IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

F.A.O.No.3604 of 2015 (O&M)
Date of Decision: May 18, 2015

New India Assurance Company Limited

...Appellant

Versus

Narmail Singh & Ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.Harsh Aggarwal, 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 New India Assurance Company Limited challenging the award dated 17.01.2015 passed by learned Motor Accidents Claims Tribunal, Panchkula (for brevity "learned Tribunal") whereby an award of Rs.23,85,000/-(Rupees Twenty three lacs and eighty five thousand) along with interest at the rate of 7% per annum from the date of filing of the petition till realization was passed in favour of the respondent Nos.2 to 4 (claimants).

Learned counsel for the appellant-Insurance Company has submitted that Baljeet Singh (since deceased) as per the case of the claimants, was working with the contractor for lifting of the dead animals within the jurisdiction of the Municipal Corporation, Panchkula. There was no cogent evidence that he was getting Rs.10,000/-(Rupees Ten thousand) per month from his employer. Learned Tribunal has failed to take notice of the notification dated 22.02.2013 issued by the Department of Labour, Haryana, whereby the minimum wages for unskilled and skilled labour have been notified. Though Baljeet Singh (since deceased) was an unskilled labour but even if it is assumed that he was a skilled labour then also his monthly income cannot be taken beyond Rs.5732.15 (Rupees Five thousand seven hundred thirty two and fifteen paisa). He further submitted that learned Tribunal has gone wrong in adding 50% monthly income of Baljeet Singh (since deceased) as future prospects.

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

On 03.10.2013, Baljeet Singh (since deceased) along with his father, Narmail Singh (PW1), and Nanak Chand went to village Bir Ghaggar near the toll plaza in a tractor bearing registration No.HNQ-1725 owned by Babu Ram to lift the dead buffalo. The tractor and the cart attached with it were parked on the kacha berm of the road. Narmail Singh (PW1) and Nanak

Chand were in the process to lift and load the dead buffalo in the cart attached with the tractor, in the meantime, a Tempo Traveller bearing registration No.CH01-TA-0124 (for brevity "offending vehicle") being driven by Raghubir Singh (respondent No.5) rashly or negligently at a very high speed emerged there and hit Baljeet Singh as well as the cart attached with the tractor. Baljeet Singh sustained multiple injuries. He was carried to the Govt. Hospital, Sector 6, Panchkula, and from there, he was referred to the Post Graduate Institute of Medical Science and Research Centre, Chandigarh, where he succumbed to the injuries on 04.10.2013. The matter was reported to the police on the basis of which FIR No.257 dated 04.10.2013 for the offences punishable under Sections 279 and 304-A, IPC, was registered at Police Station, Chandimandir, District Panchkula.

The parents, the widow and the minor daughter of Baljeet Singh filed the claim petition alleging that Baljeet Singh was aged about 24 years at the time of his death. He was working with Babu Ram, a contractor and getting a salary of Rs.15,000/- (Rupees Fifteen Thousand) per month. Babu Ram was allotted a contract by the Municipal Corporation, Panchkula, for lifting the dead animals within its jurisdiction. It was further alleged that all the four claimants were dependents on the earnings of Baljeet Singh (since deceased). They further averred that Rs.80,000/- (Rupees Eighty Thousand) were spent on the transportation of the injured to the hospital, his dead body to the house and thereafter, to the cremation ground, and on the last rites etc. They claimed Rs.30,00,000/- (Rupees Thirty lacs) along with interest at the rate of 18% per annum from the date of filing of the petition till realization.

The registered owner as well as the appellant-Insurance Company appeared before learned Tribunal and filed their respective replies.

On the basis of the pleadings of the parties the following issues were framed:-

1. Whether the deceased Baljeet Singh son of Sh.Narmail Singh had died on account of injuries suffered by him in a road side accident occurred on 03.10.2013 at about 06:45 p.m on account of rash and negligent driving of vehicle No.CH01-TA-0124 by respondent No.1? OPP.

2. If issue No.1 is proved, whether the claimants are entitled to receive the compensation from the respondents, if so, at what rate and interests? OPP.

3. Whether the present claim petition is not maintainable? OPR.

4. Relief.

In order to substantiate their claim, the claimant, Narmail Singh appeared as PW-1 and also produced Babu Ram, contractor i.e employer of Baljeet Singh as PW-2 and Dharam Pal, Clerk, Municipal Corporation, Panchkula, as PW-3. The claimants also placed on record the copy of the FIR Ex.P-1, copy of the postmortem report Ex.P-2, copy of charge-sheet Ex.P-3, copy of ration card Ex.P-4 and copy of the auction proceedings of the contract in favour of Babu Ram Ex.PW3/A.

The appellant-Insurance Company as well as the registered owner of the offending vehicle did not lead the oral evidence. However, the copy of registration certificate, copy of insurance and copy of route permit of the offending vehicle as well as the driving licence of the driver of the offending vehicle were produced on record.

