S.No.129

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

****

Date of Decision:17.02.2020

1. FAO No.1341 of 2020 (O&M)

National Insurance Company Ltd. .....Appellant

Vs.

Harjinder Kaur and others .....Respondents

2. FAO No.1342 of 2020 (O&M)

National Insurance Company Ltd. .....Appellant

Vs.

Riya Tuli and others .....Respondents

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. S.S. Sidhu, Advocate for the appellant.

****

<u>Rajbir Sehrawat, J.(Oral)</u>

These are two appeals filed by the Insurance Company challenging the award dated 02.11.2019 passed by the Motor Accident Claims Tribunal, vide which two claim petitions have been allowed in favour of the claimants.

Accordingly, this order shall dispose of two appeals i.e. FAO Nos.1341 and 1342 of 2020, filed by the Insurance Company of the offending vehicle.

The brief facts giving rise to these appeals are that one claim petition was filed by the parents and grandmother of Khushmeet Singh alleging that on 24.04.2016, Khushmeet Singh along with his friend Riya Tuli was returning from Rajpura to Ambala in Swift Dzire Car bearing registration No.HR-01-AG-0713. He was driving the car on the left side of the road and at a moderate speed. At about 02:15 pm, when they reached in front of Partap Factory in the area of Village Bapraur on Rajpura-Ambala Road, then a Tata Manza car; bearing registration No.HR-02X-1516, being driven by respondent No.1 rashly and negligently, came from the backside. The driver of this car tried to overtake the car of Khsuhmeet Singh from the left side and in that process, right side of the Manza car hit into the left side of the car being driven by Khushmeet Singh. With the impact, the car of Khushmeet Singh turned towards the right side and hit into the divider in the centre of the road and crossed over to the other side of the road, where it hit against an army vehicle coming from the opposite side. The driver of the offending vehicle had stopped his vehicle at some distance. But on seeing the serious conditions of the accident, he slipped away in his car. Thereafter, the passer-by shifted both the injured to the hospital. Khushmeet Singh was declared as brought dead to the hospital, whereas, the injured Riya Tuli was referred to GMCH, Sector-32 Hospital. On account of this accident, FIR No.72 dated 16.05.2016 was also registered under Sections 279, 337, 338, 304-A and 427 IPC at Police Station Shambu on the statement made by Riya Tuli. It was further pleaded that the deceased-Khushmeet Siungh was 19 years old at the time of accident and he was studying in B.Com 2nd year in S.A. Jain College, Ambala City. He was a brilliant student. On completion of his studies, he would have got a job of about Rs.30,000/- per month at the initial stage. Accordingly, the compensation of an amount of Rs.50 lakhs was claimed.

The second claim petition was filed by the injured Riya Tuli in which she mentioned the sequence of events, as mentioned above. Besides this, she claimed to have spent Rs.15 lakhs on the treatment. Hence, she had also filed separate claim petition to claim damages on that account.

The same evidence was recorded in both the petitions, however, two separate awards have been passed by the Tribunal. The claimants in the claim petition arising on account of death of Khushmeet Singh have been awarded an amount of Rs.15 lakhs, whereas, Riya Tuli has been awarded an amount of Rs.1,60,000/- on account of injuries suffered by her and the treatment expenses. Challenging both these awards, the present two appeals have been preferred by the Insurance Company of the offending vehicle.

Learned counsel for the appellant has raised the point regarding the non-involvement of the vehicle insured by the Company, as well as, qua the notional income of the deceased; in Khushmeet Singh's death case, and qua the non-involvement of the offending vehicle; in case of claimant Riya Tuli.

While arguing the case, learned counsel for the appellant has submitted that immediately after the accident, the father of the deceased, namely, Harvir Singh, himself had made a statement to the police stating therein that his son was negligent in driving his car. Because of the negligence, his car crossed over to the other side of the divider of the road and hit the army vehicle. As a result of which, his son had died. Upon this statement, the police had recorded DDR Ex.RW2/D. The said statement has been duly proved on record by examining the police official who recorded the statement, as RW2 Gurmukh Singh. Therefore, it is established that the vehicle insured by the appellant- Company was not involved in the accident. Subsequent version, on which the FIR has been registered, has wrongly been given by Riya Tuli; to create a basis for filing the claim petition. In that version, she has wrongly mentioned that the car insured by the appellant- Company had hit from behind and then the car being driven by

Khushmeet Singh had crossed over to the other side of the divider and hit against the army vehicle. Counsel has submitted that the statement was recorded by the police after about 22 days of the accident. Even after her discharge from the hospital, injured- Riya Tuli had not immediately reached the Police for recording of the FIR. It is further submitted that she has not explained as to how she came to know of the registration number of the vehicle involved in the accident.

On the quantum of compensation, learned counsel for the appellant has submitted that since the income of the deceased, Khushmeet Singh had not been proved on record, therefore, if his income is to be taken on notional basis then the same could not have been taken more than the rate of minimum wages prevalent at that time, for the semi-qualified person. It is further submitted that since it was a notional income only, therefore, no future prospects were required to be added in this case. Hence, the Tribunal has committed error in taking the income of the deceased on the higher side, as well as, in granting 40% future prospects even on the notional income taken by the Tribunal.

