IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.3607 of 2013 (O&M)
Date of Decision: 24.03.2015

United India Insurance Company Ltd. ......Appellant

Versus

Anu and others ......Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

1. Whether Reporters of 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. Suvir Dewan, Advocate,
for appellant.

Mr. Lajpat Sharma, Advocate for
Mr. Vivek Khatri, Advocate,
for respondents No.1 to 3.

***

SHEKHER DHAWAN, J

Appellant-Insurance Company has challenged the Award dated 20.03.2013 whereby three petitions were decided by Motor Accident Claims Tribunal, Hisar (hereinafter referred as 'The Tribunal'). However a challenge in the present appeal is against award in petition No.9 of 2011 filed by Anu and others.

2. The Tribunal had awarded a sum of ₹11,96,564/- as compensation on account of death of Hansvir.

3. Brief facts relevant for the purpose of decision of present appeal that motor vehicle accident took place on 30.11.2010 involving motorcycle bearing No.HR-20-N-2863 and truck bearing No.HR-46-B-2920. The motorcycle was being driven by Hansvir (since deceased) and the truck was being driven by Davinder Singh and the said truck was owned by Ashish

Hooda. As per the claimants the accident had taken place because of rash and negligent driving of respondent No.1 and the accident resulted into death of Hansvir. Claimants are widow, minor daughter and mother of Hansvir. The Tribunal awarded compensation of ₹11,96,564/- as Hansvir was of the age of 24 years as per post mortem report (Ex.P-25) and the multiplyer of 18 was applied. The income of the deceased was taken ₹4350/- per month and after deducting 1/4th as personal expenses and holding the monthly dependency as ₹3261/- per month. The amount of compensation included ₹10,56,564/- on account of loss of income and another sum of ₹50,000/- was awarded to widow on account of loss of love and affection and ₹25,000/- to claimant No.3 on account of love and affection and another sum of ₹15,000/- was awarded on account of transportation expenses and last rites. While awarding the amount of compensation on account of loss of income, the Tribunal also added 50% income on account of future prospects as the age of the deceased was 24 years. On this point the Tribunal placed reliance upon judgment of Hon'ble Apex Court in case titled as **Shyamwati Sharma and others Vs. Karam Singh and others 201(2) Latest Judicial Reports 478(SC)**.

4. The appellant-Insurance company has mainly challenged the award of 'The Tribunal' as 'The Tribunal' added 50% of the income towards future prospects although the deceased in this case was self-employed. The income of the deceased was not proved and he was not getting a fixed salary.

5. Mr. Suvir Dewan, Advocate learned counsel for the appellant took the plea that as per law laid down by Hon'ble Supreme Court in case **Reshma Kumari and others Vs. Madan Mohan and others 262 SC,** it

was held that if the deceased was self-employed or was on a fixed salary (without any provision for annual increments, etc.) the actual earnings at the time of death, without any addition to income for future prospects would be appropriate. Learned counsel for the appellant took the plea that the Tribunal while awarding compensation thereby including 50% increase on account of future prospects is against the law laid down by Hon'ble Supreme Court in **Shyamwati Sharma and others Vs. Karam Singh and others** (supra). Learned counsel for appellant also took plea that in identical matter **National Insurance company Vs. Pushpa and others decided on 02.07.2014 Special Leave to Appeal (C) CC No.8058 of 2014** Hon'ble Apex Court referred the matter to a larger Bench.

6. Learned counsel for respondent took plea that law laid down by Hon'ble Supreme Court in earlier cases where future prospects were granted to the claimants had not been stayed by the Hon'ble Apex Court. There is absolutely no illegality in that award pronounced by the Tribunal in this case and as such the present appeal is liable to be dismissed.

7. Mr. Vivek Khatri, Advocate learned counsel for respondent also took the plea that even the Tribunal has not awarded any amount on account of loss of consortium. More so minimum amount of ₹25,000/- on account of funeral expenses and transportation charges have not been ordered in this case as per judgment of Hon'ble Supreme Court in case **Rajesh & others Vs. Rajbir and others 2013(9) SCC 54**. So the awarded amount be enhanced suitably.

8. Having considered the rival contentions raised by learned counsel for both the parties and the findings recorded by the Tribunal on the basis of facts and evidence on the file. This Court is of the considered view that

there is no dispute on the main facts that accident had taken place on 30.11.2010 involving motorcycle No.HR-20N-2863 and truck bearing No.HR-46-B-2920. The Tribunal has returned the findings on the basis of evidence available on the file that accident was a result of a rash and negligent driving of driver Davinder Singh which resulted into the death of Hansvir. The Tribunal has rightly taken the age of the deceased as recorded in the post mortem report and had taken the income of the deceased correctly. Hence the amount on account of compensation on account of death of Hansvir has been calculated correctly by the Tribunal.

9. Real dispute is whether any amount was to be awarded on account of future prospects. Keeping in view the age of the deceased as the same was less than 40 years. It is a matter of common knowledge that with the passage of time the earnings of everybody keeps on growing and the price index is consistently having increasing tendency, thereby raising the cost of living. Even the minimum wages being paid to any worker are being enhanced suitably by State Governments and the Central Government. In view of the increasing cost of bare necessities, the earnings of everybody are also bound to increase irrespective of the fact whether he is a self-employed, or working with any Government establishment or private establishment or just a daily wage earner. The rise in cost of living, effects everyone. It does not make any distinction between rich and a poor. As a matter of fact, effect of rise in price which indirectly effects the cost of living is mainly on the rich and maximum on those who are self-employed or those getting fixed income emoluments. They are the worst affected people. The future prospects of earnings cannot be ignored while calculating the amount of compensation in such like cases. 'The Tribunal'

has rightly applied 50% increase of income on account of future prospects as the age of the deceased was just 24 years and he was survived by widow, minor daughter and mother.

10. In view of the above the Tribunal has already awarded 'Just Compensation' while taking the income of the deceased correctly and thereby taking into consideration the future prospects of his earning and on account of loss of love and affection and on account of transportation expenses and last rites. It is not disputed in any way that there is no stay order passed by Hon'ble Supreme Court, not to award compensation considering future prospects of earnings.

11. Resultantly, the appeal is without any merit and dismissed.

(SHEKHER DHAWAN)
JUDGE

March 24, 2015
msd