

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

FAO No. 5815 of 2015(O&M)

Date of Decision: September 3 , 2015.

United India Insurance Company Ltd.

..... APPELLANT (s)

Versus

Kamaljeet and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Rajesh K.Sharma, Advocate
for the appellant.

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?

LISA GILL, J.

Instant appeal has been preferred by the United India Insurance Company Limited impugning award dated 06.05.2015 passed by the Motor Accident Claims Tribunal, Panchkula (hereinafter referred to as, the 'Tribunal') whereby compensation has been awarded to the legal representatives of deceased – Madan Lal. Challenge has been laid on the ground that once the Tribunal chose to assess the income of the deceased as a skilled worker, rate as was applicable at the time of accident should have been determined. Furthermore, compensation should not have been awarded on account of future prospects as the deceased was not working on government or permanent job.

There is no dispute regarding the liability of the Insurance Company.

Facts as reflected in the claim petition are that Madan Lal (deceased) and Gurmeet Singh @ Vimal Kumar left their village Raipur, Tehsil Kalka District Panchkula on 09.11.2011 on a tractor trolley for loading sand and concrete from a plant at village Surajpur-Dosarka. They parked their tractor trolleys in the plant and went to the other side of the road to have tea. After taking tea at about 2.00 p.m., they were coming back to the plant. When Madan Lal crossed all the four lanes as well as the divider and reached on Katcha portion of the other side of the road, a Canter bearing registration No. PB-65F-4583 arrived from Pinjore side being driven by respondent No.6 – Vipin Kumar in a rash and negligent manner at a high speed and hit against Madan Lal. As a result thereof, Madan Lal fell down and suffered injuries. Said driver stopped his Canter at a little distance and on seeing the serious condition of Madan Lal, fled from the spot leaving his vehicle.

The injured was removed to Radhidevi Amrawati Hospital, Surajpur from where he was referred to Govt. Medical College and Hospital, Sector 32 Chandigarh. He was discharged from the said hospital on 13.12.2011 in an unconscious condition. Later, he was re-admitted on 03.01.2012 and discharged on 10.01.2012. Subsequently, he was admitted in PGI, Chandigarh on 12.01.2012 and discharged on 21.01.2012. He remained in PGI, Chandigarh from 22.07.2012 to 25.07.2012 and was continuously taking treatment. Ultimately, on 25.07.2012 he succumbed to the injuries received in the accident. He remained in coma from the date of accident i.e. 09.11.2011 to 25.07.2012

i.e., till his death. FIR No.211 dated 09.11.2011 was registered against respondent No.6 – Vipin Kumar for the commission of offences under Sections 279/337/338 IPC at Police Station Pinjore.

Claim petition under Section 166 of the Motor Vehicles Act, 1988 was filed by the claimants who are the widow, two minor children and parents of deceased – Madan lal. They claimed compensation to the tune of ₹30 lacs. Age of the deceased, Madan Lal was 26 years at the time of accident. As per the claimants, the deceased was a driver by profession and earning ₹15,000/- per month.

Learned Tribunal on considering the evidence on record concluded that the accident had taken place due to the rash and negligent driving of Canter No.PB-65F-4583 by its driver. As no documentary evidence was brought on record, the Tribunal made an approximate assessment of the income of the deceased. Keeping in view the prevailing circumstances, earnings of the deceased being a skilled worker in the capacity of driver was taken to be ₹7,000/- per month. Deduction of 1/4th (₹1750/-) was effected. Annual dependancy was worked out at ₹63,000/- (5250x12). Multiplier of 17 was applied. Compensation amount was worked out at ₹10,71,000/- (63,000x17). 50% addition to the actual income i.e., ₹3,35,500/- was made on account of future prospects as the deceased was 26 years old at the time of accident. Claimants were held entitled for a total sum of ₹19,85,438/-, details of which are as under:-

Income	₹7,000/- p.m.
Deduction of 1/4 th	₹1,750/-
Annual Dependancy	5250x12 = ₹63,000/-

Multiplier	17
Compensation	₹10,71,000/- (63,000x17)
Addition of 50% on account of future prospects	₹5,35,500/-
Funeral expenses	₹25,000/-
Loss of consortium to wife	₹1,00,000/-
Loss of care and guidance to minor children	₹1,00,000/-
Grand Total	₹19,85,438/-

Learned counsel for the appellant argues that if the deceased was treated as a skilled worker by the Tribunal, it is the amount as specified in the Schedule of 2011 by the Government of Haryana in respect to skilled worker which should have been taken into account and the income of the deceased should be fixed accordingly. Income of a skilled worker in the year 2011 was much less i.e., about ₹5,294/- per month. Learned counsel for the appellant further contends that compensation on account of future prospects should not have been awarded. It is submitted that Hon'ble Supreme Court vide order dated 02.07.2014 passed in SLP CC No.8058 of 2014 (National Insurance Company Ltd. v. Pushpa and others) has referred the matter in respect to addition in income on account of future prospects to a larger Bench.

Having heard learned counsel for the appellant and going through the file, I find no merit in the abovestated arguments for the reason that a rule of thumb has been applied by the Tribunal. His earning has not been determined to be that of a skilled worker as sought to be projected. Learned Tribunal has specifically observed that “keeping in view the prevailing circumstances, in modest estimate, the earnings of the deceased being a skilled worker in the capacity of driver is taken to be ₹7,000/- per month”.

It is, thus, erroneous to assume that specific amount (minimum wage) which is available to a skilled worker should be assessed as the income of the deceased. Though there is no documentary evidence on record regarding the extent of his earnings, it cannot be ignored that at the time of accident, the deceased had taken the tractor trolley to the plant for transporting sand and concrete. Specific stand of the claimants is that the deceased was a driver. PW1 Kamaljeet, widow of the deceased has specifically deposed to this effect and claimed that her husband was earning ₹15,000/- per month. It is not that the Tribunal was required to exercise clinical precision and award the exact amount as available to a skilled worker at the time of the accident. It is indeed the duty of the Tribunal/court to award just and proper compensation in a given situation. Prescribed wages of different categories definitely afford a reference point but strict adherence is not called for in all situations. There is, thus, no infirmity or illegality in the finding of learned Tribunal to the estimation of income to be ₹7,000/- per month in such a situation.

Regarding the objection to award of loss of future prospects, learned counsel for the appellant is unable to deny that the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others, 2013(3) RCR(Civil)170(SC)** has not been stayed. In **Munna Lal Jain v. Vipin Kumar Sharma, (2015) 6 SCC 347** the Hon'ble Supreme Court has awarded compensation on account of loss of future prospects where the deceased was not in a permanent/government job. Therefore, said argument of learned counsel for the appellant is also unacceptable.

No other ground has been raised.

Learned counsel is unable to point out any illegality, infirmity or perversity in the impugned award dated 06.05.2015 passed by learned Motor Accident Claims Tribunal, Panchkula which would warrant interference by this Court in the present appeal.

Consequently, this appeal is dismissed.

September 3 , 2015.
'om'

(LISA GILL)
JUDGE