IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Decided on: 27.08.2016

1. FAO No.3693 of 2013 (O&M)

Oriental Insurance Company Limited ....Appellant

Versus

Laxmi Devi and others ....Respondents

2. FAO No.8686 of 2014 (O&M)

Laxmi Devi ….Appellants

Versus

Ram Singh and others ….Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. D.P. Gupta, Advocate
for the appellant (in FAO No.3693 of 2013)
and for respondent No.3 (in FAO No.8686 of 2014)

Mr. Ishan Cooner, Advocate
for Mr. J.S. Cooner, Advocate
for respondents No.2 and 3 (in FAO No.3693 of 2013)
and for respondents No.1 and 2 (in FAO No.8686 of 2014)

Mr. Pradeep Sharma, Advocate
for Mr. B.S. Makkar, Advocate
for respondent No.1 (in FAO No.3693 of 2013)
and for the appellant (in FAO No.8686 of 2014)

REKHA MITTAL, J.

CM No.23749-CII of 2014 in FAO No.8686 of 2014

Prayer in this application is for condoning delay of 306 days in filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Laxmi Devi, the application is allowed and delay of 306 days in filing the appeal stands condoned.

MAIN CASE

By way of this order, I intend to dispose of FAO No.3693 of 2013 ***"Oriental Insurance Company Limited vs Laxmi Devi and others"*** and FAO No.8686 of 2014 ***"Laxmi Devi vs Ram Singh and others"*** as these have emerged out of the same award dated 29.04.2013 passed by the Motor Accidents Claims Tribunal, Ambala (in short 'the Tribunal') whereby compensation has been awarded in regard to death of Yogesh Kumar son of Kashmiri Lal in a motor vehicular accident that took place on 03.01.2012.

The parties shall be referred to as *'the insurance company'* and *'the claimant'* for the sake of convenience.

<u>1. FAO No.3693 of 2013</u>

Counsel for the insurance company has assailed the award both in regard to accident being the result of rash and negligent driving of alleged offending vehicle namely truck No.HP-12-A-8741 by Ram Singh as well as quantum of compensation assessed by the Tribunal. The plea with regard to assessment of compensation would be taken up while disposing of FAO No.8686 of 2014 filed by the claimant.

The facts, in brief, are that on the fateful day i.e. 03.01.2012 the deceased was driving motorcycle bearing No.HR-02-Z-3956 with Rajpal PW2 as a pillion rider. As per case set up by the claimant, on 03.01.2012 at about 03:00 p.m., Yogesh Kumar (deceased) was going from Shahbad to Yamunanagar on motorcycle No.HR-02-Z-3956. When he reached near Harda turn, near New Neelkanth Punjabi

Dhaba, truck bearing No.HP-12-A-8741 driven by Ram Singh was going ahead of him (Yogesh Kumar). He tried to overtake the truck but driver of the truck suddenly turned his vehicle towards his right side without giving any signal and caused accident with the motorcycle. Yogesh Kumar and Rajpal (maternal uncle of the deceased) fell down on the road. Yogesh Kumar sustained injuries and died at the spot. The occurrence was witnessed by Rulda Ram son of Kashmiri Lal, owner of new Neelkanth Punjabi Dhaba. The motorcycle bearing No.HR-02-Z-3956 was crushed by the truck. FIR No.04 dated 03.01.2012 was registered at Police Station Saha against the driver for offence punishable under Sections 279, 337 and 304-A of IPC at the behest of Rulda Ram.

To discharge onus of Issue No.1 with regard to accident having taken place due to rash and negligent driving of truck No.HP-12-A-8741, the claimant examined Rajpal PW2 and he tendered into evidence his duly sworn affidavit Ex.PW2/A by way of examination-in-chief. Copy of the FIR lodged with the police is Ex.P3.

Counsel for the insurance company has submitted that Rulda Ram, author of the FIR has not been examined to substantiate version of the claimant. It is further argued that testimony of Rajpal does not inspire confidence to prove that deceased was in the process of overtaking the truck in question when the occurrence took place. For this purpose, counsel has invited attention of the Court towards following part of his cross-examination:-

".... at that time, no other vehicle was coming from

the opposite side. Speed of the truck was about 40-50 Km/hr. The speed of motorcycle was 20-30 Km/hr at that time."

It is vehemently argued that if speed of motorcycle was less than that of speed of the truck, there was no possibility of the motorcycle overtaking the truck, sufficient to falsify and belie testimony of Rajpal and claim of the claimant that accident took place when the motorcycle was overtaking the truck and the truck suddenly took turn towards its right side.

