

FAO Nos. 429 and 430 of 2013 (O/M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 19.3.2015

FAO No. 429 of 2013 (O/M)

United India Insurance Company Limited Appellant

Versus

Seema and others Respondents

FAO No. 430 of 2013 (O/M)

United India Insurance Company Limited Appellant

Versus

Savitri Devi and others Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Sanjeev Pabbi, Advocate, for the appellant-Company
in both the cases.
Mr. Jatin Hans, Advocate, for respondents No. 4 and 5.

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.
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KULDIP SINGH, J.

This judgment will dispose of 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, arising out of the same award dated 11.9.2012, passed by the Motor Accident Claims Tribunal, Bhiwani (for brevity 'the Tribunal').

1. **The Facts**

The brief facts of the case are that on 22.1.2011, at about 6:30 PM, Nehru son of Mukhtyar Singh, resident of Makrana accompanied by his brother Lilu Ram were going to their house on motorcycle. When they reached near boundary of village Makrana, a TATA-407, bearing registration No. HR-39-A-1114, being driven by its driver at high speed in a rash and negligent manner, which was going ahead of them, struck into the motorcycle coming from the opposite direction i.e. from village Makrana towards village Chiriya. Two boys were riding the said motorcycle. Due to the result of the accident, both the occupants of the motorcycle fell down on the road. The driver of TATA-407 stopped the vehicle at some distance and thereafter, ran away abandoning the vehicle at the spot. Complainant Nehru stopped his motorcycle and went forward to assist the injured motorcyclists. He found that one of them was Pawan @ Sintu son of Panipat and the second motorcyclist was Naresh son of Ramji Lal, residents of village Makrana. Pawan @ Sintu died on the spot, whereas Naresh also succumbed to the injuries later on. On the basis of statement of Nehru, FIR No. 23 dated 22.1.2011 was registered under Sections 279, 337 and 304-A IPC at Plice Station Sadar, Dadri.

2. The Claims

Shakuntla and Panipat, mother and father respectively of Pawan filed Claim Petition No. 56 of 24.2.2011/23.5.2011, titled as Shakuntla and another Versus Balwan and others, before the Tribunal. Shakuntla died during the pendency of the claim petition. Her LRs, namely, Seema, Vicky and Panipat were brought on record. It is stated that the deceased Pawan was 17 years of age. He was a student of 10+2 in Government Senior Secondary School, Makrana and had done computer course. He used to work as an Electrician. He was also running a milk dairy and was earning Rs. 12,000/- per month. The claimants were dependent upon his earning.

Mother and sisters of Naresh Kumar (deceased) brought Claim Petition No. 57 of 24.2.2011/23.5.2012 titled as Savitri and others Versus Balwan and others. It was stated in the claim petition that the deceased Naresh was of 19 years of age. He was a student of 10+2 in Government Senior Secondary School, Makrana and had done computer course. He used to work as an Electrician. He was also running a milk dairy and was earning Rs. 12,000/- per month. The claimants were dependent upon his earning.

In the written statement filed by respondents No. 1 and 2, the cause of accident was denied. It was stated that a story of

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accident has been concocted to get compensation. It was pleaded that on 22.1.2011, vehicle No. HR-39-A-1114, being driven by respondent No. 1, went out of order on Markana road. Respondent No. 1, after leaving the vehicle at the site, went to call the mechanic for the repairs of the vehicle. When he came back, he learnt about the entire story and that a false version was engineered by the complainant by putting the dead body of the deceased near his vehicle. It is stated that the said accident was caused by some other vehicle. It was also stated that the said TATA-407 was insured with respondent No. 3.

Respondent No. 3-insurance company pleaded collusion between respondents No. 1 and 2 to grab the money from the insurance company. It was stated that if the alleged accident is proved, the same took place on account of rash and negligent driving of the motorcyclist, who was neither a skilled driver nor holding a valid and effective driving licence. The motorcycle was being driven at high speed and it could not be controlled and hit the offending vehicle. There was no fault of the driver of offending vehicle.

The Tribunal framed following issues :-

1. Whether accident took place on 22.01.2011, at 6:30 p.m.
Caused death Pawan son of Panipat and Naresh son of

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Ramji Lal took place due to rash and negligent driving of vehicle bearing registration No. HR-39A-1114 by respondent No. 1 ? OPP.

2. If issue No. 1 is proved, whether the petitioners are entitled for compensation, if so to what amount and from whom ? OPP.
3. Whether petition is not maintainable in the present form ? OPR.
4. Whether the petitioners have no locus standi or cause of action to file the present petition ? OPR.
5. Whether the driver of the offending vehicle was not holding a valid and effective driving licence on the date of accident ? OPR.
6. Whether the petition is bad for mis-joinder and non-joinder of necessary parties ? OPR.
7. Whether the petitioners are estopped to file the present petition by their own acts and conduct ? OPR.
8. Relief.

To prove the case, claimants examined complainant Nehru (eye-witness) as PW1, Shakuntla Devi (deceased petitioner), mother of deceased Pawan Kumar as PW2, Savitri Devi, mother of deceased Naresh Kumar as PW3 and one Inderwesh was produced

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as PW4.

