

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

**FAO No.4491 of 2011
Date of decision : 01.03.2016**

Smt. Santosh and others

.....Appellants

Versus

Ashok Kumar and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

- 1. Whether Reporters of the 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*

Present: Mr. Sandeep Yadav, Advocate for appellants.

Mr. M.B. Jain, Advocate for respondent No.3.

DARSHAN SINGH, J.

The present appeal has been preferred by the appellants-claimants against the award dated 17.01.2011 passed by learned Motor Accidents Claims Tribunal, Narnaul (hereinafter called the 'Tribunal'), vide which the claimants have been awarded compensation to the tune of Rs.4,31,200/- on account of death of Laxminarain in the motor vehicular accident which took place on 24.10.2009.

2. Learned counsel for the appellants contended that deceased Laxminarain was 50 years of age. He was an agriculturist and

was also doing dairy farming but the learned Tribunal has taken his income just Rs.3600/- per month. He further contended that no future prospects have been awarded by the learned Tribunal towards the income of the deceased. Less amount of compensation has been awarded under the other conventional heads. No amount has been awarded to the claimants towards loss of love and affection. Thus, he contended that the Tribunal has not awarded the just compensation.

3. On the other hand, learned counsel for the respondent-Insurance Company contended that there was no documentary evidence to establish that the deceased was an agriculturist or was doing dairy farming. His income has been rightly taken by the learned Tribunal. He further contended that no future prospects were required to be added to the income of the deceased as he was just a casual labourer and was not holding any permanent post. He contended that in case *National Insurance Company Ltd. Vs. Pushpa and others 2015 (9) SCC 166*, the Hon'ble Apex Court has referred the matter to the Larger Bench with respect to the permissibility of granting the future prospects. He further contended that the just compensation has been awarded by the learned Tribunal under all other heads. He further contended that the deceased was travelling on the tractor, which was not meant for carrying on the passengers. He was only a gratuitous passenger and was not covered under the insurance policy. So, the Insurance Company has no liability to pay the amount of compensation.

4. I have duly considered the aforesaid contentions.

5. Firstly, I take up the plea raised by learned counsel for

respondent-Insurance Company with respect to its liability. The learned Tribunal while dealing with the question of liability has recorded the finding that the deceased had gone on the tractor along with his fodder as well as fodder of respondent No.2. As such, he was travelling on the tractor as owner of the goods loaded therein. So, there was no violation of the terms and conditions of the insurance policy. Moreover, the findings of the learned Tribunal with respect to the liability of the Insurance Company has not been assailed by respondent-Insurance Company as it has not filed any appeal or the cross appeal. Thus, the findings given by learned Tribunal qua the liability of respondent No.3-Insurance Company has attained finality and cannot be questioned in the present appeal.

6. As per the case of the claimants, deceased was an agriculturist and was also doing the dairy farming. He was also doing the work of a driver as well as labourer. But there was no corroboration to this oral statement of PW1 Santosh Devi appellant-claimant No.1. The claimants have not placed on record any revenue document to show that the deceased was owing or possessing any agricultural land. There is also no documentary evidence to show that he was doing the dairy farming. So, the learned Tribunal has rightly considered the deceased as a labourer but the income of the deceased taken by the learned Tribunal i.e. Rs.3600/- per month is on the lower side. So, the income of the deceased shall be taken to Rs.3900/- per month.

7. I do not find any substance in the plea raised by learned counsel for the respondent-Insurance company that no future prospects were required to be added to the income of the deceased. In case

National Insurance Company Ltd. Vs. Pushpa and others (supra), relied upon by learned counsel for respondent-Insurance Company the matter has only been referred to the larger Bench keeping in view the conflicting judgments but in a latest judgment rendered by three-Judges Bench of the Hon'ble Apex Court in case ***Munna Lal Jain and another Vs. Vipin Kumar Sharma and others 2015(3) PLR 304***, the future prospects were allowed in case of the self-employed person following the observations in ***Rajesh and others Vs. Rajbir Singh and others (2013) 9 SCC 54***, wherein it was laid down as under :-

“11. As far as future prospects are concerned, in Rajesh and others Vs. Rajbir Singh and others (2013) 9 SCC 54, a three-Judge Bench of this Court held that in case of self-employed persons also, if the deceased victim is below 40 years, there must be addition of 50% to the actual income of the deceased while computing future prospects. To quote:

“8. Since, the Court in Santosh Devi case actually intended to follow the principle in the case of salaried persons as laid down in Sarla Verma case 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.”

The deceased being of the age of 30 years, 50% is the required addition.”

8. Thus, in view of the aforesaid ratio of law laid down by the Hon'ble Apex Court, even though the deceased was a labourer/self-employed, the future prospects were required to be added towards his

income. PW5 Dr. Gaurav Arora has deposed that deceased Laxminarain was 50 years of age at the time of his death. No definite evidence has been adduced by the claimants to show that he was below 50 years of age at the time of the death. 15% of the income of the deceased shall be added towards the future prospects. So, the total income of the deceased comes to Rs.4485/-, to make it a round figure it can be taken to be Rs.4500/- per month i.e. Rs.54,000/- per annum. $\frac{1}{4}$ th of this amount is to be deducted towards personal and living expenses of the deceased. The remainder comes to Rs.40,500/-. Keeping in view the age of the deceased, multiplier of 11 shall be applicable. So, the multiplicand comes to Rs.4,45,500/-.

9. In addition to the aforesaid amount appellant-claimant No.1 shall be entitled to a sum of Rs.1,00,000/- towards loss of consortium. Appellants-claimants No.2 to 4 shall be entitled to a sum of Rs.1,00,000/- towards loss of care and guidance. Appellant-claimant No.5 Smt. Kamla Devi, the mother of the deceased shall also be entitled to a sum of Rs.50,000/- towards loss of love and affection of her son. The claimants shall also be entitled to a sum of Rs.25,000/- towards funeral and transportation charges. In this manner, the total amount of compensation comes to Rs.7,20,500/-.

10. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The amount of compensation is enhanced to Rs.7,20,500/- from Rs.4,31,200/- as awarded by the learned Tribunal. The claimants shall be entitled to interest on the enhanced amount from the date of filing the petition till realization at the rate of interest as awarded by the learned Tribunal. The liability to pay the

enhanced amount shall remain as determined by the learned Tribunal in the main award.

01.03.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**