IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4124-2012 (O&M)
Date of decision: 9.12.2015

Murti Devi and another

....Claimants-Appellants

Versus

Sanjay Kumar and others

...Respondents

FAO-4532-2012 (O&M)
Date of decision: 9.12.2015

Reliance General Insurance Co. Ltd.

...Insurer-Appellant

Versus

Murti Devi and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Arun Yadav, Advocate for the claimants.

Mr.Arun Sharma, Advocate for
Mr.TK Joshi, Advocate
for the Insurance Co.

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SNEH PRASHAR, J.

This judgment shall dispose of FAO-4124-2012 filed by the claimants and FAO-4532-2012 filed by the Insurance Company. Both these appeals have arisen from the award dated 19.4.2012 passed by learned Motor Accident Claims Tribunal, Rewari (for short 'the Tribunal') vide which compensation to the tune of Rs.7,63, 120/- was awarded to the claimants on account of death of Ram Pal in a vehicular accident.

The facts garnered from the record are as under:-

On 10.4.2010 at about 12.15 AM, Ram Pal was going to village Pranpur on a motorcycle as a pillion rider. After the motorcycle crossed NH-8 at Naichana cut near Rudh flyover, a tanker bearing registration No.HR-69-2521 (hereinafter referred to as “the tanker”) being driven by Sanjay Kumar in a rash and zig zag manner came from the side of Delhi and hit on the back portion of the motorcycle as a result of which, Ram Pal fell down on the road and the tanker crossed over him. Due to the injuries sustained in the accident Ram Pal died on the spot and the driver of the tanker sped away. The people sitting near tea kiosk at village Mohammadpur and Kalrawas witnessed the accident. A First Information Report No. 63 dated 10.4.2010, under Section 279/304-A of the Indian Penal Code was registered at Police Station Bawal against Sanjay Kumar, driver of the offending tanker in respect of the accident in question.

Parents and sisters of the deceased filed a petition under Section 166 of the Motor Vehicles Act, 1988 (for short “the Act of 1988”) claiming compensation on account of untimely death of Ram Pal during the vehicular accident.

Driver and owner namely Sanjay Kumar and M/s Triveni Corporation respectively appeared and contested the petition. In the written reply filed by them, they denied the factum of accident as well as involvement of the offending tanker in the accident as alleged by the claimants. According to them a false and fictitious criminal case in respect of the accident was registered only to grab the money from them.

The insurer of the tanker i.e. Reliance General Insurance Company filed a separate written reply taking preliminary objection with regard to maintainability of the petition. It alleged false involvement of the offending tanker in collusion with the police in order to extract compensation.

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

> *"1 Whether Ram Pal son of Shri Babu Lal died in a motor vehicle accident occurred on 10.4.2010 due to rash and negligent driving of the offending vehicle bearing registration No.HR-69-2521 by its driver respondent No.1?OPP*
> *2. Whether the petitioners are entitled to compensation, if so to what amount and from whom?OPP.*
> *3. Whether the respondent No.1 was not holding a valid and effective driving licence at the time of alleged accident?OPR*
> *4. Relief."*

Both the parties adduced their oral as well as documentary evidence.

Coming to the conclusion that the accident in question occurred due to rash and negligent driving of the offending tanker by Sanjay Kumar, which resulted into death of Ram Pal, learned Tribunal decided issue no.1 in favour of the claimants. An amount of Rs.7,63,120/- was awarded as compensation to the parents of the deceased and issue No.2 was accordingly resolved. Issue No.3 was not pressed by the Insurance Company, thus, the same was decided against it.

Being aggrieved by the award dated 19.4.2012 passed by learned Tribunal, claimants filed FAO-4124-2012 and the Insurance Company filed separate FAO-4532-2012.

The submissions made by learned counsel for the parties have been heard and the record perused.

Learned counsel for the Insurance Company submitted that the deceased was treated as unskilled worker by the Tribunal and his income was assessed as Rs.5230/- per month, which is contrary to the minimum wages notified by the Haryana State vide Notification dated 6.6.2011. He also asserted that the deceased was a bachelor at the time of his death, therefore, 1/2 deduction of the income of the deceased should have been made on account of his personal expenses, whereas learned Tribunal has made 1/3rd deduction. Further, relying on **Shakti Devi Vs. The New India**

Insurance Co. Ltd. & Anr., 2010(4) RCR (Civil) 950, he contended that the multiplier should have been applied according to the age of the parents and not to the age of the deceased as done by learned Tribunal.

On the other hand, controverting the submissions made by learned counsel for the Insurance Company, learned counsel for the claimants submitted that the deceased was working as a Trainee with NGO Mamta Health Institute for Mother and Child, New Delhi and was earning a sum of Rs.10,500/- per month, however, learned Tribunal gravely erred in treating him as an unskilled worker and by assessing his income as Rs.5230/- per month. He further submitted that no amount has been awarded on account of loss of future prospects and loss of love and affection to the parents.

