by this common order.

While praying for modification of the award and reducing the quantum of compensation, learned counsel for the appellant submitted that as per the settled principles of law that the schedule provided under Section 163-A should be followed even for grant of compensation even though the claim petition is filed under Section 166-A for minors under the age of 15 years. As per the schedule, the notional income has to be taken as Rs.15,000/- per annum.

Heard.

This Court in the case of the **Beet Nath** **Vs.** **Gulab Singh**, FAO No. 159 of 2015 decided on 10.7.2017 as well as **Sunita Devi and another Vs. Vijay Pal and others**, *2018(2) Law Herald 1659* vide which the learned Single Judge of this Court took into account the notional income as Rs.50,000/- per annum.

Learned counsel for the respondent-Insurance Company while vehemently opposing the enhancement by taking Rs.50,000/- per annum as the income submitted that the same would be against the well settled proposition of law as laid down in the case of **Kishan Gopal and another Vs. Lala and others**, *2013(5) Law Herald (SC) 4346* wherein the notional income of the child was taken as Rs.30,000/-. Reference is also made to the second schedule provided under Section 163-A of the Motor Vehicle Act qua the fatal accident resulting in death cases to be taken as maximum Rs.5 lacs who is not earning.

A perusal of the judgment rendered in the case of Kishan Gopal's case (supra) shows that the said accident pertained to the year 1992. Taking the date of the accident, learned Single Judge of this Court in the case of Sunita Devi (supra) held Rs.50,000/- to be the fair income to be assessed of a child who is 15 years old. The discussion in the said case while taking the notional income as Rs.50,000/-, it was observed in para No.8 as under:-

> *"Reference can also be made to a latest judgment of this Court in the case of Beet Nath and another vs. Gulab Singh and others (FAO No.159 of 2015) decided on July 10, 2017, wherein the notional income of the child who died in an accident which took place in the year 2012 was taken as Rs.50,000/-. It was observed in that case that in the case of Kishan Gopal and another vs. Lala and others, 2013 (4) RCR (Civil) 276, wherein the notional income of a 10 years old child was taken as Rs.30,000/-, the year of the accident was 1992. But in that case, the accident had taken place in the year 2012 and the age of the deceased at the time of the accident was 15 years. Since the*

> *value of rupee has come down drastically since the year 1992, the notional income in Beet Nath's case (supra) was taken as Rs.50,000".*

No appeal seems to have been filed in either of the two cases i.e. neither in the case of Beet Nath or Sunita Devi's cases (supra). Even otherwise, nothing has been brought to the notice of this Court that the said order or judgment has been set-aside. This Court too is in agreement of the said opinion of the learned Single Judge that Rs.30,000/- was held as the notional income of a minor child who died in an accident which took place in the year 1992.

The accident in the present case stated to have occurred in the years 2013, 2014 and 2015 respectively. Therefore, the notional income of Rs.15,000/- cannot be equated with the following value of the money as on date or in the years 2013, 2014 and 2015 respectively.

Accordingly, the appeals are dismissed being devoid of any merit.

At this Stage, learned counsel for the petitioner submitted that in FAO 4357 of 2016, the question was also with respect to the driving licence. It was contended that as per the report, the said driving licence was not a valid licence because it was a smart card. The said argument has no merit.

This Court in the case of **Oriental Insurance Company Ltd.** Vs. **Urmila Devi and others,** *FAO No.328 of 2017 decided on 25.07.2019,* has already observed :-

> *"The onus to prove that it was not a valid and effective licence was upon the appellant/ Insurance Company for which they led no*

evidence. Even otherwise it cannot be said that the driving licence so issued was not genuine. The Insurance Company cannot wriggle out of its liability on the ground that the driver did not get a smart card issued which he should have. There is nothing on record to show that his driving licence was found invalid either on the ground that he did not know driving or that it was actually cancelled on account of some fault of the driver."

In view of the above, there is no merit in the said argument.

Dismissed accordingly.

28.11.2019 (NIRMALJIT KAUR)
anju JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No