Counsel for the claimant, on the contrary, has supported findings of the Tribunal on Issue No.1 with the submissions that there is no rebuttal to testimony of Rajpal PW2 as driver of the truck did not appear in the witness-box to say something as to how the occurrence in question took place when otherwise it has not been disputed that Yogesh Kumar sustained injuries in the accident in question and the motorcycle driven by him got substantially damaged.

I have heard counsel for the parties and perused the paperbook and the original records of the Tribunal.

Rajpal has deposed that he sustained injuries in the accident. Yogesh Kumar suffered serious injuries on his chest, arms and his brain matter came out. He and Yogesh Kumar were taken to Civil Hospital, Ambala Cantt. in an ambulance where postmortem of deceased was conducted on the following day. There is no challenge to testimony of Rajpal with regard to his having sustained injuries in the accident and even shifted to Civil Hospital, Ambala Cantt. in an ambulance. As per the settled position in law, if a witness is not cross-examined on a particular fact, it amounts to an admission by the other party. Testimony of Rajpal, being an injured eyewitness to the occurrence would be sufficient to prove the case if his statement inspires confidence and is worthy of reliance.

Rajpal testified that accident took place due to rash and negligent driving of respondent No.1 while truck bearing No.HP-12-A-8741 took turn towards right side without giving any signal, indicator or blowing horn due to which the deceased who was overtaking the truck hit backside of the truck resulting in his death. In his cross-examination, he has deposed that distance between the truck and motorcycle was about 5 feet. The driver of the offending truck was not overtaking any vehicle at the time of accident. Volunteered that he took right turn without giving any signal. Yogesh Kumar (deceased) had already covered half of the portion of the offending truck at the time when the truck took turn. At that time, no other vehicle was coming from the opposite side. The speed of the truck was about 40-50 km/hr. The speed of motorcycle was 20-30 km/hr at that time. It is wrong to suggest that Yogesh Kumar while overtaking his motorcycle lost control over the motorcycle or in that eventuality, his motorcycle hit against the truck.

There is no dispute that statement of a witness is to be read as a whole for appreciation in right perspective. Equally true is that if statement of a witness is examined by picking up sentences from here and there, it may result in miscarriage of justice. No doubt, Rajpal has deposed that speed of the truck was more than that of the motorcycle, therefore, possibility of motorcycle overtaking the truck is virtually ruled-out. However, a suggestion was put to the witness by counsel for the insurance company that Yogesh Kumar lost control over his motorcycle while he was overtaking. A conjoint reading of the three sentences in the statement would lead to an irresistible conclusion that the witness has wrongly deposed about speed of the motorcycle, may be, he did not have an idea of the speed or he might have thought of that in case speed of the motorcycle is stated to be more than that of the truck, an adverse inference may be drawn by the Court against the deceased. In view of unrebutted testimony of Rajpal, I do not find any reason to differ with the findings of the Tribunal that the accident took place due to rash and negligent driving of offending truck by its driver who took turn towards right without any signal while the motorcyclist was in the process of overtaking the truck resulting in serious injuries to the deceased and damage to the motorcycle. That being so, findings of the Tribunal on Issue No.1 are liable to be affirmed and ordered accordingly.

2. FAO No.8686 of 2014

The learned Tribunal assessed income of the deceased at Rs.15,000/- per month, deducted 50% towards personal expenses and adopted a multiplier of 13 to compute loss of dependency at Rs.11,70,000/-. Another sum of Rs.20,000/- has been awarded for funeral expenses, loss of consortium and loss of estate, making total compensation to the tune of Rs.11,90,000/- payable with interest @

7.5% per annum from the date of petition till realization.

Counsel for the insurance company has challenged assessment of income at Rs.15,000/- per month with the submission that income has been assessed on the basis that the deceased was making payment of Rs.10,250/- per month towards installment to Mahindra and Mahindra Finance Services Limited from whom he had got financed Mahindra Pick-up bearing No.HR-58-A-4257. It is vehemently argued that the claimant examined Amit, Legal Advisor, Mahindra Finance, Ambala Cantt. PW6. The witness brought on record statement of account Ex.P12 with an objection by the insurance company. It is argued that in view of the facts elicited during cross-examination of Amit, no reliance can be placed upon his testimony either to prove that any vehicle was got financed by Yogesh Kumar from the finance company much less the deceased was making payment of Rs.10,250/- per month as installment of loan amount. For this purpose, counsel has carried me throughout the statement of Amit – PW6. In addition, it is argued that Mahindra Pick-up owned by the deceased is in possession of the claimant and is generating income for her. The claimant, at best, can be compensated for loss of services of the deceased to drive and manage Mahindra Pick-up.

