IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1320-2014 (o&m)
Date of decision: 30.3.2016

IFFCO TOKIO General Insurance Company Ltd. ...Appellant

Versus

Kailash Chand and others ...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Arun Sharma, Advocate for
Mr.TK Joshi, Advocate for the appellant
Mr.Vijay Kumar, Advocate for
Mr.Sanjay Mittal, Advocate for respondents No.1 to 4

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SNEH PRASHAR, J.

The appellant- Insurance Company challenged the award dated 12.12.2013 passed by learned Motor Accident Claims Tribunal, Narnaul (for short 'the Tribunal') vide which a sum of Rs.13,17,800/- alongwith interest @ 9% per annum from the date of filing of the claim petition, till its realisation, was awarded as compensation to claimants-respondents No.1 to 4 on account of death of Subhash, son of respondents No.1 and 2 and brother of respondents No.3 and 4.

The submissions made by learned counsel for the parties have been considered and record perused.

Learned counsel for the appellant raised three fold arguments (i) the multiplier to the amount determined as loss of dependency per annum, should have been applied as per the age of the parents of the deceased (ii) the deduction towards personal and living expenses of the deceased should have been to the extent of 50%, as the deceased was bachelor and the only dependent was his mother (ii) no future prospects should have been awarded as the deceased was not in permanent job. To support his arguments learned counsel relied upon **New India Assurance Company Ltd. vs. Smt. Shanti Pathak and others 2007(3) RCR (Civil) 593.**

On the other hand, learned counsel for respondents No.1 to 4 -claimants resisted the prayer of the appellant and submitted that the award passed by learned Tribunal is just and adequate.

There is no denial of the fact that Subhash died due to injuries sustained by him in a motor vehicular accident caused by rash and negligent driving of the offending vehicle i.e. a Bolero by its driver (respondent No.5). He was 22 years of age and was bachelor at the time of death. There being no substantive evidence regarding the income of the deceased and treating him to be a casual labourer, learned Tribunal assessed the income of the deceased as Rs.4550/- per month, which appears appropriate.

In **Rajesh and others vs. Rajbir Singh and others 2013 (9) SCC 54**, in para 11, the Hon'ble Supreme Court has held as under:

> "11. Since, the Court in Santosh Devi's case (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 of 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."

Thus, keeping in view the age of the deceased, addition of 50% towards future prospects was rightly allowed to the claimants-appellants.

Regarding applying of suitable multiplier, in **Reshma Kumari and others vs. Madan Mohan and another 2013(2) RCR (Civil) 660**, the Hon'ble Supreme Court has held as under:-

> 33. We have already noticed the table prepared in Sarla Verma for the selection of multiplier. The table has been prepared in Sarla Verma having regard to the three decisions of this Court, namely, Susamma Thomas, Trilok Chandra and Charlie for the claims made under Section 166 of the 1988 Act. The Court said that multiplier shown in Column (4) of the table must be used having regard to the age of the deceased. Perhaps the biggest advantage by employing the table prepared in Sarla Verma is that the uniformity and consistency in selection of the multiplier can be achieved. The assessment of extent of dependency depends on examination of the unique situation of the individual case. Valuing the dependency or the multiplicand is to some extent an arithmetical exercise. The multiplicand is normally based on the net annual value of the dependency on the date of the deceased's death. Once the net annual

> loss (multiplicand) is assessed, taking into account the age of the deceased, such amount is to be multiplied by a 'multiplier' to arrive at the loss of dependency. In Sarla Verma, this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section 166. It has been rightly stated in Sarla Verma that claimants in case of death claim for the purposes of compensation must establish (a) age of the deceased; (b) income of the deceased; and (c) the number of dependants. To arrive at the loss of dependency, the Tribunal must consider (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in Sarla Verma.

In the end, the conclusions were drawn as under:-

"In what we have discussed above, we sum up our conclusions as follows:

(i) In the applications for compensation made under Section 166 of the 1988 Act in death cases where the age of the deceased is 15 years and above, the Claims Tribunals shall select the multiplier as indicated in Column (4) of the table prepared in Sarla Verma read with para 42 of that judgment.

(ii) In cases where the age of the deceased is upto 15 years, irrespective of the Section 166 or Section 163A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in Sarla Verma should be followed.

(iii) As a result of the above, while considering the claim applications made under Section 166 in death cases where the age of the deceased is above 15 years, there is no necessity for the Claims Tribunals to seek guidance or for placing reliance on the Second Schedule in the 1988 Act.

(iv) The Claims Tribunals shall follow the steps and guidelines stated in para 19 of Sarla Verma for determination of compensation in cases of death.

(v) While making addition to income for future prospects, the Tribunals shall follow paragraph 24 of the Judgment in Sarla Verma.

(vi) Insofar as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards prescribed in paragraphs 30, 31 and 32 of the judgment in Sarla Verma subject to the observations made by us in para 38 above.

(vii) The above propositions mutatis mutandis shall apply to all pending matters where above aspects are under consideration."

A similar view has been taken by Hon'ble Supreme Court in **Amrit Bhanu Shali and others vs. National Insurance Co. Ltd. and others 2012 ACJ 2002.** In **Munna Lal Jain and anr. vs. Vipin Kumar Sharma and others (2015) 6 SCC 347** following Reshma Kumari's case it has been held as under:-

> "The remaining question is only on multiplier. The High Court following Santosh Devi (supra), has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependants or that of the deceased, has been hanging fire for sometime; but that has been given a quietus by another three-Judge

> Bench decision in Reshma Kumari (supra). It was held that the multiplier is to be used with reference to the age of the deceased. One reason appears to be that there is certainty with regard to the age of the deceased but as far as that of dependants is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average, etc., is to be taken."

In the present case, the deceased was 22 years of age when he died during the accident. The Motor Vehicles Act, being a beneficial legislation for a victim of a motor accident, this Court relies on **Munna Lal Jain's case (supra)**, which is subsequent to the case law cited by learned counsel for the respondent-Insurance Company in **Smt. Shanti Pathak's case (supra)**. Taking in to consideration the age of the deceased, the learned Tribunal has applied the multiplier of 18, which warrants no intervention.

Lastly, there certainly appears force in the argument of learned counsel for the appellant as regards deduction of 1/3rd made by learned Tribunal on account of personal and living expenses of the deceased, which is in contravention to the law laid down in **Sarla Verma and others vs. DTC and another 2009 ACJ 1298**. The deceased was a bachelor at the time of his death, therefore, the deduction has to be 50%.

No other point has been raised.

Accordingly, the total compensation comes to Rs.10,72,100/- (4550 (monthly income) + 50% (future prospects) -50% (deduction towards personal and living expenses of the deceased) x 12 x

18 (multiplier) +3,35,000 (under the conventional heads). Vide order dated 7.3.2014, this Court had stayed 60% of the award amount. Thus, the remaining compensation shall be disbursed to the claimants-respondents No.1 to 4.

With the above modification in the impugned Award, the present appeal is partly allowed.

30.3.2016
gsv

(SNEH PRASHAR)
JUDGE