

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

**FAO No.3836 of 2015 (O&M)
Date of Decision: September 14, 2015.**

Royal Sundaram Alliance Insurance Company Limited

.....APPELLANT(s).

VERSUS

Usha Rani and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. D.K. Prajapati, Advocate for
Mr. R.S. Madan, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This appeal has been filed by Royal Sundaram Alliance Insurance Company Limited against the award dated 26.02.2015 passed by Motor Accident Claims Tribunal, Kurukshetra (later referred to be as the Tribunal).

As per the claimants, Vinod Kumar (later referred to be as the deceased) lost his life in an accident, which took place on 03.04.2013 at about 07.00 p.m. when he was driving his Tata Magic bearing registration No.HR-36C/9472 and was hit by tractor-trolley bearing registration No. HR-07H/1158 (later referred to be as the offending vehicle). At the time of accident, the trolley was loaded with sugarcane and the offending vehicle

was being driven in a rash and negligent manner. Due to the impact of the accident, front of Tata Magic was totally damaged and Vinod Kumar died at the spot. The accident was witnessed by one Darshan Lal, who was coming behind Tata Magic on his motorcycle. The deceased was 33 years of age and was earning ₹20,000/- per month. FIR No.101 dated 03.04.2013 was got registered against respondent No.1 at Police Station Shahbad for offence punishable under Sections 279, 427 and 304-A of Indian Penal Code.

Respondents No.1 and 2, driver and owner of the offending vehicle respectively in their written statement denied the accident and alleged false implication of the offending vehicle.

Respondent No.3 insurer of the offending vehicle also denied the accident and took the plea that the offending vehicle had breached the terms and conditions of the insurance policy.

The Tribunal on appraisal of evidence concluded that the accident had taken place due to rash and negligent driving of offending vehicle by respondent No.1 and allowed the compensation tabulated as follows:-

1	Total gross salary of deceased @ 6655/- x 12 :	₹00,79,860/-
	50% future prospects @ 39,930	
2	(79,860+39,930) :	₹01,19,790/-
	After deducting 1/4th i.e. 1,19,790/4=29,947/-	
3	(1,19,790-29,947) :	₹00,89,843/-
4	Applying multiplier of 16 (89,843 x 16) :	₹14,37,488/-
5	Loss of consortium :	₹01,00,000/-
6	Loss of love & affection :	₹02,00,000/-
7	Funeral expenses :	₹00,25,000/-
Total	(14,37,488+1,00,000+2,00,000+25,000) :	₹17,62,488/-

Learned counsel for the appellant has assailed the award on three counts:-

- (i) The Tribunal has taken the income of the deceased as ₹6655/- per month while as per the notification issued by Labour Commissioner, Haryana dated 22.02.2013, monthly salary of a skilled labourer was fixed as ₹5,602.15 for A category and ₹5,732.15 for B category.
- (ii) The Tribunal has wrongly allowed 50% addition in the income of the deceased towards future prospects despite the fact that the matter is still pending before a larger Bench of Hon'ble Apex Court as per the reference made in **National Insurance Company Limited Vs. Pushpa Appeal(C) No.8058 of 2014 decided on 02.07.2014 (MANU/SC/1246/2014).**
- (iii) The driving licence of the deceased was not produced to establish that he had a valid driving licence to drive Tata Magic vehicle.

Admittedly, the deceased was driving Tata Magic vehicle at the time of accident. It is a matter of common knowledge that in the year 2013, the drivers of vehicle were getting salary not less than ₹7,000 to ₹8,000 per month. Even a daily wage labourer was earning about ₹250/- to ₹300/- per day. The notification referred by learned counsel for the appellant is usually applicable to the workers in the factory, who gets a number of allowances besides the minimum wages. The income of the deceased as taken by the Tribunal, as such, was not on higher side or calls for any interference.

In the case of *National Insurance Company Limited Vs. Pushpa (supra)*, while differing with the view taken in case of *Sarla Verma and others Vs. Delhi Transport Corporation and Anr. (2009)6 SCC 121*, it

was observed as follows:-

“18. Therefore, we do not think that while making the observations in the last three lines of para 24 of **Sarla Verma** judgment, the Court had intended to lay down an absolute rule that there will be no 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 on fixed wages will also get 30% increase in his total income over a period of time and if he/she becomes the victim of an accident then the same formula deserves to be applied for calculating the amount of compensation.”

In case of **Rajesh and others Vs. Rajbir and others (2013)9 SCC**

54, a three Judges Bench of Hon'ble Apex Court has observed in para 11 and 12 as follows:-

“11. Since, the Court in **Santosh Devi's case** (supra) actually intended to follow the principle in the case of salaried persons as laid in **Sarla Verma's case** (supra) and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups 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 an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.

12. In **Sarla Verma's case** (supra), it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age

of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter.”

Reference was made to a larger Bench of Hon'ble Apex Court in case of *National Insurance Company Limited Vs. Pushpa (supra)*, on 02.07.2014. In the recent judgment dated May 15, 2015 in case titled *Munna Lal Jain and others Vs. Vipin Kumar Sharma and others 2015(3)RCR (Civil) 447*, a three Judges Bench of Hon'ble Apex Court allowed future prospects in the case of self-employed persons following the observations made in case of *Rajesh and others Vs. Rajbir and others (supra)*. As the view taken in case of *Rajesh and others Vs. Rajbir and others (supra)* has been followed by the Hon'ble Apex Court in *Munna Lal Jain and others Vs. Vipin Kumar Sharma and others (supra)*, the Tribunal committed no error while allowing 50% addition of the income towards future prospects while allowing the compensation to the claimants. No interference on this score is called for.

It is not a case where the accident took place due to contributory negligence of the deceased as well as driver of offending vehicle. The claimants were not required to place on record driving licence of the deceased until or unless, it is so specifically directed by the Tribunal. It is no where case of the appellant that the Tribunal has passed any order to produce the driving licence of deceased, as such, the argument in this regard advanced by learned counsel for the appellant has no merits.

No other point has been argued by learned counsel for the appellant.

In view of my discussion above, this appeal has no merits.

Dismissed.

(SURINDER GUPTA)

September 14, 2015.

Sachin M.

JUDGE