IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 2600 of 2002

Date of decision: 20.10.2015

Smt. China Devi and others

..... Appellants

Versus

Manoj Kumar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

1. Whether Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the digest?

PRESENT: Mr. Vinod Gupta, Advocate for the appellants.

Mr. Paul S. Saini, Advocate with
Mr. Vipul Sharma, Advocate
for respondent No. 3-Insurance Company.

RAMENDRA JAIN, J. (ORAL)

The appellants-claimants have preferred the present appeal for enhancement of compensation by modifying the impugned Award dated 24.09.2001, passed by the learned Motor Accident Claims Tribunal, Fatehabad (for short 'the Tribunal).

2. Brief facts of the case are that on 29.03.1999, the husband of appellant No. 1, father of appellants No. 2 to 4 and son of appellant No. 5, namely; Bhajan Lal aged about 30 years was driving his scooter No. HR-44-A-0447, having one Om Parkash as pillion rider on it, while going

from Fatehabad to village Banawali. He was followed by one Lilu Ram S/o Chandu Ram. When, he reached 2 Kms. ahead of Fatehabad on Bighar road, a Tata-608 bearing No. RJ-31-G-1772, driven by respondent No. 1 in a rash and negligent manner came from the left side of kacha path in a rash and negligent manner and dashed into the scooter of Bhajan Lal. As a result thereof, Bhajan Lal and his pillion rider Om Parkash fell down on the road. Respondent No. 1 dragged their scooter to some distance and thereafter, fled away from the spot. Bhajan Lal, succumbed to his multiple and grievous injuries at the spot itself. With these broad submissions, the appellants-claimants claiming themselves to be the dependents of Bhajan Lal filed claim petition under Section 166 of the Motor Vehicles Act (in short called as the "Act"), before the learned Tribunal, claiming compensation of ₹ 7,15,000/- against death of Bhajan Lal as well as damage caused to his scooter along with interest @ 24% per annum towards mental torture, harassment, financial loss etc. pleading that deceased Bhajan Lal was running a Mechanic shop and was earning ₹ 5000/-per month.

3. Upon notice, the respondents contested the claim petition. Respondents No. 1 and 2 (driver and owner of the offending Tata-608) in their joint written statement denying the negligence of respondent No. 1, pleaded that the deceased (Bhajan Lal) was solely responsible for causing the impugned accident while driving his scooter. Thus, they were not liable to make any payment of compensation. Even otherwise, the offending vehicle was insured with respondent No. 3-Insurance Company, therefore, their liability, if any, was to be satisfied by it.

Respondent No. 3-Insurance Company in its written statement also took the same stand as taken by respondents No. 1 and 2, besides that it was not liable to make any compensation, because of violation of terms and conditions of Insurance Policy by respondents No. 1 and 2.

4. The learned Tribunal after framing necessary issues and recording evidence to the satisfaction of parties, passed the impugned Award dated 24.09.2001 by awarding ₹ 3,34,500/- as compensation towards the death of Bhajan Lal along with interest @ 9% per annum from the date of filing of the claim petition till realization. Being dissatisfied, the appellants-claimants have preferred the present appeal.

5. Learned counsel for the appellants-claimant argued that the learned Tribunal has erred in taking the monthly income of deceased at ₹ 2400/- per month, because he was earning ₹ 5000/- per month as a mechanic by profession. The learned Tribunal also erred in not awarding any compensation towards loss of future prospects, loss of love and affection, loss of consortium, funeral expenses etc. In support of his contentions, learned counsel for the appellants-claimants relied upon ***(i) Santosh Devi Vs. National Insurance Company Ltd. and others, 2012 (6) SCC 421; (ii) Munna Lal Jain and another Vs. Vipin Kumar Sharma and others, 2015 (3) Recent Apex Judgments 459; (iii) Kalpanaraj and others Vs. Tamil Nadu State Transport Corporation, 2015 (2) SCC 764*** and ***(iv) Asha Verman and others Vs. Maharaj Singh and others, 2015 (2) RCR (Civil) 520.***

6. On the other hand learned counsel for respondent No. 3-Insurance Company, while relying upon judgment of Hon'ble Supreme

Court in ***Reshma Kumari and others*** ***Vs.*** ***Madan Mohan and another,*** ***2013 (9) SCC 65,*** submitted that since the deceased was not having permanent income, therefore, the appellants-claimant are not entitled to any compensation towards loss of future prospects.

