IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1651 of 2013 (O&M)
Date of decision 17.03. 2015.

Subhash Chander

...... Appellant.

versus

Anil Kumar and others

...... Respondents.

FAO No. 1652 of 2013

Subhash Chander and another

...... Appellants.

versus

Anil Kumar and others

...... Respondents.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? Yes
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present : Shri S.S.Shekhawat Advocate for the appellants, in both appeals.
Shri R.N.Singal, Advocate for respondent No.4-Insurance Company, in both appeals.

K.C.PURI, J.

By this common judgment I intend to dispose of FAO No. 1651 of 2013 titled as Subhash Chander versus Anil Kumar and others and FAO No. 1652 of 2013 titled as Subhash Chander and others versus Anil Kumar and others as both these appeals have arisen out of the one incident and award. For convenience, facts are being taken from FAO No. 1651 of 2013.

2. Appellants have directed the aforesaid appeals against the Award dated 11.10.2012 passed by Shri Kamal Kant, Motor Accident Claims Tribunal, Rohtak vide which claim petition preferred by the claimants were allowed with costs and the claimants were awarded compensation of Rs.8,15,000/- and Rs.2,40,000/- respectively. The prayer for enhancement of compensation has been made in these two appeals.

3. Claimants have preferred petitions under Section 166 of Motor Vehicles Act (in short - the Act) as aforesaid.

4. Briefly the case of the claimants is that on 4.2.2011 Gitanjali @ Anjali along with her mother Mithilesh were coming from Rohtak city to her home while sitting as pillion rider on scooty No.HR-12N-4915 while Mithilesh was driving the said scooty. At about 5.30p.m., when they reached near Mahendra Model School, Sonepat Road, Rohtak, in the meantime, a truck bearing registration No.HR-55G-7821 came from Rohtak city side being driven by its driver rashly, negligently and at a high speed without following the traffic rules and took a sudden turn towards Suncity Bye-pass without giving any indicator and struck the side of the offending vehicle into the scooty of Mithilesh and caused the accident. Due to the impact Mithilesh and Gitanjali fell down on the road along with scooty and sustained serious and grievous multiple injuries on their persons. Mithilesh and Gitanjali were taken to PGIMS, Rohtak after arranging some private vehicle but Mithilesh died in the way to hospital and Gitanjali died during

the treatment at PGIMS, Rohtak in morning hours of 5.2.2011. The driver of the offending vehicle fled away from the spot after leaving the offending vehicle at the spot. The accident was witnessed by Subhash father of Gitanjali and uncle Surender Singh, who were standing on the side in waiting for auto rickshaw for Surender Singh. Mithilesh deceased was aged about 38 years and was running a beauty parlour and was earning Rs.15,000/- per month. She was having sound health and physique. She was contributing all her earning for the family. Whole of the family was depended upon her for every aspect of life. Gitanjali deceased was aged 15 years and was a student of 11th class and used to contribute her mother in household work and she was earning Rs.3000/- per month towards household affairs.

5. On notice, respondents appeared and respondents No.1 and 2 (A) filed their joint written statements. It is pleaded that a false FIR has been got registered by the petitioners in collusion with the local police. The involvement of the offending vehicle in the accident was denied. It is further denied that accident took place due to rash and negligent driving of respondent No.1. Denying other averments, answering respondents prayed for dismissal of the claim petitions.

6. Respondent No.2 in his written statement took preliminary objections regarding maintainability, cause of action etc. On merits, it is pleaded that the answering respondent has sold the offending vehicle to Kashmiri Lal son of Mathura Dass resident of Kartarpura, Rohtak on 9.9.2010 whereas the accident has occurred on 4.2.2011. All the documents

pertaining to the vehicle including insurance has been transferred in the name of Kashmri Lal before the accident and said Kashmri Lal has taken the offending vehicle on superdari from the court.

