

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**1. FAO No. 4917 of 2012 (O&M)
Date of Decision : 20.01.2016**

Shriram General Insurance Co. Ltd.Appellant

Versus

Poonam Chaddha and othersRespondents

2. FAO No. 4918 of 2012 (O&M)

Shriram General Insurance Co. Ltd.Appellant

Versus

Pyari Kukreti @ Preeti Kukreti and othersRespondents

3. FAO No. 5677 of 2012

Poonam Chaddha and othersAppellants

Versus

Raju Kumar and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ashwani Talwar, Advocate
for the appellant-Insurance Company
in FAOs No. 4917 & 4918 of 2012 and for respondent
no. 3 in FAO No. 5677 of 2012

Mr. J.S. Randhawa, Advocate
for respondents no. 1 and 2 in FAO No. 4917 of 2012
and for appellants in FAO No. 5677 of 2012.

Mr. Shiv Kumar, Advocate
for respondent no. 4 in FAOs No. 4917 & 4918 of 2012
and for respondent no. 2 in FAO No. 5677 of 2012.

None for respondent no. 3.

Surinder Gupta, J.

This judgment will dispose of above captioned appeals
filed against award dated 04.05.2012 passed by the Motor
Accident Claims Tribunal, Faridabad (later referred to as 'the
Tribunal') in claim petitions relating to accident dated 29.08.2009

resulting in death of Ravi Chaddha and Rajeev.

2. Parents of Rajeev filed claim petition bearing MACT No. 40 of 15.03.2010 while parents of Ravi Chaddha filed claim petition bearing MACT No. 41 of 2010. Both the claim petitions were decided by common award dated 04.05.2012. The Tribunal allowed compensation of ₹4 lacs each in both the claim petitions, which was calculated as follows:-

Sr. No.	Heads	Calculation
(i)	Income of the deceased	₹5000 per month
(ii)	1/2 nd of (i) deducted as personal expenses of the deceased	(₹5000-₹2500)= ₹2500 per month
(iii)	Compensation after applying multiplier of 13 as per age of claimants	(₹2500X12X13)= ₹390000
(iv)	Funeral expenses	₹5000
(v)	Loss of estate	₹5000
Total		₹400000

3. Facts of case are not being discussed in detail as in the appeals (FAOs No. 4917 and 4918 of 2012) Insurance Company is seeking right against insured to recover the compensation amount and decrease in compensation as awarded by the Tribunal and in FAO No. 5677 of 2012, claimants are seeking enhancement of compensation.

FAOs No. 4917 & 4918 of 2012

4. Learned counsel for the appellant-Insurance Company has argued that driving licence of Raju Kumar-respondent no. 3 driver of the offending vehicle was admittedly fake. Despite this fact, the Tribunal has not allowed right to recover the amount of compensation paid to claimants by the Insurance Company.

Insured-owner of the offending (respondent no. 4) had committed breach of terms of the policy by allowing respondent no. 3 who was not holding a valid driving licence to drive the vehicle, as such, no liability of the insurer to indemnify the insured is attracted in this case. He has further argued that the Tribunal had taken income of both the deceased as ₹5000/- per month. Deceased Rajeev was 20 years of age while deceased Ravi Chaddha was 24 years of age. Rajeev was a student who was doing two years software engineering course in IIT Institute at Delhi. His income was alleged as ₹11,000/- per month from tuition. Income of deceased Ravi Chaddha was alleged as ₹9000/- per month from his employment as Marketing Supervisor with M/s Bee Emm Distributors, NIT, Faridabad. However, in the absence of any evidence of their income, the Tribunal assessed their monthly income as ₹5000/-. The accident had taken place in the year 2009. In the absence of any evidence regarding income of the deceased, the Tribunal could take their monthly income as that of a daily wager which in no case was more than ₹4000/- per month.

5. Learned counsel for the respondents has argued that the Tribunal has discussed in detail that driving licence of respondent no. 3-Raju Kumar was fake but it was concluded that there was no violation of terms and conditions on the part of insured. The Tribunal relied on the observations in case of **United India Insurance Company Limited vs. Lehu, 2003 (2) RCR (Civil) 278** while reaching the conclusion that insured, who had taken enough precautions while employing respondent no. 3-Raju Kumar as driver, cannot be held to be liable for breach of terms of

insurance policy if driving licence is found to be fake. The Insurance Company has failed to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of policy regarding use of vehicle by the duly licenced driver.

6. It is admitted that driving licence of respondent no. 3-Raju Kumar was found to be fake. A report from the office of Licensing Authority, Mathura was obtained in this regard. The insured had appeared as RW-3 and has categorically stated that at the time of appointing/hiring respondent no. 3-Raju Kumar, he had seen his driving licence issued by the Licensing Authority, Mathura which was valid from 07.05.2007 to 06.05.2010. He had retained one copy of licence in his record. Thereafter, he had taken driving test of respondent no. 3 and found that he drives the truck very smoothly with care of traffic rules. After satisfying himself he has allowed him to drive his truck. The Tribunal has taken into account observations of the Apex Court in case of **National Insurance Co. Ltd. vs. Swaran Singh and others, 2004 (2) RCR (Civil) 114** while arriving at a conclusion that to avoid the liability, the insurance company has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of policy regarding driving of vehicle by duly licenced driver. In case of ***Lehru (supra)***, the Apex Court has observed that if the insured at the time of employment of driver had seen his driving licence which on the face of it looks genuine and had taken test of the driver and at later stage the licence is found to be fake, he cannot be held guilty