Respondents have examined Balwan Singh (respondent No. 1) as RW1, Arun Kumar, Criminal Ahlmad of the Court of the learned Judicial Magistrate 1st Class, Charkhi-Dadri as RW2 and closed the evidence after tendering some documents.

The Tribunal came to the conclusion that the accident took place due to negligent and rash driving of TATA-407 by respondent No. 1.

The Tribunal, after determining the testimony of Inderwesh (PW4), came to the conclusion that both the deceased were working at his shop and were being paid salary of Rs. 4,200/- per month each. However, the Tribunal took into consideration the salary of unskilled labourer as fixed by the State of Haryana for the year 2010-11 and came to the conclusion that the minimum wages were Rs. 4,426/- per month at that time. The Tribunal, considering the age of Pawan to be 17 years of age, applied the multiplier of 18, as per Sarla Verma Versus Delhi Transport Corporation, 2009 (3) RCR (Civil) 77. 1/3rd were deducted as personal expenses and the loss of income was calculated at Rs. 2,951/- per month. Therefore, the compensation was calculated at Rs. 2,951/- x12x18=Rs.6,37,416/-. Rs. 5,000/- for transportation of dead body and Rs. 10,000/- as funeral expenses were also allowed. In the

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case of Pawan, the total compensation of Rs. 6,52,416/- was allowed.

Regarding the deceased Naresh Kumar, same minimum wages of Rs. 4,426/- were treated as income of the deceased and considering the age of the deceased to be of 19 years, as per the school certificate, the multiplier of 18 was applied. $\frac{1}{4}^{\text{th}}$ were deducted as personal expenses and the dependency of the claimants was calculated at Rs. 3,320/-. The total compensation was calculated at Rs. 3,320/-x12x18=Rs. 7,17,120/-. Similarly, Rs. 5,000/- were allowed for transportation of dead body and Rs. 10,000/- were allowed as funeral expenses and total compensation of Rs. 7,32,120/- was allowed. All the respondents were held jointly and severally liable to pay the compensation alongwith interest @ 7% per annum from the date of institution of the claim petition till the realization.

The insurance company aggrieved by the excessive compensation has come up in the present appeal.

3. Contentions raised before this Court

The insurance company has assailed the award on the following grounds :-

- (i) wrong multiplier on the basis of age of deceased has been applied, whereas it should have been allowed as

- per the age of the parents ;
- (ii) deduction of 50% as personal expenses should have been made in place of 1/3rd and 1/4th on account of death of Pawan and Naresh Kumar respectively ; and
- (iii) excessive notional income of both the deceased has been assessed.

4. Findings

Taking up the 3rd contention as first, it is to be seen that the income of both the deceased has been assessed on the basis of minimum wages of unskilled worker for the year 2010-11, as fixed by the Government of Haryana. There is nothing wrong in the same. Therefore, the third contention raised before this Court is found to be without any force.

Now, taking up the question of multiplier, the learned counsel for insurance company has vehemently argued that the multiplier on the basis of age of the parents of the deceased should have been applied. The Tribunal erred in applying the multiplier on the basis of age of the deceased.

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.*

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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.

Now, coming up to the second contention as to what should be the deduction on account of personal expenses ?

Both the deceased were bachelor, aged about 17 and 19 years of age, as determined by the Tribunal. As per the judgment of the Hon'ble Supreme Court in *Amrit Bhanu Shali and others Versus*

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National Insurance Co. Ltd. and others, 2012 (4) RCR (Civil) 343, in such a case, 50% deduction on account of personal expenses should have been made and not 1/3rd and 1/4th as determined by the Tribunal.

However, it still requires to be determined whether the compensation granted by the Tribunal is on higher side or not ?

In the later judgments titled as Rajesh Versus Rajbir Singh, (2013) 9 SCC 54 and Santosh Devi Versus National Insurance Co. Ltd. (2012) 6 SCC 421, the Hon'ble Supreme Court has ruled that in case of self-employed persons engaged on fixed basis, an addition of 50% should be made on account of his actual income towards his future prospects if he is aged below 40 years. Therefore, in this case, 50% income of the deceased should have been added on account of future prospects, which comes to Rs. 2,213/-. It being so, the income of the deceased should have been calculated at Rs. 6,639/- per month and if 50% is deducted as personal expenses, the dependency of the claimants comes to Rs. 3,320/- per month and the compensation is to be calculated accordingly. However, in this case, the dependency in the case of death of Pawan has been calculated on the lower side i.e. Rs. 2,951/- per month and in case of Naresh (deceased), Rs. 3,320/-, which is the amount mentioned above. The claimants were entitled

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to some additional compensation of Rs. 1 lac on account of loss of love and affection to the parents and Rs. 25,000/- on account of funeral and last rites, in place of Rs. 10,000/- allowed by the Tribunal. If the compensation is calculated, while considering the above-noted principles, it comes to much more than allowed by the Tribunal. Unluckily, in both the cases, the claimants have not come up in appeal, nor have they filed cross-objections. Therefore, the Tribunal is unable to enhance the compensation without any prayer from the side of the claimants.

From the foregoing discussion, it comes out that the compensation awarded by the Tribunal, in any case, is just and is not on the higher side. It being so, the present appeals are found to be without any force and are dismissed.

(KULDIP SINGH)
JUDGE

19.3.2015
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