IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3876 of 2015 (O&M)
Date of Decision: 30 June, 2015

Shri Ram General Insurance Company Limited
...Appellant

Versus

Smt.Sandhiya & Ors.
...Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.Rajbir Singh, Advocate, for
Mr.Sanjeev Goyal, Advocate,
for the appellant.

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1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Naresh Kumar Sanghi, J.(Oral)

The present first appeal against the order has been filed by Shri Ram General Insurance Company Limited, challenging the Award dated 27.01.2015 passed by learned Motor Accidents Claims Tribunal, Mewat, (for brevity "learned Tribunal") whereby an amount of Rs.16,72,000/- (Rupees Sixteen lacs seventy two thousand) along with interest at the rate of 7% per annum from the date of filing of the claim petition till full realization was awarded in favour of the claimants.

Sh.Rajbir Singh, learned proxy counsel for the appellant-Insurance Company submits that the claimants have failed to substantiate the fact that Om Parkash (since deceased) was earning ₹ 8,000/- (Rupees Eight thousand) per month and as such, the learned Tribunal has wrongly assessed the monthly income at the rate of ₹ 8,000/- (Rupees Eight thousand) per month. He further submits that the learned Tribunal has also gone wrong in adding 50% of the monthly income of the deceased as future prospects while calculating the amount of compensation. To elaborate his arguments, he submitted that as per the Haryana Govt. notification dated 01.01.2014, the minimum income of Om Parkash (since deceased) being unskilled labour should have been assessed at the rate of ₹ 5,547.10p. (Rupees Five thousand five hundred forty seven and ten paisa).

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

As per the material available on record, Om Parkash, aged about 30 years, was a pillion rider on motorcycle bearing registration No.HR-27C-3534, which was being driven by Jaffruddin and when the said motorcycle reached at Adbar Chowk a dumper bearing registration No.HR-55G-2798 (for brevity the offending vehicle) being driven in rash or negligent manner by respondent No.1, Azeem, arrived there from the rear side and hit the motorcycle being occupied by Om Parkash and Jaffruddin. As a result of the impact, Om Parkash sustained fatal injuries and died after three days. The matter was reported to the police on the basis of which first information report was registered. As per claimants, the deceased was aged about 25 years but on the basis of the documentary evidence, it was concluded by the learned Tribunal that he was aged about 30 years at the time of his death. The claimants had alleged that the deceased was dealing in cutlery items and earning ₹ 15,000/- (Rupees Fifteen thousand) per month however, the learned Tribunal assessed his monthly income at the rate of ₹ 8,000/- (Rupees Eight thousand).

Since the factum of accident and the negligence on the part of Azeem, the driver of the offending vehicle, have not been challenged before this Court, therefore, there is no necessity to discuss the said aspect in detail. It is suffice to mention that after scanning the material available on record, the learned Tribunal returned the finding that the accident in question had taken place on account of the sole rash or negligent act on the part of Azeem, the driver of the offending vehicle.

To deal with the first submission of the learned counsel for the appellant that there was no evidence to substantiate the fact that the monthly income of Om Parkash (since deceased) was ₹ 8,000/- (Rupees Eight thousand) per month, a reference can be made to para no.12 of the impugned award which is reproduced as below:-

> "*These issues are interconnected, interlinked and interdependent hence are taken up together to avoid repetition of discussion. Under the issue no.2, the*

petitioners were burdened to prove the quantum of compensation and liability to pay whereas under the issues no.3 and 4, the respondent no.3 was burdened to prove that respondent no.1 was not holding valid and effective driving licence and respondent no.2 had not complied with the terms and conditions of the insurance policy at the time of the alleged accident. In order to discharge her onus, the petitioner no.1 in her sworn statement by way of tendering affidavit Ex.PW2/A has stated that her husband was hale and hearty. He was engaged in occupation of marketing of cutlery and used to earn Rs.15,000/- per month. All the petitioners were dependent on his income. Due to untimely death of her husband apart from depriving of love and affection they have also suffered monetary loss. Further, the petitioner no.1 in terms of her affidavit has also stated that her mother-in-law (mother of the deceased), had died for about 22 years back. The proforma respondent no.4 is her father-in-law. In order to prove income of her deceased husband, she has placed reliance upon returns and assessment slips Ex.P-27 to Ex.P-32 thereby showing his net profit Rs.98,000/- per annum during the assessment year 2006-2007. Therefore, the income of the deceased is assessed at Rs.8,000/- per month. As per

PMR Ex.P-23 at the time of accident age of the deceased was 30 years."

During their depositions before learned Tribunal the claimants had produced the income tax assessment slips Ex.P-27 to Ex.P-32 showing that net profit per annum of the income of Om Parkash (since deceased) was ₹ 98,000/- (Rupees Ninety eight thousand) during assessment year 2006-2007. Though while filing the claim petition and during deposition before learned Tribunal, the claimants alleged that Om Parkash (since deceased) was earning ₹ 15,000/- (Rupees Fifteen thousand) per month, yet the learned Tribunal while placing reliance on the documentary evidence held that monthly income of Om Parkash (since deceased) was ₹ 8,000/- (Rupees Eight thousand) per month.

The submission of the learned counsel for the appellant that in view of the notification dated 1.4.2014 issued by the Labour Commissioner, Haryana, minimum monthly income of Om Parkash (since deceased) should be assessed at the rate of ₹ 5,547.10 (Rupees Five thousand five hundred forty seven and ten paisa) cannot be accepted. The notification does not prescribe 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 ₹ 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.

In view of the above, there is no force in the first argument of learned counsel for the appellant and the same is hereby rejected.

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

> "*13. Further in **Renu Devi** vs. **Md.Yunis 2013(4) RCR (Civil) P&H page 1** and **Smt.Atiman** vs.**Ashok Kumar** by our own Hon'ble High Court of Punjab and Haryana while disposing of FAO No.5534 of 2012 on 03.12.2013 has laid down that 50% of the income in case of labourer or a daily wage earner or a person with a fixed salary without increment in case he was below 40 years and 30% of the income in case he was between 40-50 years will have to be added towards his future prospectus while calculating loss of dependency. In the case in hand, the age of the deceased at the time of death was about 30 years. Following the ratio of law laid down in the authorities (supra) if 50% of the income of the deceased is added, total comes to Rs.12,000/- (8000+4000 i.e. 50%*

of the total) per month."

Even otherwise in the latest judgment pronounced by the Full Bench of Hon'ble the Supreme Court in **Munna Lal Jain & Anr.** vs. **Vipin Kumar Sharma and Ors.**, **Civil Appeal No.4497 of 2015** arising out of **S.L.P.No.8362 of 2013**, the future prospects formula was accepted and an appropriate amount was awarded to the claimants.

Similar view was taken by Hon'ble the Supreme Court in the matters of **Asha Verman & Ors.** vs. **Maharaj Singh & Ors. Civil Appeal No.3211-3212 of 2015** arising out of **SLP No.1668-1669 of 2014 reported in 2015 ACJ 1286** and **Kanhsingh & Anr.** vs. **Tukaram & Ors.,2015(1) RCR (Civil) 613,** therefore, the second argument of learned counsel for the appellant with regard to rejection of the claim for future prospects is also not accepted.

No other argument has been raised.

Dismissed.

June 30 2015 **(Naresh Kumar Sanghi)**
seema **Judge**