

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

**F.A.O. No.3239 of 2015 (O&M)
Date of Decision: May 08, 2015**

National Insurance Company Limited

...Appellant

Versus

Smt.Kanchan & Ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.D.P.Gupta, Advocate,
for the appellant.

- 1· Whether Reporters of Local papers 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

Naresh Kumar Sanghi, J.(Oral)

The present appeal has been filed by National Insurance Company Limited challenging the award dated 02.03.2015 passed by learned Motor Accidents Claims Tribunal, Palwal, (for brevity “learned Tribunal”) whereby a sum of Rs.11,00,000/-(Rupees Eleven lacs) along with interest at the rate of 7.5% per annum from the date of filing of the petition till its actual realization, was awarded in favour of the claimants on account of death of Subhash aged about 34 years who was working as a priest (*pujari*).

Learned counsel for the appellant has raised the only issue that the learned Tribunal has wrongly awarded future prospects to the claimants. In support of his contention, he

submitted that in **Shashikala & Ors** vs. **Gangalakshamma & Anr.**, Civil Appeal No.2836 of 2015, Hon'ble the Supreme Court while dealing with the issue of future prospects had referred the matter to a larger Bench for decision.

I have heard learned counsel for the appellant and with his able assistance gone through the material available on record.

Though learned counsel for the appellant has not raised the issue with regard to the death of Subhash in the motor vehicle accident and the negligence on the part of Joginder Singh (driver of the offending vehicle) while driving trailer bearing No.HR-55F-4706 but to be clear on all aspects, this Court deems it fit to narrate the brief description of the case which is as under:-

On 31.10.2013 at about 10/10:30 p.m Subhash (since deceased) along with Anil Kumar Bhardwaj was coming from Neelkanth Hospital, Gurgaon, while riding on a motor cycle bearing registration No.HR-99QR-4927 and when the said motor cycle reached ahead of Balaji Hospital turn, the offending vehicle bearing registration No.HR-55F-4706 being driven by Joginder Singh in a rash or negligent manner came from the rear side and hit the motor cycle being occupied by Subhash and Anil Kumar Bhardwaj. The front tyre of the trailer ran over Subhash whereas, Anil Kumar Bhardwaj, who was on the pillion, fell down on the road side. Subhash died at the

spot. After leaving the vehicle, Joginder Singh (driver) ran away from the spot. Anil Kumar Bhardwaj and corpus of Subhash were shifted to the hospital. The matter was reported to the police, on the basis of which, FIR No.602 dated 01.11.2013, for the offences punishable under Sections 279, 304-A and 337 IPC, was registered at Police Station, Sector 10, Gurgaon.

Smt.Kanchan (widow), Bhushan (minor son), Bharti (minor daughter), Lekh Ram (father) and Jagwati (mother) of Subhash (since deceased) filed the claim petition before learned Tribunal. It was alleged that Subhash (since deceased) was aged about 32 years and was a priest (*pujari*) in Shiv Mandir, Kankola Road, village Wajupur, District Gurgaon, and earning Rs.15,000/- (Rupees Fifteen Thousand) per month. They claimed Rs.30,00,000/- (Rupees Thirty Lacs) along with interest at the rate of 18% per annum.

The driver and the owner of the offending vehicle did not appear despite service and hence, they were proceeded against ex parte.

The appellant/Insurance company pleaded that no accident as alleged had ever taken place. The police had registered a false case in collusion with the claimants. It was further denied that the claimants were entitled to the compensation as claimed by them.

On the basis of the pleadings, learned Tribunal framed the following issues:-

1. Whether the accident in question took place due to the rash and negligent driving of vehicle bearing registration No.HR-55F-4706 by the respondent no.1 resulting into the death of Subhash? OPP.
2. Whether the claimants are entitled to compensation, if so, how much and from whom? OPP.
3. Whether the respondent no.1 was not holding a valid and effective driving licence to drive the vehicle in question on the date of accident? OPR3.
4. Whether the respondent no.2 has violated any other terms and conditions of the policy exonerating the liability of the insurance company? OPR3.
5. Relief.

To prove their case, the claimants examined the following witnesses:-

PW-1 :- Smt. Kanchan, widow of Subhash;

PW-2:- Anil Kumar Bhardwaj, an eye-witness of the occurrence; and

PW-3:- Neeraj Kumar, Additional Ahlmad of the court of learned Judicial Magistrate Ist Class, Palwal.

No evidence was led by the respondents.

Learned Tribunal held that the accident in question resulting into death of Subhash had occurred solely due to negligence on the part of Joginder Singh (driver of the offending vehicle) and hence, issue No.1 was decided in favour of the

claimants.

Issue Nos.2, 3 and 4 were discussed together and held that date of accident Subhash (since deceased) aged about 34 years was a labourer and assumed his monthly income as Rs.5,000/-; and while relying upon **Sarla Verma and Others** vs. **Delhi Transport Corporation and Anr.** 2009(3) RCR (Civil) 77, learned Tribunal added 50% of monthly income towards future prospects after deducting 1/4th of the monthly income as personal expenses of Subhash (since deceased), applied the multiplier of 16 and awarded Rs.10,80,000/-(Rupees Ten lacs and eighty thousand) for loss of dependency; Rs.10,000/-(Rupees Ten thousand) were awarded as consortium and further Rs.10,000/-(Rupees ten thousand) were awarded on account of expenditure incurred on transportation and last rites of the deceased.

Learned counsel for the appellant was specifically asked as to whether Hon'ble the Supreme Court has stayed the findings of **Sarla Verma's** case (supra) and **Santosh Devi** vs. **National Insurance Company and others**, 2012 STPL (Web) 248 S.C. decided on 23.04.2012, then the learned counsel simply answered that no stay has been granted with regard to the findings of the said cases. However, in an interim order passed in **Shashikala & Ors's** case (supra) Hon'ble the Supreme Court had passed the following order:-

“Since we have disagreed only insofar as the addition

towards the future prospects in case of self-employed or fixed wages to be added to the compensation towards the dependency, the matter may be placed before the Hon'ble the Chief Justice of India for appropriate orders towards the constitution of a suitable larger Bench to decide the said issue.

Pendente lite the said issue, the enhanced compensation of Rs.4,62,938/- along with interest at the rate of 9% p.a from the date of the claim petition till the date of realisation shall be paid within four weeks from today by way of a demand draft or be deposited before the Motor Accident Claims Tribunal, Bangalore, to enable the appellants herein to withdraw the same."

Not only in **Sarla Verma's** case (supra) but also in **Rajesh and others vs. Rajbir and Others, (2013) 9 SCC 54**, Hon'ble the Supreme Court had added future prospects in the income of the deceased, therefore, the award passed by learned Tribunal is adequate. No interference is called by this Court and the same is hereby dismissed.

May 08, 2015
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(Naresh Kumar Sanghi)
Judge