

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

FAO No.10131 of 2014 (O&M)

Date of decision : 23.07.2016

HDFC ERGO General Insurance Company Ltd.

.....Appellant

Versus

Shanti Devi 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. Kulwinder Singh, Advocate for
Mr. Sanjeev Goyal, Advocate for appellant.

None for respondents No.1 to 5.

Mr. Chanderhas Yadav, Advocate for respondents No.6 & 7.

DARSHAN SINGH, J.

The present appeal has been preferred by the appellant-HDFC ERGO General Insurance Company Ltd. (respondent No.3 in the claim petition) aggrieved with the award dated 21.08.2014 passed by the learned Motor Accidents Claims Tribunal, Hisar (hereinafter called the 'Tribunal'), vide which the claim petition filed by respondents No.1 to 5-claimants under Section 166 of the Motor Vehicles Act, 1988 (hereinafter called the 'Act') has been partly allowed and a sum of Rs.18,02,000/- along with interest at the rate of 7.5% per annum has been awarded to respondents No.1 to 5-claimants on account of death of Ram Bhawan in the motor

vehicular accident which took place on 12.10.2013.

2. In the present appeal the quantum of compensation awarded to respondents No.1 to 5-claimants is under challenge.

3. Mr. Kulwinder Singh, Advocate appearing for Mr. Sanjeev Goyal, Advocate, learned counsel for appellant-Insurance Company contended that there was no documentary proof to establish that the deceased was a driver by profession. So, the learned Tribunal has wrongly determined the income of the deceased to be Rs.6000/- per month. He further contended that he was just a casual labourer and could not have earned more than Rs.4000/- per month. He further contended that the learned Tribunal has wrongly awarded the future prospects towards the income of the deceased. The deceased was not holding the permanent job, earning regular increments. Moreover, the matter with regard to grant of future prospects has been referred to the Larger Bench of the Hon'ble Apex Court. Thus, he contended that the compensation awarded by the learned Tribunal is exorbitant.

4. I have duly considered the aforesaid contentions.

5. As per the case of the claimants, deceased Ram Bhawan was a transporter and was earning Rs.70,000/- per month. On appreciation of the entire evidence, the learned Tribunal has come to the conclusion that the claimants have not been able to establish that deceased Ram Bhawan was earning Rs.70,000/- per month and was carrying on the avocation as a transporter. However, he was held to be a driver by profession and his monthly income has been taken equivalent to be a skilled person *i.e.*

Rs.6000/- per month. This finding of the learned Tribunal is based on the statements of PW-1 Shanti Devi, PW-4 Suresh Singal and PW-5 Pardeep Singhal, to which there is no rebuttal. PW-4 Suresh Singal and PW-5 Pardeep Singhal have deposed that deceased Ram Bhawan used to take the material from their factory for different places and they used to pay him fare as per the weight and destination. It shows that the deceased used to drive the vehicle. Thus, no fault can be found with the findings recorded by the learned Tribunal that deceased was a driver by profession and was earning Rs.6000/- per month.

6. The learned Tribunal has awarded 50% of the income of the deceased towards future prospects, as he was only 27 years of age at the time of his death. Mere this fact that deceased was not holding the permanent job earning regular increments, is no ground to decline the benefit of future prospects to the claimants. The deceased was a driver by profession. He was a skilled person. His income was bound to increase with the passage of time. It cannot be accepted that he would remain on earning Rs.6000/- throughout his life. So, the learned Tribunal has rightly awarded 50% of the income of the deceased towards the future prospects by relying upon the law laid down by the Hon'ble Apex Court in case ***Rajesh & others Vs. Rajbir Singh & others, 2013(3) RCR (Civil) 170***. Mere this fact that the question regarding admissibility of future prospects has been referred to the Larger Bench of the Hon'ble Apex Court, is no ground to decline the future prospects even in deserving cases. The matter was referred to the Larger Bench in case ***National Insurance Company Ltd. Vs. Pushpa and***

others 2015 (9) SCC 166, due to divergent opinion in cases *Rajesh and others Vs. Rajbir Singh and others (2013) 9 SCC 54* and *Reshma Kumari and others Vs. Madan Mohan and another (2013) 9 SCC 65* on 02.07.2014 but in a latter 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* (supra). So, the learned Tribunal has not committed any illegality by awarding the future prospects towards the income of the deceased.

7. No other point was raised at the time of arguments before this Court.

8. Thus, keeping in view my aforesaid discussion, the present appeal is without any merits and the same is hereby dismissed.

23.07.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**