

FAO Nos. 1125, 1545 of 2012 and 2610 of 2013 (O/M)

-1-

203 (3)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 1.4.2015

FAO No. 1125 of 2012 (O/M)

Smt. Anita Devi and others

..... Appellants

Versus

Sh. Surat Ram and others

..... Respondents

FAO No. 1545 of 2012 (O/M)

The New India Assurance Company Ltd.

..... Appellant

Versus

Smt. Anita Devi and others

..... Respondents

FAO No. 2610 of 2013 (O/M)

Smt. Krishna Devi Soni

..... Appellant

Versus

The New India Assurance Company Ltd. and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Ashwani Arora, Advocate, for the appellants
in FAO No. 1125 of 2012 and
for respondents No. 1 to 5 in FAO No. 1545 of 2012 and
for respondents No. 2 to 5 in FAO No. 2610 of 2013.

Mr. R.C. Gupta, Advocate, for the appellant
in FAO No. 1545 of 2012 and
for respondent No. 3 in FAO Nos. 1125 of 2012 and
for respondent No. 1 in FAO No. 2610 of 2013.

Mr. Akshay Jindal, Advocate, for,
Mr. Arun Yadav, Advocate, for the appellants
in FAO No. 2610 of 2013 and
for respondents No. 6 and 7 in 1545 of 2012 and
for respondents No. 1 and 2 in FAO No. 1125 of 2012.

FAO Nos. 1125, 1545 of 2012 and 2610 of 2013 (O/M)

-2-

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

-. -

-. -

KULDIP SINGH, J. (ORAL)

By this judgment, I will dispose of FAO No. 1125 of 2012 titled as Smt. Anita Devi and others Versus Sh. Surat Ram and others, FAO No. 1545 of 2012 titled as The New India Assurance Company Ltd. Versus Smt. Anita Devi and others and FAO No. 2610 of 2013 Smt. Krishna Devi Versus The New India Assurance Company Ltd. and others, arising out of the same award dated 14.12.2011, passed by the Motor Accident Claims Tribunal, Grugaon (in short 'the Tribunal'). FAO No. 1125 of 2012 has been filed by the claimants for enhancement of compensation, whereas FAO No. 1545 of 2012 has been filed by the New India Assurance Company Limited and FAO No. 2610 of 2013 has been filed by the owner Krishan Devi Soni, challenging the award of the Tribunal, vide which the recovery rights have been granted to the insurance company.

On the last date of hearing, last opportunity was granted to the parties to address the arguments and it was ordered that no adjournment shall be entertained and the arguments shall be heard. Despite this, Mr. Arun Yadav, learned counsel for the owner (in FAO No. 2610 of 2013) has not put in appearance and rather the proxy

FAO Nos. 1125, 1545 of 2012 and 2610 of 2013 (O/M)

-3-

counsel has informed this Court that he is out of station. It being so, in his absence, the matter is ordered to be considered on merit and decided.

The facts of the case are that on 20.10.2010, at about 9:15 PM, Lance Naik Bhupinder Singh was going from Manesar to National Security Guard Camp (NSG) alongwith Jasvinder Singh and Sanjiv Singh. They were walking on the extreme left side of the road a little ahead from Bishandass temple. In the meanwhile, a trolly No. RJ-09-GA-2600 came from behind at a fast speed and hit Bhupinder Singh. As a result, Bhupinder Singh fell down and received serious injuries. He was taken to General Hospital, Gurgaon, where he succumbed to his injuries. FIR No. 272 dated 21.10.2010 under Sections 279, 304-A IPC was registered at Police Station Manesar, District Kurukshetra. It is stated that Bhupinder Singh was 31 years of age. He was employed as a Lance Naik, Support Weapon Squadron in NSG Commando, Manesar and was earning Rs. 30,000/- per month.

Before the Tribunal, respondents No. 1 and 2, the driver and the owner, namely, Surat Ram and Krishna Devi Soni respectively, did not appear and they were proceeded against ex-parte, vide order dated 16.7.2011. Later on, on 4.8.2011, they appeared and were allowed to contest the claim petition. However,

they did not file written statement.

