IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

**FAO No. 5269 of 2010 (O&M)**
Date of decision : December 10, 2015

Sunita and another .....Appellants

Versus

Hanuman and others ....Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL**

Present: Ms. Avantika Gupta, Advocate for
Mr. Naveen Bhardwaj, Advocate
for the appellants. (in FAO No. 5269 of 2010)
for respondent No. 1. (in FAO No. 1469 of 2010)

Mr. Sumit Sangwan, Advocate
for respondent No. 2. (in FAO No. 5269 of 2010)
for the appellant. (in FAO No. 1469 of 2010)

Mr. R.K. Bashamboo, Advocate
for respondent No. 3. (in FAO No. 5269 of 2010)

Mr. V. Ramswaroop, Advocate
for respondent No. 3.(in FAO No. 1469 of 2010)

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**LISA GILL, J.**

FAO Nos. 5269 of 2010 (Sunita and another versus Hanuman and others) and 1469 of 2010 (Rohtash versus Sunita and others) are taken up together for hearing as both arise out of common award dated 30.09.2009 passed by learned Motor Accident Claims Tribunal, Bhiwani (hereinafter referred to as the 'Tribunal').

FAO No. 5269 of 2010 has been preferred by the legal representatives of Balwan, who lost his life in a motor vehicle accident which took place on 21.04.2007. Appellants therein pray for enhancement of compensation awarded to them.

FAO No. 1469 of 2010 has been filed by Rohtash - owner of the offending vehicle challenging recovery rights afforded to the insurance company against him.

Briefs facts of the case, as revealed in claim petition, are that Balwan (since deceased) alongwith his father and others were proceedings to Motipura on 21.04.2007 at about 4.00 p.m. to bring Tura. All of them were sitting in the offending vehicle i.e. Tata-407 bearing registration No. RJ-109-0553. Offending vehicle was being driven by respondent No. 1 – Hanuman in a rash and negligent manner at a high speed. He was requested by the deceased and others to drive the vehicle at a slow speed but to no avail. When they reached near village Mithi at about 5.00 p.m. Hamuman lost control over the vehicle while crossing a speed breaker. Offending vehicle turned turtle and the deceased was crushed under the said vehicle. One Kuldip also sustained serious injuries in this accident. Balwan was extricated from under the vehicle and brought to CMC Hospital, Hisar where he died. FIR No. 51 dated 22.04.2007 under Sections 379A, 304A, 337 IPC was registered against respondent No. 1.

Claimants-appellants i.e. the widow and minor children of the deceased Balwan – preferred claim petition under Section 166 of Motor Vehicles Act, 1980 claiming compensation to the tune of ₹10 lakhs alongwith interest on account of death of Balwan – due to rash and negligent driving of the offending vehicle by respondent No. 1. Deceased was stated to be a milk vendor and a labourer earning ₹6000/- per month from both the sources.

Claim was resisted by the respondents. Respondent – driver/owner pleaded that offending vehicle was driven with due care and caution at moderate speed. Speed breaker was without any marking and was not visible. Despite best efforts to avoid the same, respondent-driver could not control the vehicle which overturned. Furthermore, vehicle is stated to be insured with insurance company, therefore, liability if any, is of the said respondent company.

Respondent - insurance company pleaded collusion between claimants and the said respondents. Furthermore, fundamental breach of terms and conditions of the insurance policy by respondent-owner was pleaded as the vehicle was allegedly used for a purpose other than the one it is insured for. Deceased was alleged to be travelling as a passenger in a Good carrier, therefore, insurance company sought to escape liability.

Following issues were framed by the learned Tribunal:

1. Whether the accident in question took place due to rash and negligent driving of respondent No. 1 Hanuman by driving vehicle No. RJ-10G/0553 resulting death of Balwan, if so its effect? OPP
2. If issue No. 1 is proved whether the petitioners are entitled to compensation, if so how much and from whom? OP Parties.
3. Whether the petition is not maintainable in the present form? OPR

4. Whether the insured has violated the terms and conditions of insurance policy under Section 134 (c) of the Motor Vehicles Act? OPR No. 3.
5. Whether the respondent driver was not holding a valid and effective driving license at the relevant time? OPR No. 3.
6. Relief.

Learned Tribunal on consideration of facts and circumstances of the case as well as evidence on record concluded that accident in which Balwan lost his life was caused due to rash and negligent driving of the offending vehicle by respondent No. 1 – Hanuman.

