118-1 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1.**FAO-1917-2018 (O&M)**

National Insurance Company Limited

....Appellant

Versus

Joginder Kaur and others

..Respondents

1.**FAO-3340-2018 (O&M)**

Joginder Kaur and others

....Appellants

Versus

Subhash Arora and others

..Respondents

Date of decision: 10.08.2022

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vinod Gupta, Advocate for the Insurance Company

Mr. Yogesh Gupta, Advocate for the claimants

ANIL KSHETARPAL, J (Oral)

1. By this order, two appeals, one filed by the Insurance Company (FAO-1917-2018) and another filed by the claimants (FAO-3340-2018) shall stand disposed of.

2. The Insurance Company prays for setting aside the award passed by the Motor Accident Claims Tribunal whereas the claimants pray for modification of the award. The Tribunal has awarded a sum of Rs. 20,14,000/- along with interest at the rate of 6% per annum to the claimants on account of death of late Sh. Shamsher Singh, aged about 37

years, in an automobile accident. As per the case of the claimants, late Sh. Shamsher Singh was coming from Kohara to his village on a motorcycle whereas Sh. Subhash Arora came from the opposite direction and while overtaking some other vehicle, the driver of the car came on the wrong side and smashed his car into the motorcycle driven by late Sh. Shamsher Singh, who is stated to have died on the spot. The accident took place on 4th April, 2017, whereas the FIR was registered on 5th April, 2017 against an unknown driver, though the car was parked at the place of the occurrence of the accident. The claimants are five in number namely the widow, two minor children and aged parents of the deceased. In order to prove the occurrence of accident and the rash and negligent driving of Sh. Subhash Arora, Sh. Mohinder Singh, the alleged eye witness was examined. He is father of deceased, who was following his son on a separate Activa scooter. The deceased was working as a driver of the truck drawing salary of Rs.10,000/- per month along with Rs. 300/- per day for food. The Tribunal assessed his income at the rate of Rs. 9,000/- per month and applied deduction of 1/4th on account of personal expenses in order to work out the dependency. Thereafter, the Tribunal increased the income by 40% on account of increase in the income due to future prospects. The Tribunal, after applying multiplier of 15, worked out the compensation.

3. Heard the learned counsel representing the parties at length and with their able assistance perused the award, which has been passed by the Tribunal. Learned counsel representing the Insurance Company claims that the vehicle in question was falsely implicated. He relies upon

the judgment passed in a criminal case. He contends that Sh.Subhash Arora was acquitted in the criminal case registered with regard to the accident in question. While referring to the judgment passed in a criminal case, the learned counsel representing the Insurance Company contends that Sh.Mohinder Singh while appearing in criminal case has stated that he did not know the name of the driver, which was disclosed to him by the police and the police got his signatures on the blank papers. Consequently, it is contended that the Tribunal has erred in allowing the said petition.

4. On the other hand, learned counsel representing the claimants submits that the car bearing registration number CH-03-L-2603 was parked at the place of accident in a damaged condition and the police recovered the same. He submits that Mohinder Singh at that time did not know the name of the driver but subsequently when the police investigated the matter, the name of Sh.Subhash Arora surfaced. It is further submitted that the registered owner of the vehicle is Ms.Nitika Arora, resident of H.No.5075/B, Sector 38 West, Chandigarh whereas Sh. Subhash Arora is also the resident of the same address.

5. It is a well settled principle that the evidence of a witness in some other case could be admitted as evidence only if the witness is confronted with the aforesaid statement in order to solicit his explanation. In the present case, the learned counsel representing the Insurance Company admits that Sh. Mohinder Singh was never confronted to the aforesaid statement in the criminal case, when he appeared as a witness before the Tribunal. Furthermore, the judgment

passed in a criminal case is not binding on the Civil Court. Moreover, the facts of the case do not prove that the vehicle was falsely involved in the occurrence of accident. Firstly, the vehicle in question was parked in a damaged condition at the place of accident. Secondly, the FIR was registered by Sh.Mohinder Singh disclosing the registration number of the vehicle while stating that he does not know the name of the driver. It was not difficult for the police to locate the driver once the vehicle was known. It is not in dispute that Sh. Subhash Arora is resident of the same house in which the registered owner resides. The Insurance Company has not produced any evidence to prove that there was any collusion between Ms. Nitika Arora or Sh. Subhash Arora. Hence, there is no substance in the appeal filed by the Insurance Company.