On pleading of the parties, following issues were framed :-

1. Whether the accident had taken place due to rash and negligent driving of vehicle No. RJ-09-GA-2600 by respondent No.1 resulting into death of Bhupinder Singh as alleged ? OPP
2. If issue No. 1 is proved, to what amount of compensation the petitioners are entitled to and from whom ? OPP
3. Whether the claim petition is liable to be dismissed on the ground taken by respondent No. 3 in its written statement ? OPR
4. Relief.

On the basis of the last pay drawn certificate (Ex.P14), the income of the deceased was determined to be Rs. 25,295/- per month. 1/3rd was deducted as personal expenses and the dependency of the claimants was taken to be Rs. 16,862/- per month. Keeping in view the age of the deceased and claimants, multiplier of 7 was applied. Rs. 5,000/- on account of loss of consortium, Rs. 2,000/- as transportation charges and Rs. 2,000/- as funeral expenses were allowed. In this way, a total compensation of Rs. 14,25,408/- was allowed with interest @ 6% per annum.

The Tribunal further observed that as per the verification report of driving licence No. RJ06/DLC/A/08/3389, issued on 18.9.2008, the said licence is found to be fake. Hence, the recovery rights were given to the insurance company. The shares of the claimants were also ordered to be deposited in a fixed deposit in the Indian Post Office or Nationalized Bank for a period of five years or till the date of their attaining majority, whichever is later.

I have heard learned counsel for the claimants/appellants, learned counsel for the insurance company, learned counsel for the owner of the offending trolly and have also carefully gone through the file.

First of all, I will take up the case of the appellants/claimants i.e. FAO No. 1125 of 2012.

Learned counsel for the claimants/appellants has vehemently argued that in this case though, the Tribunal took note of the contention of the learned counsel for the claimants that addition on account of future prospects should be made, but while recording the findings, no mention was made regarding the same. The deceased was a Commando in National Security Guards. He was a salaried person. Therefore, as per the authority of the Hon'ble Supreme Court in Sarla Verma Versus Delhi Transport Corporation, 2009 (3) RCR (Civil) 77, 50% addition is to be made in his income.

FAO Nos. 1125, 1545 of 2012 and 2610 of 2013 (O/M)

-6-

Therefore, the income will come to Rs. 37,942.50, say Rs. 37,942/- per month. Out of the same, 1/3rd is deducted as personal expenses i.e. Rs. 12,647/-. The dependency of the claimants comes to Rs. 25,295/-.

The question as to whether the age of the deceased should be taken into account for the purpose of determining the multiplier or the age of the claimants/parents should be seen, was considered by this Court in FAO No. 429 of 2013 titled as United India Insurance Company Limited Versus Seema and others and FAO No. 430 of 2013 titled as United India Insurance Company Limited Versus Savitri Devi and others, (decided on 19.3.2015) and after considering the law point, it was held as under :-

“ For this purpose, reliance has been placed on the authority of the Apex Court in New India Assurance Company Ltd. Versus Smt. Shanti Pathak and others, 2007 (3) RCR (Civil) 593. The question as to whether the multiplier on the basis of age of the deceased or the age of the parents of the deceased should be applied was considered by Two-Judges Bench of the Hon'ble Supreme Court in Sarla Verma's case (supra). The matter was considered in 2013 by a Larger Bench, consisting of Three-Judges in Reshma Kumari and others Versus Madan Mohan and another, (2013) 9 Supreme Court Cases 65. A Three-Judges Bench

of the Apex Court approved the principles laid down in Sarla Verma's case (supra). The Hon'ble Supreme Court considered the compensation to be determined under Sections 163-A and 166, 2nd Schedule of the Motor Vehicle Act, 1988 and on the basis of proved negligence, noted certain discrepancies. The Apex Court observed as under :-

“31. Section 168 of the 1988 Act provides the guideline that the amount of compensation shall be awarded by the Claims Tribunal which appears to it to be just. The expression, “just” means that the amount so determined is fair, reasonable and equitable by accepted legal standards and not a forensic lottery. Obviously “just compensation” does not mean “perfect” or “absolute” compensation. The just compensation principle requires examination of the particular situation obtaining uniquely in an individual case.”

