

**118 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No. 2265 of 2015 (O&M)

Decided on: 6.4.2015.

Bajaj Allianz General Insurance Company Limited

... Appellant

Versus

Smt. Meera Devi and others

... Respondents

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

Present : Mr. Ashwani Talwar, Advocate,
for the appellant-insurance company.

K.C.PURI.J.

This is an appeal directed by insurance company against the Award dated 15.1.2015 passed by Motor Accident Claims Tribunal, Chandigarh (for short “the Tribunal”) vide which the claim petition has been partly accepted and the claimants have been allowed a sum of Rs.22,50,000/- on account of death of Arun Kumar Singh in a motor vehicular accident.

The claimants widow and three minor children of Arun Kumar Singh filed claim petition claiming a sum of Rs.40 lacs on account of death of Arun Kumar Singh in a motor vehicular accident on 30.7.2014. It was pleaded that on 30.7.2014 deceased was going from the side of Kajheri Petrol Pump towards Sector 49, Chandigarh while sitting on the driver seat of three wheeler bearing No. CH-01-TA-1863 which was being towed with a rope by three wheeler No. CH-01-TA-9507 which was being driven by

Inderjeet Jha, at slow speed and on left side of the road. When they were going in front of Aryan Enclave Society, Sector 51, Chandigarh at about 12.15 PM a car bearing No. PB-65-D-3798 came at a fast speed from the opposite direction i.e. small chowk of Sector 50-51, Chandigarh and by coming on wrong side of the road, hit three wheeler of the deceased. The car was being driven at fast speed and in rash and negligent manner by Jatinder Singh. Due to the impact, three-wheeler of the deceased turned turtle and deceased received serious injuries. He was referred to PGI, Chandigarh where he was declared dead.

Learned counsel for the appellant insurance company has challenged the Award on two grounds (i) negligence (ii) quantum.

Regarding negligence it is submitted that the deceased was the sole negligent person. It is submitted that towing of a three wheeler by another three wheeler is not permitted and in this view of the matter, the three wheeler on which the deceased was being towed was in violation of traffic rules so, the deceased was negligent.

I have considered the said submission but do not find any force in that submission.

The driver of offending vehicle has not come into the witness box to depose the manner whereas the claimants have produced the evidence to prove the negligence of offending vehicle so, in these circumstances, the finding of the Tribunal regarding negligence on the part of the driver of offending vehicle does not call for any interference and consequently, the same stands affirmed.

The next contention raised by learned counsel for the appellant is regarding quantum. It is submitted that assessment of the income of the deceased to the tune of Rs.10,000/- is excessive. It is further submitted that future prospects should not have been taken into account in view of authority **Reshma Kumari and others vs. Madan Mohan and another 2013(2) RCR (Civil) 660.** It is submitted that authority **Rajesh and others vs. Rajbir Singh and others 2013 ACJ 1403** is latter in time and as such authority **Reshma Kumari's case (supra)** should have prevailed regarding future prospects. He has further relied upon authority **Union of India and others vs. S.K. Kapoor 2011(4) SCC 589** and has submitted that first authority in time shall prevail which is **Reshma Kumari's case (supra)**. So, no amount regarding future prospects should have been granted by the Tribunal. More so, in authority **National Insurance Co. Ltd. vs. Pushpa and others (SLP No.8058 of 2014 decided on 2.7.2014)** matter regarding grant of future prospects has been referred to larger bench.

I have considered the said submission made by learned counsel for the appellant but do not find any force in that submission.

So far as the assessment of income in respect of driver to the tune of Rs.10,000/- per month is concerned, that cannot be said to be excessive. Today, even a labourer earns more than Rs.300/- per day whereas the deceased was a skilled person with a skill of driving so, income of Rs.10,000/- cannot be said to be on higher side.

The point which of the authority should be followed i.e.

Rajesh's case (supra) or **Reshma Kumari's case (supra)** has been dealt

with by this Court in Balbir Kaur and others vs. State of Haryana and others (FAO No.3903 of 2012 decided on January 15th, 2014). In the said authority, it has been observed while relying upon a full bench authority of this Court in Indo Swiss Time Ltd. vs. Umrao and others AIR 1981 Pb. & Hr 213(1) that in case there are two decisions of equal benches in that case, choice with the Court is difficult but the authority which has more elaborately dealt with the issue in question should be followed and it has been observed by this Court in that authority that Rajesh's case (supra) should be followed in respect of grant of future prospects. Learned Tribunal has also relied upon the said authority. Learned counsel for the appellant could not show any judgment vide which the operation of Rajesh Kumar's case (supra) has been stayed by the Hon'ble Apex Court.

So far as the authority Pushpa's case (supra) is concerned, in that case, no doubt, the matter regarding grant of future prospects in respect of self employed and fixed salaried persons has been referred to the larger bench but no decision has been produced that operation of Rajesh's case (supra) has been stayed.

So far as the authority S.K. Kapoor's case(supra) is concerned, the ratio decidendi of that case is that when decision of a bench of equal strength is to be deviated by a coordinate bench of equal strength in that case, proper course is to refer the matter to large bench. In the said authority, it was not in issue that in case there are two different decisions by equal strength of judges which of the decision should be followed.

So, in these circumstances, I find no fault with the Award of the Tribunal. The dependency has been calculated strictly in accordance

with authority Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009(6) SCC 121. The amount of Rs.25,000/- towards funeral expenses and Rs.1 lac towards loss of consortium and Rs.1 lac in respect of loss of love, care and guidance has been allowed in consonance with Rajesh 's case (supra).

So, no ground for interference is made out. Consequently, the appeal is without any merit and the same stands dismissed.

6.4.2015.
SN

(K.C.PURI)
JUDGE