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

FAO No.4401 of 2013 and
XOBJC No.37-CII of 2014
Date of Decision :29.03.2016

New India Assurance Company Limited ....Appellants

Versus

Smt.Ravinder Kaur and Others ....Respondents

Coram Hon'ble Mr. Justice Amol Rattan Singh.

Present: Mr.D.K.Prajapati, Advocate, for
Mr.R.S.Madan, Advocate, for the appellant.

Ms.Amandeep Kaur, Advocate, for
Mr.Ashwani Arora, Advocate, for
respondent No.1/Cross Objector.

****

Amol Rattan Singh, J.

1. This is an appeal filed by the insurance company with which car bearing registration No.CH-03-8030 was insured. The said car having been involved in an accident on 25.01.2009, in which one Shivdeep Singh unfortunately lost his life, a claim petition was filed by respondent No.1 herein, i.e. his widow, in the which the learned Motor Accident Claims Tribunal, Chandigarh, awarded her Rs.16,73,248/- and further awarded Rs.10,00,000/- to respondent No.5 herein (respondent No.4 before the Tribunal), who is the mother of the deceased. Thus, it is against the said Award dated 15.01.2013, that the present appeal has been filed, to which respondent No.1 has filed cross-objections.

2. The facts, as taken from the impugned Award, are that Shivdeep Singh was going from Chandigarh to Sector-71, Mohali, on his motorcycle, at about

10:15 p.m. on 25.01.2009. When he reached the crossing of Sectors 70-71/3B2/Phase-VII, Mohali, which he is stated to have crossed more than half of, the "offending vehicle" came allegedly at a fast speed from the side of Kumbra Chowk, driven by respondent No.2 herein (hereinafter to be referred to as the driver) and hit the motorcycle of the deceased. Allegedly, the car was being driven at a high speed, in a rash and negligent manner by the driver, Baljinder Singh. As a result of the accident, the deceased, alongwith his motorcycle, are stated to have been dragged for a long distance by the car, due to which he died on the spot.

It was also claimed that the deceaseds' brother, Balwinder Singh, was following him on a separate vehicle.

3. It was pleaded in the claim petition that the deceased was 32 years old at that time and was earning Rs.2,00,000/- per month as a businessman, who was also an income tax payee.

FIR No.41, dated 26.01.2009, was registered at Police Station, Phase-1, Mohali, for the commission of offences punishable under Sections 279/304-A and 427 of the IPC.

Somehow, though the Award states that the deceased died on the spot, thereafter, in para 3, it is stated that he was attended to by doctors on duty in Civil Hospital, Phase-VI, Mohali. Immediately thereafter, however, the amount spent on the funeral and last rites of the deceased (Rs.25,000/-), has been referred to in the Award.

Compensation of Rs.5,00,00,000/- (Rs.5 crores) was claimed because of the untimely death of the deceased, under various heads.

4. Respondent No.2 herein, i.e. the driver (respondent No.1 before the Tribunal), filed his written statement, not denying the accident but stating that it

was the deceased who was driving rashly and negligently, without following traffic rules. Other than that, it was stated that the claim was highly exaggerated and that the driver was not liable to pay any compensation as the vehicle was duly insured with the present appellant (respondent No.3 before the Tribunal) and that he himself, i.e. driver Baljinder Singh, was carrying a valid driving licence.

5. Respondent No.3 herein, the registered owner of the car, filed a written statement to the effect that he had actually sold the vehicle to Naib Singh (Respondent No.2-A before the Tribunal and respondent No.4 herein), before the accident, and that Naib Singh had given an affidavit to that effect on 10.06.2009, that he would be responsible for any decision/Award passed in the case.

On merits, the owner denied the contents of the claim petition and in fact stated that no accident took place with the vehicle in question.

6. Respondent No.4 herein, i.e. the Naib Singh, filed a separate written statement raising a preliminary objection regarding maintainability and stated that he was neither owner of the offending vehicle, nor was it registered in his name and that it was respondent No.2 who was its registered owner.

Contents of the claim petition were again denied, with complete lack of knowledge of the accident by the said respondent, further stating that he was not a necessary party.

7. The present appellant, i.e. the insurance company (respondent No.3 before the Tribunal), also filed a separate written statement with the usual preliminary objections, including invalidity of the licence of the driver, improper registration certificate and contravention of the terms and conditions of the policy etc. The contents of the claim petition were also denied, holding that it had been filed with the intention to grab money.

The mother of the deceased (present respondent No.5) was proceeded against *ex parte* by the Tribunal.

8. After framing issues on the question of attribution of negligence to the driver of the 'offending vehicle', the amount of compensation to be awarded and the validity of the licence of the driver, the learned Tribunal, on the basis of evidence led, held respondent No.1 to be negligent in driving the car with which the deceased met with an accident.