Having heard learned counsel for the appellant, this Court does not find any substance in the argument raised by learned counsel for the appellant. The Tribunal has rightly recorded its finding that father of the deceased Khushmeet Singh was not an eye witness to the accident. Therefore, if at all he stated to the police qua the vehicle crossing over to the other side on account of negligence of Khushmeet Singh, the said statement, being only hearsay, cannot be taken as any relevant fact. The eye witness of the accident and injured-claimant Riya Tuli has, right from the beginning, stated before the Police and also deposed before the Tribunal that, in the first instance, the offending car, which is insured by the present appellant, had hit from behind and then the vehicle being driven by Khushmeet Singh had crossed over to the other side of the road, and thereafter, his car had hit against the army vehicle. This stand she has maintained throughout. Another aspect which is to be kept in mind is that the difference between the statement by father of the deceased in the DDR and the statement made by the injured eye witness, is only qua one step i.e. of hitting of the vehicle of Khushmeet Singh from behind. The remaining version is common in both the statements. So far as the fact whether the offending vehicle had hit from behind or not, the injured eye witness would be the only appropriate witness to depose upon the fact. She has categorically deposed that the offending vehicle had hit from behind. She has withstood the cross-examination on this point. Despite cross-examination, nothing adverse could be extracted from her testimony; as such. Although learned counsel for the appellant has submitted that once she was sitting in the car and her car was being subjected to accident by the offending vehicle from behind then it was not possible for her to see the number of the offending vehicle, however, this fact has duly been explained by the injured witness. She has stated that she had seen the number of the car from the side mirror of the car in which she was travelling. No further cross-examination has been done by the Insurance Company or any respondent on this point. There is nothing on record to prove that the side mirror was of such quality from which registration number could not have been read by this witness. Therefore, the trial Court had no reason to disbelieve the testimony of this injured witness. Although learned counsel for the appellant has also relied upon the statement of Vikas Kumar, who was posted at the hospital, and who has deposed that one Sushant had brought the injured Riya Tuli to the hospital and he had disclosed at that time that the car driven by Khushmeet Singh had hit the army vehicle by crossing over to the other side of the road and in that, the injured Riya Tuli had got injuries. However, this version is also only a hear-say version, allegedly, disclosed to this Vikas Kumar by Sushant. It is not even on record that this Sushant was also an eye witness. Hence, the categoric and consistent evidence of the injured eye witness has duly proved on record that, in the first instance, the vehicle being driven by Khushmeet Singh was hit from behind by the offending vehicle insured by the present appellant, and thereafter, it had crossed over to the other side of the road. The Tribunal has rightly recorded a finding in this regard. Needless to say that even challan has been filed against the driver of the offending vehicle, for being involved, in and for being responsible for this accident.

So far as the quantum of the compensation awarded to the dependents of Khusmeet Singh is concerned, although learned counsel for the appellant has submitted that the notional income has been taken on higher side; and that it should have been taken at the level of minimum wages prevalent at the time for semi-qualified person, however, there is nothing on record even to suggest as to what were the rates prevalent for such a person at the relevant time. No notification issued by the competent authority has been placed and proved on record by the appellant or any one of the respondents. Therefore, this argument of the counsel for the appellant is also non-sustainable. Otherwise also, there is no compulsion for taking the wages of deceased at the level of minimum prescribed wages. The minimum wages are prescribed by the authorities as applicable in the establishments covered under the notification and presume the actual employment of the person who claims the wages on the basis of the same. Besides such minimum wages, such persons are also entitled to several types of statutory benefits, like EPF, Insurance and health benefits. If income of deceased is to be taken at the level of minimum wages, then these benefits also have to be duly accounted. So far as the notional income is concerned, that is to be taken as per the prevalent social and economic environment, as well as, the employability of the deceased at the relevant time or after completion of the qualification; if the deceased was still studying. In any case, in the year, 2016, when the accident had taken place, a notional income of Rs.10,000/- cannot be considered to be excessive. Hence, the Tribunal has assessed the notional income of the deceased at the rate of Rs.10,000/- per month. This Court is also of the view that the income of the deceased could not have been assessed at the rate lower than this.

Learned counsel for the appellant has also submitted that in case of assessment of the income of the deceased on notional basis, no future prospects are to be awarded. He has relied upon judgment of this Court in judgment of this Court in **FAO No.3483 of 2013 (O&M) – Cholamandalam MS General Insurance Co. Ltd. v. Lakhmi Chand and others**, decided on 26.02.2015; to contend that in case of calculation of dependancy in terms of notional income, no future prospects can be awarded. However, this Court finds the said judgment to be totally distinguishable. Since the assessment of the compensation in an accident case is the informed guess-work based upon notional basis, therefore, wherever the multiplier method is applied for assessment of the compensation, the future prospect has to be a necessary component of the same. There is no logic, reason or economic concept that a person would stagnate at a particular level of income for the number of years; for which the multiplier is to be applied. Hence, it has been the consistent law, that the benefit of future prospects has to be applied to the income assessed by the Tribunal, as per the graded scale as laid down by Hon'ble the Supreme Court of India in case of **Smt. Sarla Verma and others v. Delhi Transport Corporation and another, 2009 AIR (SC) 3104,** which stands approved in case of **National Insurance Company Ltd. v. Pranay Sethi and others, 2017 AIR (SC) 5157** . As per those judgments, in case of death of a person of age less than 40 years, the future prospects of 40% has to be applied. Only this much has been applied by the Tribunal. Hence, this Court does not find any illegality or irregularity on the part of the Tribunal; even in this regard.

No other point was argued.

In view of the above, finding no merit in the appeals, the same are dismissed.

February 17, 2020 **(RAJBIR SEHRAWAT)**
renu **JUDGE**

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No