7. Respondent No.3- Insurance Company in its written statement took several preliminary objections. It is alleged that respondent No.1 was not holding a valid and effective driving licence to drive the offending vehicle at the time of accident and that respondent-owner of the offending vehicle has violated the terms and conditions of the insurance police. On merits, it is pleaded that a false FIR has been lodged in collusion with the local police by the petitioners. The contents of FIR were wrong. Claimants have concocted false story in the petition. Denying other averments, answering respondent prayed for dismissal of the claim petitions.

8. No replication was filed. From the pleadings of the parties, following issues were framed :-

(1) Whether present accident is the outcome rash and negligent driving of vehicle bearing No.HR-55G/7821 being driven by respondent No.1 Anil Kumar on 4.2.2011 resulting into death of Mithilesh and Gitanjali, as alleged ? OPP

(2) If issue No.1 is proved in affirmative, to what amount and from whom, the petitiones are entitled to recover ?OPP

(3) Relief.

9. The Tribunal, after assessing the testimony of the witnesses accepted the claim petitions, as aforesaid.

10. Feeling dissatisfied with the above said Award, the appellants have directed the present appeals, as aforesaid.

11. I have heard learned counsel for the parties and have gone through the records of the case.

12. Learned counsel for the appellants has submitted that income of Mithilesh has been computed on lower side. Income tax returns for the year 2009-2010 was filed in which income of the deceased has been shown as Rs.1,35,000/-p.a.

13. The income tax return of Mithilesh for the year 2010-2011 has proved her income as Rs.1,40,000/- per annum. The learned Tribunal has ignroed the reutrns. The future prospectus regarding income of deceased Mithilesh and Geetanji has not been taken into account. A sum of Rs.10,000/- in respect of last rites awarded by the Tribunal is on lower side. The amount granted in respect of consortium is also extremely on lower side in respect of both the deceased.

14. Learned counsel for the appellants has relied upon authority **Rajesh and others vs. Rajbir Singh and others reported in 2013 (9) SCC page 54.**

15. In reply to the above noted submissions, counsel for the respondents has submitted that deceased-Mithilesh was not doing any business and income tax return has been submitted only to create evidence regarding income. It is submitted that claimants had not examined any witness, who was a customer of Beauty Parlour allegedly run by Mithilesh. The income of Rs.80,000/- per annum assessed by the Tribunal is on higher side.

16. It is further submitted that in authority **Reshma Kumari and**

others vs. Madan Mohan and another reported in 2013 (2) DNJ (SC) page 257, Hon'ble the Apex Court has observed that amount in respect of future prospectus can only be granted, in case the deceased is a Government employee and has permanent income. The amount already granted is on higher side and as such no case is made out for enhancement. It is submitted that in authority **National Insurance Co. LTD. VS. Pushpa and others in** Special Leave to Appeal (C) CC No.(s) 8058 of 2014 decided on 02.07.2014, the Division Bench of Hon'ble Apex Court has referred the matter to larger Bench to determine whether future prospectus in respect of other than Government employee can be considered?

17. In reply to the above noted submission, learned counsel for the appellants has further submitted that this Court in authority **Balbir Kaur and others vs. State of Haryana and others** FAO No.3903 of 2012 decided on January 15, 2014 held that the authority **Rajesh and others' case (supra)** can be relied as the matter has been discussed in detail regarding future prospectus. It is submitted although the pronouncement made by Hon'ble the Apex Court in **Reshma Kumari and others' case (supra)** is of equal Bench but the authority **Rajesh and others' case (supra)** is required to be followed, in view of the observations made by this Court in **Balbir Kaur and others' case (supra)** decided on January 15, 2014.

