IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.4299 of 2015 (O&M)
Date of Decision: September 01, 2015.

Oriental Insurance Company Limited

..........APPELLANT(s).

VERSUS

Swarna Devi and others

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vinod Chaudhari, Advocate
for the appellant (s).

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SURINDER GUPTA, J.

This is an appeal by Oriental Insurance Company Limited against the award passed in MACT case No.267 of 2014 by the Motor Accident Claims Tribunal, Chandigarh (later referred to as the Tribunal) for the death of Shyam Lal in a motor accident with Scorpio vehicle bearing registration No.RJ-28-UA-0988 (later referred to as the offending vehicle).

As per case of the claimants, on 28.07.2014, Shyam Lal was going on his motorcycle on which Satya Narayan was pillion rider. They were going from Sector-18, Chandigarh and when they reached near light point of Sector 19/27 and were in the process of crossing the light point, the offending vehicle came from the side of Sector-26. It was being driven by respondent No.1-Trilok Sharma in a rash and negligent manner and hit the motorcycle at a fast speed. As a result of collision, deceased and Sat Narayan fell on the road. The motorcycle was dragged by the offending vehicle to a long distance. Shyam Lal sustained serious injuries and was taken to Government Multi-Speciality Hospital, Sector-16, Chandigarh, where he succumbed to the injuries sustained by him.

In reply filed on behalf of respondents No.1 and 2 i.e. owner and driver of the offending vehicle, the accident was admitted but it was alleged that the same had taken place due to rashness and negligence of driver of the motorcycle, who suddenly came in front of the offending vehicle without giving any indication. The driver of the motorcycle did not obey the traffic rules.

Appellant-Oriental Insurance Company also contested the claim petition with the plea that the offending vehicle was not insured with respondent No.3. The accident and involvement of the offending vehicle was also denied. An alternative plea was also taken that in case the accident is proved, the same was due to rashness and negligence of the deceased, who was driving the motorcycle.

Pleadings of the parties led to the framing of following issues:-

(1) Whether accident dated 28.07.2014 resulting in injuries to claimant Satya Narayan and death of Shyam Lal @ Shyam Gopal occurred on account of rash and negligent driving of vehicle No.RJ-28-UA-0988 by respondent no.1? OPP

(2) Whether the claimants are entitled to compensation as prayed, if so, to what extent and from whom? OPP

(3) Whether the driver of offending vehicle was not holding a valid and effective driving licence on the date of accident and the vehicle was being driven in violation of the terms and conditions of the insurance policy? OPR3

(4) Relief.

The Tribunal returned the finding that accident had taken place due to rashness and negligence of driver of the offending vehicle. Claimants-respondents No.1 and 2 were allowed compensation of ₹13,35,580/- for the death of Shyam Lal. The compensation was calculated in the manner as tabulated below:-

Sl.No.	*Heads*	*Calculation*
(i)	Income	₹8090 per month
(ii)	50% of (i) above to be added as future prospects	(₹8090+ ₹4045)= (₹12135 per month)
(iii)	1/2 of (ii) deducted as personal expenses of the deceased	(₹12135-₹6067.5)= ₹6067.5 per month
(iv)	Compensation after multiplier of 18 is applied	(₹6067.5X12X18)= ₹13,10,580
(v)	Funeral expenses	₹25,000
Total		₹13,35,580/-

I have heard learned counsel for the appellant and have gone through the paper book with his assistance.

Learned counsel for the appellant has argued that the Tribunal has taken the income of the deceased as per the testimony of PW1 Pushpinder Kaushal, Shift Manager, KFC Franchise, Sector-8, Madhya Marg, Chandigarh where the deceased worked for a very short tenure from 26.04.2014 to 26.08.2014. He had deposed about the income which the deceased was drawing at the time of death as ₹8,090/- per month. The Tribunal has also allowed 50% addition in income of the deceased towards the future prospects. The matter in this regard is pending before the Larger Bench of Hon'ble Supreme Court in case ***National Insurance Company Limited Vs. Pushpa*** **Appeal (C) No.8058 of 2014 decided on 02.07.2014** ***(MANU/SC/1246/2014).*** He submits that the compensation allowed by the Tribunal as ₹13,35,580/- is on higher side.

The Tribunal has taken into account the documentary evidence i.e. salary certificate proved on file by the Shift Manager of KFC Franchise, Sector-8, Chandigarh. As per the salary certificate, the deceased started his job with salary of ₹7201/- which was increased from time to time and at the time of death, he was drawing ₹8090/- per month. There is no rebuttal to this evidence produced by the claimants, as such, the Tribunal has committed no error of law or fact by relying on this piece of evidence while taking into account the income of the deceased. The matter regarding 50% increase towards future prospects which could be allowed to the private sector employees was referred to the Larger Bench of Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pushpa (supra)*** in view of the conflict of observations in case of ***Rajesh and others Vs. Rajbir and others (2013)9 SCC 54,*** and ***Sarla Verma and others Vs. Delhi Transport Corporation and Anr. (2009)6 SCC 121.*** The observations in case of ***National Insurance Company Limited Vs. Pushpa and others (supra)***, while differing with the view taken in case of ***Sarla Verma and others Vs. Delhi Transport Corporation and Anr. (supra),*** are 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 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.

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

This appeal has no merits. Dismissed.

In this case, the statutory amount of ₹25,000/- while filing the appeal, was deposited with wrong title of the appeal as Oriental Insurance Company Limited Vs. Satya Narayan and others. The title has now been rectified, as such, the registry is directed to send the statutory amount of ₹25,000/- to the Tribunal for payment to respondents Swarna Devi and Raju Ram (claimants).

(SURINDER GUPTA)
JUDGE

September 01, 2015.
Sachin M.