While dealing with issue No.1, learned Tribunal held that Baljeet Singh (since deceased) had died on account of the injuries suffered in the accident which took place due to rash or negligent driving of the offending vehicle by Raghubir Singh-respondent No.5 and hence, issue No.1 was decided in favour of the claimants and against the appellant as well as its co-respondents in the claim petition.

While dealing with issue No.2, learned Tribunal held that Baljeet Singh (since deceased) was aged about 24 years at the time of his death.

Learned Tribunal did not place implicit reliance on the deposition of Babu Ram (PW2), contractor/employer of Baljeet Singh (since deceased) and held that Baljeet Singh was earning Rs.10,000/- (Rupees Ten thousand) per month. Rs.5,000/- (Rupees Five thousand) per month was added as future prospects and held that annual income of Baljeet Singh was Rs.1,80,000/- (Rupees One lac and eighty thousand). Champa Devi, widow of Baljeet Singh, was further awarded Rs.1,00,000/- (Rupees one lac) for loss of consortium while his minor daughter, Diksha Devi, was also awarded Rs.1,00,000/- (Rupees One lac) towards loss of love and affection. Rs.25,000/- (Rupees Twenty five thousand) were awarded in lumpsum towards funeral expenses, transportation of dead body and last rites etc and hence, total sum of Rs.23,85,000/- (Rupees Twenty three lacs and eighty five thousand) along with interest at the rate of 7% per annum from the date of filing of the petition till realization were awarded.

The submission of the learned counsel for the appellant that Baljeet Singh (since deceased) was not earning Rs.10,000/- (Rupees Ten thousand) per month has no legs to stand. In fact from the very beginning, the stand of the claimants was that Baljeet Singh (since deceased) was getting a salary of Rs.15,000/- (Rupees Fifteen thousand) per month from his employer Babu Ram (PW2). Even during course of his deposition Narmail Singh (PW1) deposed that his son Baljeet Singh was getting a salary of Rs.15,000/- (Rupees Fifteen thousand) per month from his employer Babu Ram (PW2). When Babu Ram appeared as PW2 he also corroborated the stand of the claimants and deposed that Baljeet Singh (since deceased) was being paid a salary of Rs.15,000/- (Rupees Fifteen thousand) per month. Though learned Tribunal has not placed implicit reliance on the deposition of Narmail Singh (PW1) and Babu Ram (PW2) in this regard and assumed the monthly income of Baljeet Singh (since deceased) as Rs.10,000/- (Rupees Ten thousand). This Court has no material to conclude that the findings of the learned Tribunal to that effect are wrong or against the material available on record.

The submission of the learned counsel for the appellant that in view of the notification dated 22.02.2013 issued by the Labour Commissioner, Haryana, a skilled labour was to get Rs.5732.15 (Rupees Five thousand Seven hundred thirty two and fifteen paisa) and as such, at best the monthly income of Baljeet Singh(since deceased) could be Rs.5732.15 (Rupees Five thousand Seven Hundred thirty two and fifteen paisa) is not tenable. The notification does not say that a skilled or unskilled labour cannot be paid over and above whatever has been notified as minimum monthly salary.

In the matter of **Smt.Neeta w/o Kallappa Kadolkar and others** vs. **The Div. Manager, MSRTC, Kolhapur, 2015(1) RCR(Civil) 625,** Hon'ble the Supreme Court while dealing with the similar proposition held as under:-

> 9. Further, in the case of ***Vimal Kanwar & Ors. v. Kishore Dan & Ors.2013(2) R CR (Civil) 945: 2013(3) Recent Apex Judgments (R.A.J.) 446: (2013) 7 SCC 476,*** this Court has held as under:-
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> > "31. In *New India Assurance Co. Ltd.* this Court noticed that the High Court determined the compensation by granting 100% increase in the income of the deceased. Taking into consideration the fact that in the normal course, the deceased would have served for 22 years and during that period his salary would have certainly doubled, upheld the judgment of the High Court…."
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> Taking the principle laid down in the aforesaid case, the deceased would have served another 25 years, during that period their salary would have certainly

doubled, which is the view taken by this Court in the case of ***New India Assurance Co. Ltd.*** *v.* ***Gopali & Ors****.* ***2012(3) R.C.R.(Civil) 818; 2012(4) Recent Appex Judgments (R.A.J.) 87; (2012) 12 SCC 198*** Keeping in view the aforesaid statement of law laid down in the aforesaid cases and monthly income of the deceased who were doing the skilled job of carpentry and added to that income, the income that was derived from the agricultural occupation from their agricultural land and future prospects as held by this Court in the above case, it would be just and proper for this Court to assess their monthly income at Rs.12,000/- p.m. each for the purpose of computation of loss of dependency. Further, in view of the law laid down by this Court in the case of ***Santosh Devi*** *v.* ***National Insurance Company Ltd. & Ors. 2012(2) R.C.R.(Civil) 882: 2012(2) Recent Apex Judgments (R.A.J.) 505: (2012) 6 SCC 421,*** this Court has ruled that even in the case of private employment, the future prospects can be taken into consideration to determine the loss of dependency. Having regard to the age of the deceased, the same shall be added to the annual income of the deceased to determine the just and reasonable compensation under the heading of the loss of dependency.

