105+115 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

FAO-36-2023 (O&M)

National Insurance Company Ltd. ..... Appellant

Versus

Isarail and others .... Respondents

FAO-76-2023 (O&M)

National Insurance Company Ltd. ..... Appellant

Versus

Nahim alias Savir Ali and others .... Respondents

Date of Decision: 01.02.2023

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Sandeep Suri, Advocate,
for the appellant.

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RAJBIR SEHRAWAT, J. (ORAL)

CM-340-CII-2023 in FAO-76-2023

This is an application filed under Section 5 of the Limitation Act for condoning the delay of 05 days in filing the appeal.

For the reasons mentioned in the application, the same is allowed and the delay of 05 days in filing the appeal is condoned.

FAO-36-2023 AND
FAO-76-2023 (O&M)

This shall dispose of aforesaid two appeals, i.e. FAO-36-2023 and FAO-76-2023, because both of them are arising out of the same award passed by the same Motor Accident Claims Tribunal, Karnal (in short, 'the Tribunal') relating to the same incident of motor vehicle accident. However, for the sake of brevity, the main facts are being taken from FAO-36-2023.

For the purpose of the present appeals, the parties would be referred to as they were described in the original claim petition filed before the Tribunal.

The brief facts, as involved in the present case, are that on 19.09.2019, at about 9:00 A.M., Nahim alias Savir Ali and Nadim started from Dera Brass for Karnal on motorcycle bearing No.HR05-AG-8655 of Splendor make. When they reached near Sambhili turn, one car of Ford Figo make bearing registration No.HR05-AF-4204 came from the opposite side, which was being driven by driver in a rash and negligent manner. This car hit against the motorcycle which was being driven by Nahim alias Savir Ali and on which Nadim was a pillion rider. As an impact of the accident, both the persons on a motorcycle fell down. Both of them suffered multiple injuries. Nadim succumbed to the injuries, whereas Nahim alias Savir Ali survived due to the treatment received at PGIMER, Chandigarh. Regarding this incident, an FIR No.51, dated 19.09.2019, under Sections 279, 337 and 304-A of the Indian Penal Code was also registered at Police Station Nidghu, Karnal.

Asserting these facts, two separate claim petitions were filed. One claim petition was filed by Nahim alias Savir Ali seeking compensation on account of the injuries suffered by him and the another claim petition was filed by legal heirs of deceased Nadim. The claimants in the claim petition filed on account of death of Nadim are his father, mother, wife and minor children. In the claim petitions, it was asserted that Nadim was hale and hearty young man of 23 years of age. He was working as a mechanic of Submersible motors and was earning about Rs.30,000/- per month. The claimants have been deprived of the said income, as well as, love and affection of the deceased. Hence, an amout of Rs.1,00,00,000/- along with interest was claimed. In the second claim petition, injured Nahim alias Savir Ali has asserted that he was of the age of 22 years and was working as mechanic from where he was earning Rs.20,000/- per month. After the accident, he was unable to do any work. Hence, he made a claim of Rs.50,00,000/- along with interest.

On being put to notice, respondents No.1 and 2 filed their respective written statements denying the factum of accident itself. Further it was alleged that the case has been registered against respondent No.1 in collusion with the police. Respondent No.3-Insurance Company/the present appellant filed separate written statement and denied the involvement of the vehicle in the vehicle in the accident. It was further asserted that respondent No.1 was not having a valid and effective driving licence. As an alternate plea, it was pleaded that a false petition has been filed in collusion with respondents No.1 and 2 just to extract money from the insurance company.

In the claimants' evidence, Sameem, author of the FIR, was examined as PW1, Nahim alias Savir Ali, the injured eye witness was examined as PW2. Besides this, a copy of the driving licence was also placed on record as Exhibit P1. The father of the deceased-Nadim, the claimant, appeared as PW3 and Dr. Nagpal Singh was examined as PW4, who proved the MLR. Besides this, a certified copy of the report under

Section 173 of Cr.P.C was also placed on record as Exhibit P6, along with the certified copy of the charge-sheet filed by the police as Exhibit P7. On the other hand, respondents No.1 and 2 tendered in evidence copy of driving licence as Exhibit R2 and the copy of the R.C. as Exhibit R3. Respondent No.3-Insurance Company did not examine any witness and closed the evidence only by tendering in evidence a copy of the insurance policy as Exhibit R3.

After assessing the respective assertions and the material on record, the Tribunal has awarded an amount of Rs.20,71,960/- in favour of the legal representatives of deceased-Nadim and an amount of Rs.1,38,700/- has been awarded in favour of the injured-Nahim alias Savir Ali along with interest at the rate of 9% per annum from the date of filing of the petition till actual realization. Challenging this award of compensation, the Insurance Company has come in appeal.

Arguing his case, learned counsel for the appellant-Insurance Company has raised the solitary arguments that the factum of involvement of the vehicle in question in the accident and the negligence in driving the said offending vehicle has not been proved; as such. To buttress his arguments, learned counsel for the appellant has also submitted that even the name of the driver is replaced and the name of Kulshan Mehta is brought up in the claim petition, whereas name of Sandeep was mentioned in the FIR. Learned counsel has also questioned the rate of interest to be on the higher side.

Having heard learned counsel for the appellant and having perused the case file, this Court does not find any substance in the arguments raised by the learned counsel for the appellant. It is not even in dispute that Nahim alias Savir Ali, who suffered the injuries in the accident has duly been examined as PW2 in the claim petition. Therefore, the deposition in the case is by an injured eye witness, who has categorically deposed as to the involvement of the vehicle in the accident. Nothing substantial has been extracted in cross-examination of the said witness so as to impeach the deposition as such. Therefore, his testimony cannot be brushed aside lightly. Although, learned counsel for the appellant has referred to the testimony of the said witness to highlight the aspect that after the accident, he had become unconscious, however, this fact itself is totally irrelevant; because the offending vehicle was, undisputedly, coming from the front side and not from the back side. Once, the offending vehicle was coming from the front side then the injured witness would, obviously, get to know the vehicle and its details before the accident had happened; and not after the accident. Hence, this Court does not find anything wrong in the findings recorded by the Tribunal that the offending vehicle was, in fact, involved in the accident.

The arguments of the learned counsel for the appellant-Insurance Company that the name of the driver has been replaced by the claimants is also not sustainable in law. The fact that the claimants earlier mentioned the name of one person as driver and subsequently named another person as a driver of the offending vehicle cannot be attached much importance because of the reason that the claimants would not know the name of the driver for sure. The only person, who could have deposed as to the person who was driving the said vehicle on the fateful day would have been the owner of the vehicle in question. However, the appellant-Insurance Company has not even examined the said person as a witness so as to face the cross-examination on behalf of the claimants. Neither the driver of the offending vehicle has appeared as a witness nor the owner of the vehicle has been produced as a witness. Therefore, the appellant-Insurance Company has filed to rebut the assertion made by the claimants that it was Kulshan Mehta, who was driving the offending vehicle.

Even on the aspect of the interest, this Court does not find anything worth interference because the interest rate does not appear to be so excessive as to invite special attention of the Court for setting aside the same. The Tribunal has awarded the rate of interest as considered appropriate by it, keeping in view the attending circumstances and prevalent rate of interest. There is nothing brought to the notice of this Court contrary to the said facts and circumstances. Therefore, even this argument is liable to be rejected.

In view of the above, finding no merits in the present appeals and the same are dismissed.

All pending miscellaneous application(s), if any, stands dismissed as such.

(RAJBIR SEHRAWAT)
JUDGE

01.02.2023
adhikari

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No