Counsel for the claimant has supported assessment of income by the Tribunal with the submission that Yogesh Kumar would afford to pay an amount of Rs.10,250/- per month as installment only if he had income more than that. It is further argued that the Tribunal has wrongly applied the multiplier of 13 by taking into consideration age of the claimant in place of age of the deceased. For this purpose, he has placed reliance upon judgment of Hon'ble the Supreme Court ***"Smt. Sarla Verma and others vs. Delhi Transport Corporation and another",*** **2009(3) R.C.R. (Civil) 77.** Further contends that the claimant is entitled to benefit of increase in income for future prospects to the extent of 50% in the light of judgment ***"Rajesh and others Vs. Rajbir Singh and others",*** **2013(3) R.C.R. (Civil) 170**. It is further argued that compensation awarded under conventional heads requires re-look, addition and enhancement.

In reply, counsel for the insurance company has submitted that the matter with regard to grant of future prospects as well as multiplier in case the deceased happens to be an unmarried person is pending consideration before a Larger Bench in separate references made for the purpose, therefore, no such plea of the claimant can be accepted.

Heard.

Indisputably, there is no evidence on record to prove income of the deceased. The learned Tribunal has assessed income on the basis of an inference drawn from the testimony of Amit PW6 particularly the fact that the deceased had been paying installment of Rs.10,250/- per month to the finance company from whom a vehicle was got financed by Yogesh Kumar. The witness brought on record a copy of statement of account Ex.P12 but the same was objected to by counsel opposite. In his cross-examination, he has deposed in the following terms:-

> *"Ex.P12 was not prepared by me. The loan was not passed in my presence nor was given to Yogesh in my presence. I do not know if after death of Yogesh Kumar any person has returned the loan or not. I have not brought the records of the year 2000. I have not brought the file pertaining to loan documents on the basis of which loan was given to Yogesh Kumar. I do not know how much money was due to the company at the time of death of Yogesh. I do not know whether the vehicle for which the loan was given is operational or not."*

There is no dispute that strict principles of law of evidence are not applicable to proceedings before the Tribunal that are summary in nature. At the same time, the Tribunal has an obligation to assess just, reasonable and equitable compensation to make good for the wrong done as far as money can do. Equally true is that compensation cannot be a bonanza largesse or a source of profit. The statement of Amit is not sufficient to prove that the deceased was paying an amount of Rs.10,250/- per month towards installment to the finance company. Nevertheless, it has been established on record that Yogesh Kumar was owner of Mahindra Pick-up. He was holder of a driving licence as stated by his mother – Laxmi Devi. It was put to Laxmi Devi by counsel for the insurance company that the said Mahindra Pick-up is being operated by availing services of a driver. In this view of the matter, income of the deceased is to be assessed on the basis of loss of his services as a driver and managing affairs of Mahindra Pick-up. Taking a clue from wage fixed for a skilled worker by the State of Haryana available in January, 2012, income of the deceased is assessed at Rs.8,000/- per month.

This brings the Court to the question of multiplier and benefit of future prospects. In ***Sarla Verma's case (supra)***, Hon'ble the Apex Court specifically dealt with the issue of deduction to be made when the deceased happens to be an unmarried person and the claimants are his/her parents. The Court in an effort to bring uniformity in assessment of compensation by the Tribunals has culled out certain guiding principles with regard to multiplier, deductions and benefit of future prospects in case the deceased happens to be a permanent employee. The Court has allowed a multiplier of 18 if the deceased happens to be in the age bracket of 16 to 25 years. In view of age of the deceased in the present case, a multiplier of 18 is required to be applied/adopted. The pendency of reference before a Larger Bench of the Apex Court is not sufficient to deny benefit of the judgment in ***Sarla Verma's case (supra)*** till the judgment is varied or set-aside. Similarly, the claimant shall be entitled to benefit of increase in income for future prospects to the extent of 50% even though in this regard a reference is pending before a Larger Bench. In view of the above, compensation *qua* loss of dependency comes to ***Rs.12,96,000/-*** (Rs.8,000/- x 12 x 18 = Rs.17,28,000/- + Rs.8,64,000/- (50% for future prospects) = Rs.25,92,000/- – Rs.12,96,000/- (50% deduction towards personal expenses).

The claimant is awarded an amount of ***Rs.25,000/- each*** for funeral expenses and loss of estate. She is allowed another amount of ***Rs.50,000/-*** for loss of love and affection. The total compensation payable comes to ***Rs.13,96,000/-***. The enhanced compensation is ***Rs.2,06,000/-*** (Rs.13,96,000/- – Rs.11,90,000/-) payable with interest

@ 7.5% per annum from the date of petition till realization.

The appeals are disposed of in the aforesaid terms.

27.08.2016 **(REKHA MITTAL)**
yakub **JUDGE**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No