

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

FAO-310-2013 (O&M) &
XOBJC-13CII-2014
Date of decision: 29.2.2016

National Insurance Company Ltd.

...Appellant

Versus

Rajinder Kumar Kapil and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Rohit Goswami, Advocate for
Mr.DP Gupta, Advocate for the appellant

Mr.SS Kamboj, Advocate for respondents No.1 & 2

SNEH PRASHAR, J.

The appellant- Insurance Company challenged the award dated 5.12.2012 passed by learned Motor Accident Claims Tribunal, Panchkula (for short 'the Tribunal') vide which a sum of Rs.6,25,524/- alongwith interest @ 7.5% per annum from the date of filing of the claim petition, till its realisation, was awarded as compensation to claimant-respondent No.2 on account of death of her son Arun Kapil in a road side accident. The claimants-respondent No.1 and 2 have also filed cross-objections for enhancement of the compensation.

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

Learned counsel for the appellant -Insurance Company argued that unless and until it could be proved that the deceased was an employee, the income of the deceased could not be assessed as provided under the Minimum Wages Act. Learned counsel further submitted that the multiplier should have been applied as per the age of the parents of the deceased as he was a bachelor and no amount should have been added towards future prospects when he was not in a permanent job. He 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 and 2 -claimants resisting the prayer of the appellant submitted that the addition to the actual income of the deceased while computing future prospects should have been 50% instead of 30% of his earnings. Learned counsel further submitted that the amount awarded under conventional heads is also on the lower side.

Admittedly, Arun Kapil died due to the injuries suffered by him in a road side accident. He was aged 22 years and was bachelor at the time of his death. There is no evidence except the bald statement of PW1 Rajinder Kumar Kapil, father of the deceased, that the deceased was working in a factory and used to earn Rs.8000/- per month. In the absence of any documentary evidence with regard to employment of the deceased, learned Tribunal treating him as an unskilled labourer and considering the letter bearing No.43985-44114

dated 16.8.2000 issued by Labour Commissioner Haryana to Additional Labour Commissioner, Gurgaon, took his income as Rs.4349/- per month, which appears to be justified.

Regarding applying of suitable multiplier, in **Reshma Kumari and others vs. Madan Mohan and another 2013(2) RCR (Civil) 660**, Full Bench of 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 conclusion was 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 the ratio of **Reshma Kumari's case (supra)** 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 old at the time of occurrence. Moreover, the Motor Vehicles Act, being a beneficial legislation, this Court also relies on **Munna Lal Jain's case** (*supra*), which is subsequent to the case law cited by learned counsel for the appellant -Insurance Company in **Smt. Shanti Pathak's case** (*supra*). Considering the age of the deceased, the learned Tribunal has taken the multiplier of 18, which warrants no intervention.

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 person 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 and the law laid down in **Rajesh and others' case (supra)**, there has to be 50% addition to the actual income of deceased on account of future prospects.

Learned Tribunal has rightly declined the claim of respondent No.1 father of the deceased in view of the law laid down in **Sarla Verma and others vs. DTC and another 2009 ACJ 1298**.

The amount awarded under conventional heads appears to be on the lower side, therefore, the same is enhanced as under:-

1. Funeral expenses from Rs.5,000/- to Rs.25,000/-
2. Loss of Estate and non-pecuniary damages to be treated as loss of love and affection from Rs.10,000 to Rs.50,000/-

Accordingly, the total compensation comes to Rs.7,79,538/- i.e. Rs. 4349/- (monthly income) + 50% (future prospects) -1/2 (deduction on account of personal and living expenses of the deceased) x 12 x 18 (multiplier) + Rs.75000/- (conventional heads including already awarded). The enhanced of Rs.1,54,014/- (7,79, 538- 6,25,524) amount shall be paid to the claimant- mother

within two months from the date of receipt of the certified copy of the judgment, failing which, it shall carry interest @ 7.5% per annum from the date of the filing of appeal till its realisation.

In view of above, appeal filed by the Insurance Company is dismissed, whereas cross objections filed by the claimants-respondents No.1 and 2 are partly allowed and the impugned award is modified as noticed above.

29.2.2016
gsv

(SNEH PRASHAR)
JUDGE