The Apex Court went on to observe further as under :-

“35. We have already noticed the Table prepared in *Sarla Verma* for the selection of multiplier. The Table has been prepared in *Sarla Verma* having regard to the three decisions of this Court, namely, *Susamma Thomas*, *Trilok Chandra* and *Charlie* for the claims made under Section 166 of the 1988 Act. The Court said that multiplier shown in Column (4) of the Table must be used having regard to the age of the deceased. Perhaps the biggest advantage by employing the Table prepared in *Sarla Verma* is that the uniformity and consistency in selection of the multiplier can be achieved. The assessment of extent of dependency depends on

examination of the unique situation of the individual case. Valuing the dependency or the multiplicand is to some extent an arithmetical exercise. The multiplicand is normally based on the net annual value of the dependency on the date of the deceased's death. Once the net annual loss (multiplicand) is assessed, taking into account the age of the deceased, such amount is to be multiplied by a "multiplier" to arrive at the loss of dependency.

36. In *Sarla Verma*, this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section 166. It has been rightly stated in *Sarla Verma* that claimants in case of death claim for the purposes of compensation must establish (a) age of the deceased; (b) income of the deceased; and (c) the number of dependents. To arrive at the loss of dependency, the Tribunal must consider (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in *Sarla Verma*.

37. We do accordingly. If for the selection of multiplier, Column (4) of the Table in *Sarla Verma* is followed, there is no likelihood of the claimants who have chosen to apply under Section 166 being awarded lesser amount on proof of negligence on the part of the driver of the motor vehicle than those who prefer to apply under Section 163-A. As regards the cases where the age of the victim happens to be upto 15 years, we are of the considered opinion that in such cases irrespective of Section 163-A or Section 166

under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the Table in *Sarla Verma* should be followed. This is to ensure that claimants in such cases are not awarded lesser amount when the application is made under Section 166 of the 1988 Act. In all other cases of death where the application has been made under Section 166, the multiplier as indicated in Column (4) of the Table in *Sarla Verma* should be followed.”

Therefore, the selection of multiplier as mentioned in column No. 4 in the case of *Sarla Verma's* case (supra) is to be followed. The same was followed by a Two-Judges Bench in *M. Mansoor and another Versus United India Insurance Co. Ltd.*, 2013 (4) RCR (Civil) 729. The Apex Court reiterated as under :-

“16. In the decision in *Sarla Verma* case (supra), this Court held that the multiplier to be used should be as mentioned in column (4) of the table of the said judgment which starts with an operative multiplier of 18. As the age of the deceased at the time of the death was 24 years, the multiplier of 18 ought to have been applied. The Tribunal taking into consideration the age of the deceased wrongly applied the multiplier of 17 and the High Court committed a serious error by bring it down to the multiplier of 12.”

In case of age of a bachelor, the multiplier, as per his age is to be applied as per column No. 4 of the table given in *Sarla Verma's* case (supra). The Tribunal has already applied the said principle, which was the correct approach in this case.

Therefore, the contention of the insurance company that the multiplier, as per age of the parents of the deceased, should have been applied, stands negated.”

In any case, it is to be seen that the age of the widow of the deceased was 28 years and age of minor claimants was 4½ and 2 years at the time of filing the claim petition before the Tribunal. Even in that case, the maximum multiplier of 18 is to be applied. However, if the age of the deceased is considered, the multiplier of 16 is to be applied. The Tribunal gravely erred in considering the age of the parents of the deceased by applying the multiplier of 7. Therefore, I am of the view that in this case, the multiplier of 16 is to be applied as per age of deceased. The amount of compensation thus comes to Rs. 25,295/-x12-x16=Rs. 48,56,640/-. The Tribunal also gravely erred in granting Rs. 5,000/- for loss of consortium, Rs. 2,000/- as transportation charges and Rs. 2,000/- as funeral expenses, which is contrary to the authority of Sarla Verma's case (supra). Therefore, a sum of Rs. 1,00,000/- for loss of consortium, Rs. 1,00,000/- to the minor children for loss of love and affection and guidance of the father, Rs. 25,000/- for funeral and last rites and Rs. 50,000/- to the father and mother of the deceased for loss of love and affection of their son are allowed. The amount of enhanced compensation thus comes to Rs. 51,31,640/-. The same is allowed.