18. The first question which arises for determination is that which of the authorities i.e., authority **Reshma Kumari and others' case (supra)** or

that of authority **Rajesh and others' case (supra)** should be followed in respect of grant of future prospectus of deceased. Both these authorities have been pronounced by three Judges Bench of Hon'ble Apex Court. This Court in authority **Balbir Kaur and others versus State of Haryana and others FAO No. 3903 of 2012** decided on January 15, 2014 relying upon Full Bench authority of this Court **Indo Swiss time Ltd. Versus Umrao and others reported as All India Reporter 1981 Punjab and Hary ana 213 (1)** held that when there is a direct conflict between two decisions of the Supreme Court rendered by co-equal Benches, in that case, the view taken by the Bench which is more reasonable should be followed. So, in authority **Balbir Kaur and others' case (supra)**, this Court comes to the conclusion that since ratio of law laid down by Hon'ble Apex Court in authority **Rajesh and others' case (supra)** has not been disproved by Hon'ble the Apex Court and elaborate reasonings have been given by the Apex Court in the said case for granting future prospectus and as such the view taken by Hon'ble the Apex Court in that case, can be safely followed.

19. So, relying upon authority **Balbir Kaur and others' case (supra),** I am of the view that view taken in **Rajesh and others' case (supra)** regarding future prosectus in respect of self-employed person can be followed.

20. The second question arises for consideration is whether the income assessed by the Tribunal in respect of Mithilesh should be

calculated on the basis of income tax returns or not ?

21. The Tribunal, after appreciating the evidence reached to the conclusion that these returns have been filed within a span of 3-4 months and as such these returns cannot be accepted. Otherwise also, the claimants have not produced any evidence on the file that Mithilesh was actually doing the business of Beauty Parlor. Even the claimants have not stated the place of work of Mithilesh in respect of business of Beauty Parlor. One of the claimant is SDO and sometimes returns of non-earning wife is filed just to show any separate income of deceased. In the present case, the income tax return shows that no tax has been paid. So, there was no financial liability in submitting these returns. Otherwise, as discussed above, in the absence of any evidence that the deceased was actually doing the business of Beauty Parlor, the said returns are meaningless.

22. The learned Tribunal has taken the income of deceased as Rs.80,000/- per annum. The question arises whether the amount is required to be enhanced in respect of future prospectus ? In my view the amount of Rs.80,000/- per annum shall also include the future prospectus of deceased as no evidence has been produced on the file that the deceased was actually running the business of Beaut Parlour. So, the income of the deceased is taken as Rs.80,000/- per annum including future prospects. Otherwise also, the claimant is working as SDO and as such the actual dependency of Rs.53,333/- has been correctly assessed including future prospectus by the Tribunal. The multiplier in respect of Mithilesh has been rightly applied. However, the amount of Rs.10,000/- in respect of last rites of Mithilesh and

Getanjli is on lower side. Therefore, a sum of Rs25,000/- in respect of each deceased stands allowed in view of authority **Rajesh and others' case (supra)** in respect of last rites and transportation etc.

23. The learned Tribunal has allowed a sum of Rs.5000/- in respect of consortium to Subhash Chander, that amount is on lower side. So, keeping in view the authority **Rajesh and others' case (supra),** a sum of Rs.1,00,000/- stands allowed in respect of love and affection to both the claimants in respect of death of Mithilesh.

24. So far as death of Geetanjli is concerned, a sum of Rs.1,00,000/- stands allowed in respect of love and affection to both the claimants.

25. The Tribunal has allowed a sum of Rs.2,40,000/- in respect of death of Geetanji, who happened to be aged about 15 years, the said amount is also on lower side. So, a sum of Rs.5,00,000/- stands allowed in resspect of death of Geetanjli which includes a sum of Rs.25,000/- on account of her funeral expenses of Geetanjli and Rs.1,00,000/- in respect of love and affection. So, in this manner, a sum of Rs.2,60,000/- stands enhanced in respect of death of Geetanjli. The said amount shall carry interest @ 7½ % per annum from the date of claim petition till realization.

26. So, in this manner, a sum of Rs.1,10,000/- stands enhanced in respect of death of Mithilesh. The said amount shall also carry interest @ 7½ % per annum from the date of claim petition till its realization.

27 Both the appeals stand disposed of accordingly.

28. A copy of this judgment be sent to the trial Court for strict

compliance.

(K.C.PURI)
JUDGE

March 17, 2015
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