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

(1) **FAO No.1288 of 2014**
Date of decision : 08.02.2016

Shri Ram General Insurance Company Ltd.

......Appellant

Versus

Smt. Sarishta Devi and others

...Respondents

AND

(2) **FAO No.10437 of 2014**
Date of decision : 08.02.2016

Smt. Sarishta Devi and others

......Appellants

Versus

Shri Ram General Insurance Company Ltd. 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. Sanjeev Goyal, Advocate for appellant
in FAO No.1288 of 2014 and
for respondent No.1 in FAO No.10437 of 2014.

Mr. Parveen Kataria, Advocate for respondents No.1 to 3
in FAO No.1288 of 2014 and
for appellants in FAO No.10437 of 2014.

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DARSHAN SINGH, J.

This judgment shall dispose of both the appeals mentioned above, which have arisen out of the same award dated 12.09.2013, passed by learned Motor Accidents Claims Tribunal, Amritsar (hereinafter called the 'Tribunal').

2. For the sake of convenience, the status of the parties shall be referred as per the claim petition.

3. Claimants Sarishta Devi and others had filed the claim petition under Section166 of the Motor Vehicles Act, 1988 (hereinafter called the 'Act') for grant of compensation on account of death of Sunny son of Ranjit in the road side accident, which took place on 24.06.2011. Victim Sunny succumbed to the injuries on 01.07.2011. As per the case of the claimants, deceased Sunny was working as a paid driver with Ashok Kumar, Proprietor of Ashoka Travels, Jawala Nagar, Naraingarh, G.T. Road, Chhehrata, Amritsar. On 24.06.2011, Subhash Chander hired Tavera vehicle bearing registration No.PB-02-AY-2524 from Ashoka Travels for going to Haridwar. The said vehicle was being driven by deceased Sunny. When they reached near Rayya, one Trailer Truck bearing registration No.HR-55-H-2125 was going ahead of Tavera car. It was loaded with cone container. All of a sudden, due to technical defect during the process of overtaking the central tyre of said Trailer Truck separated and hit the Tavera car. Deceased Sunny lost control of the Tavera car and struck against the divider. All the occupants of the car including driver Sunny received injuries. As a result of which, he

succumbed to the injuries on 01.07.2011 in Guru Nanak Dev Hospital, Amritsar. It was pleaded that the accident has taken place due to negligence of the Trailer Truck on the part of respondents No.1 & 2.

4. It was further pleaded that deceased Sunny was 24 years of age. He was working as taxi driver with Ashoka Travels, Amritsar and was earning Rs.9500/- per month. Thus, the claimants have claimed the compensation to the tune of Rs.20,00,000/-.

5. The claim petition was contested by the respondents. Respondents No.1 & 2 have filed the joint written statement whereas the appellant-Insurance Company has filed the separate written statement wherein the averments raised in the petition were controverted. The plea with respect to the age and income of the deceased were denied.

6. From the pleadings of the parties, following issues were framed by the learned Tribunal:-

1. Whether Sunny s/o Ranjit Singh died in a roadside accident on 24.06.2011 in the area of village Khilchian,Tehsil Baba Bakala, Distt. Amritsar due to rash and negligent driving of Trailer Truck bearing registration No.HR-55-H-2125 by its driver, which is owned by respondent No.1? OPP

2. If issue No.1 is proved, whether the claimants are entitled to compensation, if so, to what extent and from whom? OPP

3. Whether the claimants are legal heirs of Sunny deceased? OPP

4. Whether the claim petition is not maintainable in the present form? OPR

5. Whether respondent No.2 was not holding any valid licence at the time of accident? OPR-3

6. Relief.

7. On appreciating the evidence on record, the learned Tribunal allowed the claim petition and awarded the compensation to the

tune of Rs.6,68,000/- along with interest @ 6% per annum from the date of institution of the claim petition till realisation.

8. Respondent No.3 Shri Ram General Insurance Company Ltd. has preferred FAO No.1288 of 2014 assailing the award. The claimants have also preferred FAO No.10437 of 2014 dissatisfied with the quantum of compensation.

9. I have heard Mr. Sanjeev Goyal, Advocate, learned counsel for the appellant in FAO No.1288 of 2014 and for respondent No.1 in FAO No.10437 of 2014, Mr. Parveen Kataria, Advocate, learned counsel for respondents No.1 to 3 in FAO No.1288 of 2014 and for appellants in FAO No.10437 of 2014 and gone through the paper-books carefully.