7. I have given considerable thoughts to the rival submissions made by both the sides.

8. The accident took place in the year 1999 in which Bhajan Lal expired. The claimants being his legal heirs filed claim petition under Section 166 of the Act claiming compensation of ₹ 7,15,000/- i.e. ₹ 7,00,000/- on account of death of Bhajan Lal and ₹ 15,000/- on account of damage to his scooter bearing No. HR 44A 0447. The grouse of the appellants-claimant is that the learned Tribunal ought to have granted some compensation to them towards loss of future prospects and loss of love and affection etc. Learned Tribunal has also erred in not granting adequate compensation towards loss of consortium and funeral expenses.

9. The moot question to be decided is that whether the appellants-claimant are entitled to some extra compensation over and above awarded by the learned Tribunal towards future prospects, consortium, love & affection and funeral expenses.

10. To deal with the aforesaid question, judicial notice of various factors and law laid down by the Hon'ble Apex Court in ***"Sarla Verma's case (supra);*** ***Vimal Kanwar and others*** ***Vs.*** ***Kishore Dan and others,*** ***2013(2) RCR (Civil) 945;*** ***Rajesh and others*** ***Vs.*** ***Rajbir Singh and others*** ***2013(3) RCR (Civil) 170;*** ***Smt. Neeta and others*** ***Vs.*** ***The Divisional Manager, MSRTC, Kolhapur,*** ***2015(1) RCR (Civil) 625"***

have to be taken into consideration.

11. In ***Sarla Verma's case (supra),*** the Hon'ble Supreme Court has observed as under :

> "10. The question is whether actual income at the time of death should be taken as the income or whether any addition should be made by taking note of future prospects. In ***Susamma Thomas,*** this Court held that the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand (annual contribution to the dependents); and that where the deceased had a stable job, the court can take note of the prospects of the future and it will be unreasonable to estimate the loss of dependency on the actual income of the deceased at the time of death.
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> 11. In ***Susamma Thomas Case,*** this Court increased the income by nearly 100%,. In **Sarla Dixit,** the income was increased only by 50% and in ***Abati Bezbaruah*** the income was increased by a mere 7%. In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. Though the evidence may indicate a different percentage of

increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations being adopted. Where the deceased was selfemployed or was on a fixed salary (without provision for annual increments etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.

24. The assumption of the appellants that the actual future pay revisions should be taken into account for the purpose of calculating the income is not sound. As against the contention of the appellants that if the deceased had been alive, he would have earned the benefit of revised pay scales, it is equally possible that if he had not died in the accident, he might have died on account of ill health or other accident, or lost the employment or met some other calamity or disadvantage. The imponderables in life are too many. Another significant aspect is the nonexistence of such evidence at the time of accident. In this case, the accident and death occurred in the year 1988. The award was made by the Tribunal in the year 1993. The High Court decided the appeal in2007. The pendency of the claim proceedings and appeal for nearly two

<u>decades is a fortuitous circumstance and that will not entitle the appellants to rely upon the two pay revisions which took place in the course of the said two decades.</u> If the claim petition filed in 1988 had been disposed of in the year 1988-89 itself and if the appeal had been decided by the High Court in the year 1989-90, then obviously the compensation would have been decided only with reference to the scale of pay applicable at the time of death and not with reference to any future revision in pay scales. <u>If the contention urged by the claimants is accepted, it would lead to the following situation: The claimants only could rely upon the pay scales in force at the time of the accident, if they are prompt in conducting the case.</u> But if they delay the proceedings, they can rely upon the revised higher pay scales that may come into effect during such pendency. Surely, promptness cannot be punished in this manner. <u>We therefore reject the contention that the revisions in pay scale subsequent to the death and before the final hearing should be taken note of for the purpose of determining the income for calculating the compensation.</u>"

12. In ***<u>Rajesh's case (supra)</u>*** the deceased as a clerk was employed in Education Department of the State of Haryana and thus, was having a permanent job. In these circumstances, relying upon ***<u>Sarla</u>***

Verma's case (supra), 50% was added to his monthly salary.