of violating the terms and conditions of insurance policy. It was categorically observed by the Apex Court that owner is not expected to find out whether licence produced by driver had been issued by the competent authority or not. The owner is not expected to make enquiries with the RTOs spread all over the country to verify the validity of driving licence. In case of **Swaran Singh (supra)** the Apex Court observed that mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time are not in themselves defences available to the insurer against either the insured or the third party. Learned counsel for the appellant-Insurance Company has not referred any citation, where a view contrary to the above view has been taken by the Apex Court. Consequently, I find no legal or factual infirmity in the conclusion drawn by the Tribunal on this score, calling for any interference.

7. Now I will take up the submissions of learned counsel for the parties regarding quantum of compensation alongwith the plea of claimants in FAO No. 5677 of 2012 seeking enhancement of compensation.

8. Learned counsel for appellants-claimants has argued that though claimants have placed on record the appointment letter of deceased Ravi Chaddha with monthly salary of ₹9000/- yet the Tribunal has discarded this piece of evidence in the absence of any document showing his employment, attendance, payment of salary etc. and has taken his salary as ₹5000/- per month. However, learned counsel for the appellants-claimants has confined claim regarding income of the deceased as assessed by

the Tribunal but have sought enhancement towards future prospects as per observations in cases of **Munna Lal Jain and others vs. Vipin Kumar Sharma and others, 2015 (3) RCR (Civil) 447** and **Rajesh and others vs. Rajbir Singh and others, 2013 (9) SCC 54**. He has also sought grant of compensation under the conventional heads i.e. funeral expenses, loss of estate, love and affection.

9. Learned counsel for respondent no. 3-Insurance Company has argued that the matter regarding allowing of compensation towards future prospects as decided by the Apex Court in the case of ***Rajesh (supra)*** is pending consideration before the larger Bench of the Apex Court in case **National Insurance Company Limited vs. Pushpa and others, Appeal (C) No.8058 of 2014 decided on 02.07.2014 (MANU/SC/1246/2014)**, as such no compensation on this score can be allowed.

10. In the case of ***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.”

11. 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**¹ (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

¹ Santosh Devi v. National Insurance Co. Limited, (2012) 6 SCC 421

*compensation just, equitable, fair and reasonable.
There shall normally be no addition thereafter.”*

12. Reference was made to a larger Bench of Hon'ble Apex Court in case of ***Pushpa (supra)*** on 02.07.2014. In the recent judgment dated 15.05.2015 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 (supra)***.

13. The concept of future prospects envisages chances or opportunities for success and further progress in life which is a normal course of event for every human being involved in any avocation. Even if, keeping in view his ability, capacity etc., one may not be in a position to rise in life, there is another aspect that justifies the grant of addition in the income of the deceased towards future prospects, is the 'inflationary trend' in which we all are living. For instance, I take instance of a tailor. It is a matter of common knowledge that stitching charges have increased manifold during last two decades due to increase in expenses of material/labour charges/margin of persons in this profession, with consequent increase in their income. This is because of high increase in the cost of living. The dependents of a deceased in accident have also to face the same situation. The amount of compensation is required to be just and reasonable keeping the inflationary trend in view, where the prices of the basic amenities of life are likely to increase further.

14. On perusal of award, I find that both the deceased were

educated persons. The Tribunal has taken their monthly income as ₹5000/- which in no manner was on higher side in the year 2009. Even an unskilled daily wager could earn ₹5000/- per month. The submission of learned counsel for the appellant-Insurance Company in FAOs No. 4917 and 4918 of 2012 that the Tribunal has assessed income of the deceased on higher side is without merit.

15. As per observations in case of **Rajesh (supra)**, 50% of income of the deceased is to be added towards future prospects. Claimants-parents of Ravi Chaddha are also entitled to compensation of ₹1 lac towards loss of estate, love and affection besides ₹25000/- towards funeral expenses. As per norms fixed in case of **Sarla Verma (supra)**, multiplier required to be applied while calculating the amount of compensation is 18. The amount of compensation to which the claimants are entitled, is tabulated as follows:-

Sr. No.	Heads	Calculation
(i)	Income of the deceased Ravi Chaddha	₹5000 per month (as assessed by Tribunal)
(ii)	50% of (i) above to be added as future prospects	₹5000 + ₹2500 = ₹7500 per month
(iii)	1/2 nd of (ii) deducted as personal expenses of the deceased	₹7500 - ₹3750 = ₹3750 per month
(iv)	Compensation after multiplier of 18 is applied	(₹3750X12X18) = ₹810000
(v)	Loss of estate, love and affection	₹100000
(vi)	Funeral expenses	₹25000
Total		₹935000

16. In view of my above discussion, FAOs No. 4917 and

4918 of 2012 filed by the Insurance Company are dismissed being without merit and FAO No. 5677 of 2012 filed by the claimants is accepted. Award of the Tribunal is modified and the compensation allowed to claimants for death of Ravi Chaddha is enhanced from ₹4,00,000/- to ₹9,35,000/-. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of the claim petitions till actual realization.

A copy of this judgment be placed in the connected files.

January 20, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether to be referred to the Reporters? *Yes/No*