There is no dispute regarding accidental death of Ram Pal. He was 23 years aged and was unmarried at the time of his death. As per the claimants, the deceased had received an appointment letter and his half pay was fixed as Rs.10,500+ other benefits per month during the training period. However, no substantive evidence could be led by them to prove the income / earnings of the deceased. As such, the income of the deceased assessed as Rs.5230/- per month by the Tribunal calls for no interference.

Perusal of Award reveals that no amount has been awarded on account of loss of future prospects. Accordingly, relying upon **Rajesh and others vs. Rajbir Singh and others (2013) 9 SCC 54,** addition in income with regard to future prospects is allowed to the extent of 50%.

There is no force in the argument of learned counsel for the Insurance Company that the multiplier according to the age of the parents should be applied. In **Reshma Kumari and others vs. Madan Mohan and another 2013(2) RCR (Civil) 660**, Full Bench of Hon'ble Supreme Court has held as under:-

> 33. 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. 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 dependants. 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.

In the end, the conclusions were drawn as under:-

"In what we have discussed above, we sum up our conclusions as follows:

(i) In the applications for compensation made under Section 166 of the 1988 Act in death cases where the age of the deceased is 15 years and above, the Claims

Tribunals shall select the multiplier as indicated in Column (4) of the table prepared in Sarla Verma read with para 42 of that judgment.

(ii) In cases where the age of the deceased is upto 15 years, irrespective of the Section 166 or Section 163A 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.

(iii) As a result of the above, while considering the claim applications made under Section 166 in death cases where the age of the deceased is above 15 years, there is no necessity for the Claims Tribunals to seek guidance or for placing reliance on the Second Schedule in the 1988 Act.

(iv) The Claims Tribunals shall follow the steps and guidelines stated in para 19 of Sarla Verma for determination of compensation in cases of death.

(v) While making addition to income for future prospects, the Tribunals shall follow paragraph 24 of the Judgment in Sarla Verma.

(vi) Insofar as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards prescribed in paragraphs 30, 31 and 32 of the judgment in Sarla Verma subject to the observations made by us in para 38 above.

(vii) The above propositions mutatis mutandis shall apply to all pending matters where above aspects are under consideration.”

A similar view has been taken by Hon'ble Supreme Court in **Amrit Bhanu Shali and others vs. National Insurance Co. Ltd. and others 2012 ACJ 2002.** In **Munna Lal Jain and anr. vs. Vipin Kumar Sharma and others (2015) 6 SCC 347** following Reshma Kumari's case it has been held as under:-

> “The remaining question is only on multiplier. The High Court following **Santosh Devi (supra)**, has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependants or that of the deceased, has been hanging fire for sometime; but that has been given a quietus by another three-Judge Bench decision in **Reshma Kumari (supra).** It was held that the multiplier is to be used with reference to the age of the deceased. One reason appears to be that there is certainty with regard to the age of the deceased but as far as that of dependants is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average, etc., is to be taken.”

Reverting to the instant case, the deceased was 23 years of age and was unmarried at the time of occurrence. The Act of 1988, being a beneficial legislation, this Court relies on **Reshma Kumari's case (supra)**, which is subsequent to the case law cited by learned counsel for the Insurance Company i.e. **Shakti Devi's**

case (supra). Thus, multiplier of 18 applied by learned Tribunal according to the age of the deceased is upheld.

In the light of the observations of Hon'ble Apex Court in **Amrit Bhanu Shali and others' case (supra)**, there is merit in the argument of learned counsel for the Insurance Company that the deceased being bachelor, the deduction towards his personal expenses out of his income should be to the extent of 50%.

As is apparent from the award, no amount has been awarded to the parents towards loss of love and affection. The untimely death of of the deceased was a great shock to the parents, therefore, a sum of Rs.25,000/- is allowed on account of loss of love and affection and also the amount of funeral expenses is enhanced from Rs.5000 to Rs.25,000/-. The claimants-sisters, who cannot be said to be dependents upon the deceased, have already been held not entitled for compensation by learned Tribunal and the said finding is upheld.

Accordingly, the total compensation comes to Rs.8,97,260/- i.e. Rs.5230 (monthly income) + 50% (future prospects) - 1/2 (deduction towards personal expenses of the deceased) x 12 x 18 (multiplier) + Rs.25000 (loss of love and affection including loss of estate already awarded) + Rs.25,000 (including funeral expenses already awarded). The enhanced compensation of Rs.1,34,140/- (8,97,260- 7,63,120/- already awarded) shall be paid to claimants, parents of the deceased in equal shares, within a period of 45 days from the date of the receipt of the certified copy of the judgment, failing which, the same shall carry interest @ 7.5% per annum from the date of the filing of the appeal till its realisation.

Resultantly, both the appeals are disposed of and the impugned Award is modified to the above extent.

9.12.2015 **(SNEH PRASHAR)**
gsv **JUDGE**