10. Learned counsel for the Insurance Company contended that even as per the admitted case of the claimants, the accident has taken place due to mechanical defect. The tyre of the Trailer Truck separated and hit the Tavera vehicle. Thus, he contended that the rash and negligent driving/act on the part of respondents No.1 & 2 is not established.

11. On the other hand, learned counsel for the claimants contended that it was the duty of respondents No.1 & 2 being owner and driver of the vehicle respectively to have properly maintained the vehicle before plying it on the road. So, the negligence on their part is established.

12. Learned counsel for the claimants further contended that

no future prospects have been awarded towards the income of the deceased. He was self-employed and as per his age, 50% future prospects should have been added to his income. The funeral expenses have also been awarded only Rs.10,000/- and no amount has been awarded towards loss of love and affection of the son to the claimants. Thus, he contended that the amount of compensation assessed by learned Tribunal is inadequate.

13. In reply to these contentions, learned counsel for the Insurance Company contended that deceased Sunny was not holding any permanent job earning regular increments. So, he was not entitled for future prospects. The compensation has been properly granted by the learned Tribunal under the other heads. Thus, he contended that there is no legal defect in computation of compensation by the learned Tribunal.

14. I have duly considered the aforesaid contentions.

15. The plea raised by learned counsel for the appellant-Insurance Company that the accident has taken place due to mechanical defect and no negligence can be attributed to respondents No.1 & 2 carries no substance. Respondents have not led any evidence to show that timely and proper maintenance of the Trailer Truck was undertaken at regular intervals. There is also no evidence that when its driver undertook the journey, he had properly checked the nut-bolts of the tyres, which was incumbent upon the driver of the vehicle. Thus, it clearly establishes the negligence on his part. To support this view, reference can be made to cases ***Pyar Chand Vs. Himachal Pradesh Road***

Transport Corporation and another 2003 ACJ 1249 (D.B.) (HP). Thus, I do not find any legal infirmity in the findings of learned Tribunal on the issue of negligence.

16. I found substance in the contentions raised by learned counsel for the claimants that the compensation has not been properly assessed by the learned Tribunal. Deceased Sunny was working as a driver with Ashoka Travels. The learned Tribunal has taken the income of the deceased as Rs.6000/- per month. But the learned Tribunal has not added any future prospects to the income of the deceased. The plea raised by learned counsel for the Insurance Company that as the deceased was not holding any regular job carrying regular increments so the future prospects were not permissible, carries no substance. 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:*
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> > *"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."*
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> *The deceased being of the age of 30 years, 50% is the required addition."*

17. In view of the aforesaid ratio of law laid down by Hon'ble Apex Court the future prospects were to be added to the income of the deceased who was self-employed as a taxi driver. Deceased Sunny was 24 years of age at the time of the accident. So, 50% of his income shall be added towards future prospects. The total income of the deceased comes to Rs.9000/-. As he was bachelor, so 50% of his income is to be deducted towards his living and personal expenses. The remainder comes to Rs.4500/-. He was 24 years of age at the time of the accident and resultant death. So, as per the law laid down by the Hon'ble Apex Court in case ***Sarla Verma and others Vs. Delhi Transport Cooperation and another (2009) 6 SCC 121***, the multiplier of 18 shall be applicable. The multiplicand comes to Rs.9,72,000/-.

18. The learned Tribunal has awarded only Rs.10,000/- towards funeral expenses which are enhanced to Rs.25,000/-. The learned Tribunal has further awarded Rs.10,000/- towards loss of estate and love and affection. Rs.10,000/- shall be considered towards the loss of estate. In addition to that claimants No.1 and 3 shall be entitled to sum of Rs.50,000/- towards love and affection of their son. The total amount of compensation comes to Rs.10,57,000/- (9,72,000 + 25,000 + 10,000 +

50,000).

19. Thus, keeping in view my aforesaid discussion FAO No.1288 of 2014 filed by respondent No.3 (appellant-Insurance Company) is without any merits and same is hereby dismissed. However, FAO No.10437 of 2014 filed by claimants is hereby partly allowed. The amount of compensation is enhanced to Rs.10,57,000/- from Rs.6,68,000/- as awarded by the learned Tribunal. The claimants shall be entitled to interest at the rate as determined by the learned Tribunal on the enhanced amount from the date of filing the petition till realization. The liability to pay the enhanced amount shall remain as determined by the learned Tribunal in the main award.

08.02.2016 **(DARSHAN SINGH)**
sunil yadav **JUDGE**