Learned Tribunal while finding no evidence of the deceased being a milk vendor assessed his income to be that of a skilled labourer as ₹3500/- per month. Deduction of ₹1200/- was effected and annual dependancy was assessed as ₹27,600/- (2300x12). Keeping in view the age of the deceased i.e. 28 years at the time of death, multiplier of 17 was applied and loss of dependancy calculated as ₹4,69,200/-. Total compensation of ₹4,74,200/- was awarded, details of which are as under:-

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|---|---|
| Loss of dependancy | ₹4,69,200/- |
| Funeral expenses | ₹ 5,000/- |
| Total | ₹4,74,200/- |

Learned counsel for the claimants-appellants in FAO No. 5269 of 2010 argues that an extremely meagre amount has been awarded by the learned Tribunal. No compensation has been awarded on account of loss of future prospects, loss of consortium, loss of love and affection. Petty sum has been awarded towards funeral expenses. Learned counsel relies upon judgments of the Hon'ble Supreme Court in ***Rajesh and others versus Rajbir Singh and others*** 2013 (3) RCR (Civil) 170, ***Vimal Kanwar versus Kishore Dan and others*** (2013) 7 SCC 476 and ***Munna Lal Jain v. Vipin Kumar Sharma***, *(2015) 6 SCC 347.*

Learned counsel for the respondents refute the above said contentions and submit that just compensation has been awarded and there is no scope for any further enhancement.

I have heard learned counsel for the appellants and gone through the record.

Though learned counsel for the appellant/claimants seeks to urge that deceased was earning much more than ₹3,500/- per month, there is no evidence on record to prove the same. Thus, there is no infirmity in respect to the finding of the learned Tribunal in assessment of income of the deceased to be ₹3,500/- per month.

Contention of learned counsel for the appellants is that the deceased was aged 25 and not 28 years at the time of accident as has been held by the Tribunal. Reference is made to Ex. P3, ration card of the deceased as well as his wife, where his age is mentioned as 24 years as on 13.09.2005. Accident in question admittedly took place in the year 2007. Thus, even if reliance is placed on the said document, age of the deceased would be approximately 27 years. Therefore, age of the deceased has rightly been taken as 28 years by the learned Tribunal on the basis of Post Mortem Report.

Learned counsel for the appellants further submits that deceased was a young man aged 28 years, loss of future prospectus should also be awarded. Respondents have submitted that no such award can be made as deceased was not a public servant neither employed in permanent job. He was not having steady income. Therefore in such cases, this component of loss of future prospects should not be considered. Reference is made to order dated 02.07.2014 **SLP (c) No. 1673 of 2015** titled **National Insurance Company versus Pushpa and others** to argue that the matter regarding addition in income on account of future prospects in respect of self employed/privately employed persons stands referred to a larger bench by the Hon'ble Supreme Court. Therefore, award of compensation on account of loss of future prospects is unjustified.

In respect to the question of award of compensation on account of future prospects, it is not denied that the Hon'ble Supreme Court has specifically held in the case of **Rajesh v. Rajbir's case** (supra) as well as **Munna Lal Jain's** case (supra) that there should be an addition in the income on account of loss of future prospects as per the age of the deceased even in cases of self-employed/privately employed persons. Though a reference is made to order dated 02.07.2014 of the Hon'ble Supreme Court in SLP CC No.8058 of 2014 (National Insurance Company Ltd. v. Pushpa and others) to submit that the matter in respect to addition in income on account of future prospects of self-employed persons etc. stands referred to a larger Bench, it is not disputed that operation of the decision in the case of **Rajesh v. Rajbir's** (supra) has not been stayed. Decision in **Munna Lal Jain's** case (supra) has been rendered subsequent to the reference. Therefore, there is no illegality or infirmity in award of compensation in this respect. Thus, keeping in view the judgments of Hon'ble Supreme Court in Rajesh v. Rajbir's case (supra) and Munna Lal Jain's case (supra), he is entitled to addition in income on account of future prospects. As the deceased was 28 years of age at the time of the accident, an addition of 50% has to be afforded on account of loss of future prospects.