6. Learned counsel representing the claimants in FAO-3440-2018 contends that late Sh.Shamsher Singh was working as a driver at the salary of Rs.19,000/- per month. He submits that the employer of late Sh. Shamsher Singh appeared as PW 3 and produced on record his income tax return to prove that late Sh. Shamsher Singh was paid a salary of Rs.10,000/- along with Rs. 300/- per day for food. He contends that the Tribunal has erred in assessing the income of the deceased at Rs.9,000/- per month, particularly, when the sufficient material has been brought on record. On the other hand, learned counsel representing the Insurance Company contends that the minimum wages of an unskilled worker on the date of notification was Rs.7,600/- per month. He submits that the Tribunal has already granted compensation for more than the entitlement of the claimants.

7. It is not in dispute that Sh. Tarun Pal, proprietor of Paul and Logistic Gobind Colony, Rajpura while appearing as PW 3 has stated that deceased Sh.Shamsher Singh was working as a driver in his firm at the salary of Rs 10,000/- per month along with Rs. 300/- per day for food. In the absence of the evidence to the contrary, the Tribunal should have relied upon the statement of the employer, particularly when the learned counsel representing the Insurance Company has failed to impeach his credibility while cross examining him. The driving licence of Late Sh.Shamsher Singh was produced in which he was entitled to drive a heavy duty vehicle. The accident took place on 4th April, 2017. Hence, the claimants have not claimed any exaggerated amount for compensation.

8. Keeping in view the aforesaid facts, the income of the deceased is assessed at Rs. 10,000/- per month. He has left behind five dependents. Since late Sh. Shamsher Singh was entitled to additional amount of Rs. 300/- per day for food, it is considered appropriate to apply deduction of 1/5th only on account of personal expenses. Consequently, the dependency comes to Rs. 2000/- per month. Thus, his monthly income comes to Rs.8,000/-. This dependency will have to be increased by 40% keeping in consideration the age of the deceased, on account of increase in the income in future as per the judgment passed by the Supreme Court in ***'National Insurance Company Ltd. vs. Pranay Sethi and other'*** *2017 (10) SCC 450.* Similarly, Hon'ble Supreme Court in **Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others 2018 (4) RCR(Civil) 333, Smt. Sarla**

Verma and others vs. Delhi Transport Corporation and another 2009(3) RCR (Civil) 77 and New India Assurance Co. Ltd. vs. Somwati and others Civil Appeal No.3093 of 2020, decided on 07.09.2020 and United India Insurance Company Ltd. vs. Satinder Kaur @ Satwinder Kaur and others, (2020) SCC Online 410, held that widow, children and aged parents of the deceased are entitled to Rs.40,000/- each towards loss of consortium. Multiplier of 15 as applied by the Tribunal is maintained.

9. Keeping in view the aforesaid facts, the compensation is re-calculated as under:-

Compensation assessed by the Tribunal	**Compensation assessed by the High Court**
Income of the deceased Rs.9,000/- Annual income = 9000x12=1,08,000/- Multiplier = 15 108000x 15= 16,20,000/- Future prospects = 40% i.e 6,48,000/- Deduction @ 1/4th = 3,24,000/- Net income - 19,44,000/-	Income of the deceased = Rs.10,000/- Dependency = 1/5th 10000-2000 = Rs.8,000/- per month Future prospects = 40% i.e 3200/- Income = 8000+3200= 11,200 Annual Income = 11,200x12 = 1,34,400/-
	Multiplier 15 1,34,400x15 = 20,16,000/-
Loss of consortium = Rs.40,000/-	Spousal, parental and Filial consortium = 40,000/- for each claimant i.e 40,000x5 = 2,00,000/-
Funeral expenses = 15,000/-	Funeral expenses = 15,000/-
Loss of Estate = 15,000/-	Loss of Estate = 15,000/-
Total = 20,14,000/-	**Total= Rs.22,46,000/-**

10. Consequently, while dismissing the appeal filed by the Insurance Company, the award passed by the Tribunal is modified. The

enhanced amount of compensation comes to Rs.2,32,000/-. The enhanced compensation shall be payable to the claimants along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till its realisation.

11. All the pending miscellaneous applications, if any, are also disposed of.

10.08.2022 **(ANIL KSHETARPAL)**
rekha **JUDGE**
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No