13. Similarly, in ***Vimal Kanwar's case (supra),*** the deceased was a government servant working as Assistant Engineer with the State Government. Thus, 100% increase was added to his monthly salary to calculate the future prospects.

14. In ***Neeta's case (supra)*** the income of the deceased at ₹ 4500/- per month being 'skilled workman' as carpenter, was taken at ₹ 6000/- per month by the Hon'ble High Court to calculate the amount of compensation to be granted to their legal heirs. However, the Hon'ble Apex Court took the same as ₹ 12,000/- per moth, keeping in view the Notification issued under the "Minimum Wages Act", whereby the State of Karnataka had fixed minimum wages at such rate for the relevant period for the job of carpenter, which job falls under the category of "skilled workman".

15. However, in ***Santosh Devi's case (supra)*** deviating from ***Sarla Verma's case (supra)***, the Hon'ble Apex Court has observed as under :-

> "18. We do not think that while making the observations in the last three lines of para 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person, who is self employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30% increase in his total

> income over a period of time and if he/she becomes the victim of an accident, then the same formula deserves to be applied for calculating the amount of compensation."

16. In ***Munna Lal Jain's*** and ***Asha Verman's cases (supra)*** relied upon by learned counsel for the appellants-claimant, 50% has been added towards loss of future prospects by the Hon'ble Apex Court. Contrary to it, learned counsel for respondent No. 3-Insurance Company has relied upon ***Reshma Kumari's case (supra),*** wherein the view taken in ***Sarla Verma's case (supra)*** was approved that an addition of 50% of actual salary can be made to the income of deceased towards future prospects, where the deceased was in permanent job and was below 40 years, but no addition should be made towards future prospects, where the deceased is more than 50 years/self-employed or was on a fixed salary (without provision for annual increments etc.). In such cases, income at the time of death without any addition to income for future prospects would be appropriate.

17. In ***Munna Lal Jain's case (supra)***, the full Bench of Hon'ble Apex Court, though has discussed the judgment of ***Reshma Kumari's case (supra)*** wherein addition of something to the income of an un-employed deceased was disapproved, but, relying upon the judgment in ***Sarla Verma's case (supra)*** added 50% to the income of deceased towards future prospects. The judgment of ***Munna Lal Jain's case (supra)*** is latest being delivered on 15.05.2015 in comparison to ***Reshma Kumari's case (supra),***

18. It is needless to mention that in this era of globalization and multi-national culture, the expenditure and profits are counted on day to day basis by any employer and he acts very sharply in removing his staff etc. in case his profit reduces even for a short or temporary period. Moreover, it is always found that there is less demand of persons of more than 40 years of age, because in this era of competition, generally an employer always preferred to recruit young persons, below the age of 35 years to exploit their skill and extracting their working potential to the maximum for his earnings, which starts decreasing at the age of 40 years. Moreso, unemployment in this country has created chaos. Even graduates and post graduates are roaming idle. The fact also cannot be lost of the sight that sometimes a casual labourer does not get the job in the entire month or the entire year.

19. Now, adverting to the facts of present case in the light of above referred authorities and considering the factum of uncertainty of employment in this era of globalization and multinational culture as discussed above, I am not inclined to add anything to the monthly income of the deceased towards loss of future prospects, because, there is no definite evidence on record that deceased was a skilled workman and was or would have any permanent income in future as he was not having any diploma or educational qualification in this respect. Nothing has been brought on record to this effect. Thus, by any stretch of imagination, the deceased cannot be treated more than a casual labourer.

20. However, considering the dictum of all the above judgments and in the interest of justice, it would be appropriate to accept the claim

of the claimants of ₹ 7,15,000/- claimed by them in their claim petition in toto, to adequately compensate them under all the above heads i.e. loss of future prospects, love & affection, consortium, funeral expenses and damage to the scooter of the deceased.

21. Resultantly, the impugned award is modified and the present appeal is allowed accepting the prayer of the appellants-claimant in toto. Accordingly, the appellants-claimant are held entitled for compensation of ₹ 7,15,000/- along with interest @ 9% per annum from the date of filing of the claim petition till realization. It is needless to mention here that the amount already paid to the appellants-claimant shall be deductible from the aforesaid awarded amount.

October 20, 2015 **(RAMENDRA JAIN)**
rishu/Ashwani **JUDGE**