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

**X-objection No.-124-CII-2015 in/and
FAO-5534-2013 (O&M)
Date of Decision: September 06, 2019**

IFFCO TOKIO General Insurance Company Ltd.Appellant
Versus

Kamlesh Rani and others

.....Respondents

CORAM: HON'BLE MS.JUSTICE NIRMALJIT KAUR

Present: Ms.Vandana Malhotra, Advocate
for the appellant.

Mr.Jagdish Manchanda, Advocate
for respondent No.4.

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NIRMALJIT KAUR, J. (ORAL)

The appeal is filed by the Insurance Company against the Award, dated 08.08.2013, passed by Motor Accident Claims Tribunal, Kurukshetra, vide which the Insurance Company was made liable to pay the amount of compensation first with the right of recovery from respondent Nos.3 and 4, i.e. driver and owner of the offending vehicle.

While praying for setting aside the Award vide which the Insurance Company has been made liable to make the payment at the first instance, it is submitted that respondent No.3 was not holding a valid and effective driving licence to drive the vehicle as respondent No.3 was a minor at the time of the accident. Reliance was placed on the judgment rendered by the Hon'ble Apex Court in the case of **National Insurance Company Ltd. vs Swaran Singh**, 2004 (2) RCR (Civil) 114. The second argument raised by learned counsel for the Insurance Company was with respect to the

quantum. It was contended that the amount of compensation of ₹7,50,000/- is excessive qua a deceased, who is about five years old and is against the settled proposition of law rendered in the case of **Santosh Rani vs Ranjit Singh** 2008 ACJ-1405 wherein only ₹2.50 lacs were granted to a minor boy of 13.

Cross-objections have been filed by respondent No.4 being owner of the offending motor-cycle against the Award to the extent of recovery rights which have been granted to the Insurance Company. While praying for setting aside the said finding of the Tribunal vide which the right of recovery has been granted to the Insurance Company, learned counsel for the cross-objector submitted that there was no permission granted to the minor child to drive the vehicle. Hence, no liability can be fastened upon the owner and that it was a well settled proposition of law that if a minor has taken the vehicle without the consent of the owner of the vehicle in question, the owner is not liable. Moreover, no negligence has been established on behalf of respondent No.4. He also disputed the quantum of the Award.

The argument of the learned counsel for the Insurance Company as well as counsel for the cross-objector on behalf of the owner of the offending vehicle that the amount awarded is on the higher side deserves to be rejected. The claimants herein were the parents of the deceased, a five year old boy, who have not recovered from the mental shock. Reliance is placed by the learned counsel for the Insurance Company on the judgment rendered in the case of **Kishan Gopal and another vs Lala and others** 2013(5) Law Herald (SC) 4346. The same was discussed by the learned Single Bench in the case of **Beet Nath Vs Gulab Singh**, FAO No.159 of

2015 decided on 10.07.2017 as well as **Sunita Devi and another vs Vijay Pal and others** 2018(2) Law Herald 1658 who took the notional income as ₹50,000/- per annum. Taking the date of the accident, learned Single Judge of this Court in the case of **Sunita Devi (Supra)** held ₹50,000/- to be the fair income. The discussion in the said case while taking the notional income as ₹50,000/-, in para No.8 is 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 ₹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 ₹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 ₹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. No doubt, the age in those cases of the child was 15 years and it is five years in the present case. This Court too is in

agreement of the said opinion of the learned Single Judge that ₹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 notional income of ₹30,000/- cannot be equated with the falling value of the money as on date or in the year 2012.

But, that in itself will not be sufficient to reduce the amount already granted by the Tribunal. The claimants in both the cases are parents of a minor child, whose loss can never be weighed with the compensation.

Learned counsel for the Insurance Company has also not been able to dispute the judgment rendered in the case of **Swaran Singh and others**(supra) wherein it was held that mere absence, fake or invalid driving licence or disqualification of the driver for driving, are not sufficient defences available to the Insurance Company. Therefore, under these circumstances, this Court does not deem it proper to interfere with the order of the Tribunal in passing the Award.

The cross-objections for granting recovery rights to the Insurance Company too deserve to be dismissed. There is nothing to prove that there was no consent of the owner or that he did not know that the same was being driven by a minor. Therefore, he cannot escape the liability of reimbursement to the Insurance Company.

The appeal as well as cross-objections stands dismissed.

September 06, 2019
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**(NIRMALJIT KAUR)
JUDGE**

- 1. Whether speaking/reasoned ?**
- 2. Whether reportable ?**

**Yes/No
Yes/No**