Therefore, addition of 50% (i.e., ₹1,750/-) on account of future prospects is made on account of future prospects is made in terms of Rajesh v. Rajbir's case (supra) and Munna Lal Jain's case (supra), rendering the income of deceased as ₹5,250/- (3500+1750) per month and the amount is calculated as ₹63,000 (₹5,250x12) per annum. Deduction of 1/3$^{rd}$ i.e., ₹21,000/- is made towards personal expenses keeping in view the number of dependants. Thus, the annual dependancy of the claimants is assessed as ₹42,000/- (63,000-21,000). Multiplier of 17 has been correctly applied. Thus, loss of dependancy is calculated as ₹7,14,000/- (42,000x17).

As per judgments of Hon'ble Supreme Court in ***Rajesh's*** case (supra) and ***Munna Lal Jain's*** case (supra), ₹1,00,000/- is awarded to widow on account of loss of consortium, ₹1,00,000/- for loss of love and affection for the minor child. A sum of ₹5,000/- awarded on account of funeral expenses is enhanced to ₹25,000/- Claimants are, thus, entitled to total compensation of ₹9,39,000/- detailed as under:-

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|---|---|
| Loss of dependancy | ₹7,14,000/- |
| Loss of consortium | ₹1,00,000/- |
| Loss of love and affection | ₹1,00,000/- |
| Funeral expenses | ₹ 25,000/- |
| Total | ₹9,39,000/- |

Compensation already awarded to the claimants by the Tribunal shall stand deducted from the amount as detailed above. Claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of petition till realization.

FAO No.1469 of 2010

Learned counsel for the appellant – Rohtash in FAO No. 1469 of 2010 vehemently argues that offending vehicle is admittedly a goods carrier. Evidence on record does not support the finding of the learned Tribunal that deceased was travelling as gratuitous passenger. It is proved on record that deceased Balwan had hired the offending vehicle to transport Chaff (Tura). Necessary equipment/instruments to bring the same were found present in the offending vehicle. Deceased alongwith other was proceedings towards Motipur to load chaff in vehicle and bring it to his residence. Insurance company has not led any evidence to show that there is violation of terms and conditions of insurance policy which entitles it to recover the compensation amount from the owner.

Learned counsel for insurance company on the contrary submits that there is no ground whatsoever to interfere in the above said finding of the learned Tribunal. Right to recover said amount has been rightly afforded to the insurance company. It is admitted that deceased was neither owner nor employee of the owner, therefore, not covered under the insurance company. It is further argued with much vehemence that even if it is accepted that deceased was proceeding to load goods, said goods had not yet been loaded on to the said vehicle, therefore, no liability can be imposed upon the insurance company. Reliance is placed on judgment of Division Bench of this Court in ***National Insurance Company Limited versus Phool Singh and another 2007 (2) R.C.R. (Civil) 288*** as well as judgment of Hon'ble Supreme Court of ***New India Assurance Company Limited versus Vedwati and others***.

Perusal of testimony of PW1 Rohtash clearly reveals that vehicle in question was hired by deceased Balwan to transport Chaff from village Motipur to his own village Bud Shaili, Tehsil Siwani. PW2 has also stated that deceased was proceeding to village Motipur to transport Chaff to his own village for domestic purpose. There is no evidence on record brought forth by the insurance company to suggest anything to the contrary. Equipment for loading and unloading the chaff was found in the vehicle.

It has been held by the Division Bench of this Court in ***National Insurance Company Limited versus Smt. Urmila and others 2006 (2) RCR (Civil) 268*** that if the owner of the goods were returning back to his destination in the same vehicle after selling the goods, he cannot termed to be an unauthorised/gratuitous passengers in the insured vehicle. Division Bench in ***Phool Singh's*** case (supra) cited by learned counsel for the respondent/insurance company specifically held that the phrase “any person” occurring in Section 147 of the Act would not cover all persons who are travelling in a goods carriage in any capacity but would certainly include the owner of goods or his authorised representatives. Reliance was placed on judgment of Hon'ble Supreme Court in ***Parmod Kumar Aggarwal versus Mushtari Begum 2004 (4) RCR (Civil) 239 (SC)***.

In the present case, evidence on record indicates the deceased to be proceeding to village Motipur for transportation of chaff. Simply because accident took place when he was on the way to load chaff, it cannot be held that he was a gratuitous passenger, therefore, entitling the insurance company to escape liability.

In view of the above, said finding of learned Tribunal is set aside. Insurance company is held liable to make good the compensation and is not entitled to recover the amount from the owner.

In view of above, FAO No. 1469 of 2010 is allowed.

FAO No. 5269 is disposed of with modification in the quantum of compensation as reworked above.

**(Lisa Gill)**
**Judge**

December 10, 2015
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