Therefore, it would be just and proper to take the aforesaid additional income from the agricultural occupation and future prospects as claimed by the appellants on the basis of speculation and presumption and apply the multiplier 16, as the same is applicable in view of the age of the deceased as 33 years as on the date of their death, which is sworn to by the witnesses who were examined before the Tribunal on behalf of the appellants, in respect of both the Claim Petitions before the Tribunal.

Thus, the annual income of both the deceased would be Rs.1,44,000/- each. Deducting 1/4th of this amount towards their personal expenses, in order to determine the loss of dependency and keeping in view the age of the minor children, their widowed wives and the aged parents, as their units will be 4 and 5 respectively, as provided in the ***Sarla Verma*** (supra) case, the balance amount comes to Rs.1,08,000/- [(1,44,000/- (-) Rs.36,000/- (1/4th of Rs.1,44,000/-)]. Therefore, the loss of dependency of the appellants by applying the appropriate multiplier of 16, comes to Rs.17,28,000/- (Rs. 1,08,000/- X 16).

Similarly in the matter of **Kala Devi & Ors.** vs. **Bhagwan Das Chauhan and others, 2014(4) RCR (Civil) 936,** Hon'ble the Supreme Court assessed the income as Rs.9,000/- (Rupees Nine thousand) per month of a person who was a labourer.

As a sequel of the above discussion this Court holds that learned Tribunal has rightly arrived at a conclusion that Baljeet Singh (since deceased) was earning Rs.10,000/- (Rupees Ten thousand) per month.

The next submission of the learned counsel for the appellant that learned Tribunal has gone wrong in adding the 50% income of Baljeet Singh (since deceased) under the head future prospects is also not tenable. While discussing the issue of adding of the future prospects in the monthly income of Baljeet Singh (since deceased), the learned Tribunal held as under:-

> *"Further, during the course of arguments, learned counsel for the claimants raised point that future prospects be also granted. For that purpose, he has placed reliance upon* ***Santosh Devi*** *vs.* ***National Insurance Company, 2012 ACJ 1428,*** *wherein, in para 14 it was held that "whether formula for increase*

of income for future prospects adopted for persons with permanent jobs in ***<u>Sarla Verms's case</u>*** *(supra) are also applied to the person who are self employed and were engaged in fixed wages. Held Yes." I have gone through the above referred citation, wherein, in para no.14, it is held that "therefore, we not think that while making observation in the last three lines of para no.11 of Sarla Verma's case (supra) the court had intended to lay down an absolute rule that there will not be addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged in fixed wages will also get 30% increase in his total income of period of time and if he/she becomes victim of accident then same formula is observed to be applied for calculation of the compensation." He also placed reliance upon* ***<u>Rajesh and others</u>*** *vs.* ***<u>Rajbir Singh and others</u>, 2013 ACJ 1403,*** *wherein it was held that "since the court in Santosh Devi's case (supra), actually intended to follow the principle in case of salaried persons as laid down in Sarla Verma's case (supra) and to make it applicable also to self-employed and persons on fixed wages, it is* *clarified that the increase in the case of those group is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case the deceased victim was below 40 years, there must be addition of 50% to the actual income prospects." Accordingly, in the instant case, the age of the deceased was 24 years at the time of accident, therefore, 50% is computed towards his future prospects. As per* ***Rajesh & Other's case (supra)****, 50% addition of the amount of compensation by way of future prospects which comes to Rs.7,20,000/- is also given. Besides the same, a sum of Rs.25,000/- is awarded to claimants in lumpsum towards funeral expenses, transportation of dead body and last rites etc. Further, claimant No.2 Champa Devi is awarded Rs.1,00,000/- towards loss of consortium and claimant no.3 Diksha Devi, minor daughter is awarded Rs.1,00,000/- towards loss of love and affection. Thus, the claimant Nos.1 to 3 are entitled for compensation of Rs.14,40,000/- + Rs.7,20,000/- + Rs.25,000/-+ Rs.1,00,000/-+ Rs.1,00,000/- = Rs.23,85,000/-."*

During the course of arguments it was specifically put to learned counsel for the appellant that as to whether Hon'ble the Supreme Court has stayed the ratio of the judgments delivered in **Sarla Verma and Others** vs. **Delhi Transport Corporation and Anr. 2009(3) RCR (Civil) 77,** and **Rajesh and others** vs. **Rajbir and Others, (2013) 9 SCC 54,** then he fairly admitted that the ratio of those judgments have not been stayed by Hon'ble the Supreme Court. However, he submits that in one of the cases an interim order has been passed whereby grant of future prospects has been stayed.

In view of the above facts, learned Tribunal has rightly added the future prospects in the income of the deceased for arriving at a conclusion to award the just compensation. There is no illegality or infirmity in the impugned award and as such, finding no merit in the present appeal, the same is hereby dismissed.

May 18, 2015 **(Naresh Kumar Sanghi)**
seema **Judge**