FAO Nos. 1125, 1545 of 2012 and 2610 of 2013 (O/M)

-11-

In place of interest @ 6% per annum, interest @ 7.5% per annum is allowed from the date of filing the claim petition till its realization. Out of the compensation, Rs. 4,75,000/- are allowed to the mother/claimant No. 4, whereas Rs. 25,000/- are allowed to the father/claimant No. 5 on account of love and affection to their son. Out of the remaining part of the amount i.e. Rs. 46,31,640/-, 50% i.e. Rs. 23,15,820/- shall go to the widow of the deceased Anita Devi/claimant No. 1, who is to run day-to-day affairs of the family and meet the family responsibilities after the death of her husband. Remaining 50% of the compensation amount i.e. Rs. 23,15,820/- shall go to the minor children of the deceased. The shares of the minor children shall be invested in long term FDR with the nationalized bank of the choice of their mother after recording their date of birth in the FDR and on becoming major, the amount shall be disbursed to them without any further order from the Court. The amount of compensation shall be directly disbursed by depositing the same in the bank accounts of the widow/parents/minor children of the deceased, to be furnished before the insurance company or the Tribunal, as the case may be.

The liability of the owner of the offending vehicle was held on the ground that she failed to defend the case and that the copy of the licence produced by her was found to be fake. Before

this Court, the owner has filed an application being CM No. 12003-CII of 2013 in FAO No. 2610 of 2013 for placing on record Annexures-A-1 to A-3 as additional evidence, which are true photocopy of the driving licence, bearing last 4 digits 3399, in place of 3389, issued in the name of Surat Ram, driver. The true photocopies of the route permit and the fitness certificate were also sought to be produced.

The learned counsel for the insurance company opposed the application on the ground that since no written statement was filed, despite the fact that the owner and the driver joined the proceedings. Therefore, the additional evidence cannot be allowed.

I am of the view that the Courts exists to do the justice. If it is found that the insurance company got verified the wrong licence, then additional evidence must be allowed. This Court, vide order dated 1.5.2014, passed in CM No. 12003-CII of 2013 in FAO No. 2610 of 2013, directed the insurance company to verify the licence (Ex.A1,) produced by the appellant/owner.

The learned counsel for the insurance company has today stated at bar that the licence No. RJ06/DLC/A/08/3399 (Annexure-A-1) is found to be genuine and valid licence. Therefore, it comes out that since the insurance company had not got verified the licence, misreading wrong number of licence on the photocopy,

the error had occurred. Since the current driving licence is found to be genuine and the offending vehicle was also having valid route permit and fitness certificate, therefore, the insurance company is not entitled to recovery rights and is held liable to reimburse the insured for compensation awarded by this Court. However, since the owner/appellant deliberately did not appear and was proceeded against ex-parte and even did not file the written statement, therefore, from 16.7.2011 when they were proceeded against ex-parte till the filing of this appeal on 11.3.2013, the interest on the awarded amount shall be paid by the owner and driver of the offending vehicle jointly. FAO No. 2610 of 2013, filed by the owner is accordingly allowed to the above-noted extent.

While pressing his appeal, the learned counsel for the insurance company has argued that there is no liability of the insurance company to pay the amount. However, since the negligence of the driver is proved and the driver of the offending vehicle was having valid licence and the documents of the offending vehicle were genuine, therefore, the liability of the insurance company is there. However, as ordered earlier, the owner shall be entitled to pay interest on the awarded amount from 16.7.2011 to 11.3.2013. The appeal of the insurance company i.e. FAO No. 2610 of 2013 is allowed to that extent.

FAO Nos. 1125, 1545 of 2012 and 2610 of 2013 (O/M)

-14-

In view of the foregoing discussion, FAO No. 1125 of 2012, filed by the claimants/appellants is allowed and FAO No. 2610 of 2013, filed by the owner/appellant is also allowed, whereas FAO No 1545 of 2012, filed by the insurance company is partly allowed to the abovenoted extent.

(KULDIP SINGH)
JUDGE

1.4.2015
sjks