On the issue of compensation, the annual income of the deceased was assessed from his income tax returns. These returns were of the years 2005-06 (Ex.P35) and 2006-07, with the returns having been filed within the assessment years concerned, i.e. 3 to 4 years before the accident.

As per the return for the assessment year 2005-06, the annual income of the deceased was Rs.1,01,690/-, whereas for the year 2006-07, it was shown to be Rs.1,91,340/-. However, it was claimed that the actual income of the deceased was Rs.2,00,000/- per month, towards which documents Exs.P1 to P20, obtained from the Estate Office, Chandigarh, were led in evidence, which pertain to payments made by way of installments for a plot worth Rs.60,10,000/-, that had been purchased by the deceased and his brother Balwinder Singh, in Sector-40-B, Chandigarh. Those documents were held to be not sufficient proof of income of the deceased, as payment of installments could have been made either by the sale of some other property, or by the co-owner of the plot, i.e. the brother of the deceased.

Even the bank account of the deceased was seen to be held jointly with his brother and it was further held that it could not be determined as to whether the deposits therein were made only by the deceased from his own income, or in fact, whether these were deposits towards business or by way of his income.

Hence, the annual income of the deceased was taken to be Rs.1,91,340/-, as per his last return filed on 01.02.2007.

To the above income, the learned Tribunal added 30% of the said sum, by way of loss of future prospects of income, relying upon the judgment of the Supreme Court in **Santosh Devi v. National Insurance Company Ltd. and others** (2012) STPL (Web.) 248 SC. Thus, adding 30% of Rs.1,91,340, to that sum, the annual income of the deceased, including his actual income at the time of his death, as also by way of future prospects of income, was taken to be Rs.2,48,742/-.

On that amount, a cut of 1/3rd was applied towards the personal living expenses of the deceased, he having been held to be responsible for himself, his wife and mother. Thereby, a sum of Rs.1,65,828/- was arrived at by the Tribunal, as the annual dependent income of respondents No.1 and 5 herein.

9. With the age of deceased having been proved to be 32 years as per his date of birth recorded on his marriage certificate, a multiplier of 16 was applied as per the ratio of the judgment in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another,** (2009) 6 SCC 121, thereby bringing the total compensation under the head of loss of income (both current and future), to Rs.26,53,248/-.

10. Towards loss of estate and funeral expenses, Rs.5000/- under each head were awarded. Rs.10,000/- was awarded towards loss of consortium, to respondent No.1. Thus, the total compensation awarded by the Tribunal, was Rs.26,73,248/-.

Of the aforesaid sum, respondent No.1 was held entitled to Rs.16,,73,248/-, whereas respondent No.5 herein, i.e. the mother of the deceased, was held entitled to Rs.10,00,000/-. Interest @ 6% per annum, from the date of filing of the claim petition till the date of realization of the compensation amount, was also awarded on the principal sum, by the learned Tribunal.

11. Addressing arguments before this Court, learned counsel for the appellant-Insurance Company submits that loss of future prospects of income as have been awarded to the claimant-respondent No.1 and to respondent No. 5, i.e. the wife and mother respectively of the deceased-Shivdeep Singh, are not payable in view of the fact that the issue of grant of compensation for loss of future prospects of income has been referred to a larger Bench of the Supreme Court, in cases where the deceased was not on a fixed salary, in a permanent job. He further submits that the mother of the deceased, i.e. present respondent No.5, was also subsequently impleaded as a respondent before the learned Motor Accident Claims Tribunal, Chandigarh, being the mother of the deceased, but eventually she was proceeded against *ex parte*. Yet, the learned Tribunal directed apportionment of compensation to the extent of Rs.10 lacs to be given to respondent No.5 and the remaining amount, i.e. Rs.16,73,248/- to respondent No.1-claimant, out of the total compensation of Rs.26,73,248/-

12. Learned counsel for the claimant-Cross Objector, on the other hand, submits that, as a matter of fact, compensation for loss of future prospects of income has not been given as per the judgment of the Supreme Court in ***Rajesh and Others Vs. Rajbir Singh and Others 2014 (1) 173 PLR 779 (SC), Vimal Kanwar Vs. Kishore Dan (2013) 7 SCC 476 and Reshma Kumari Vs. Madan Mohan 2013 ACJ 1253,*** inasmuch as, the deceased being 32 years of age, 50% of his last proved income was to be added to his last income, to calculate the loss of future prospects of income; whereas, only 30% has been added by the Tribunal. She further submits that funeral expenses of only Rs.5,000/- have been granted,

whereas it should be Rs.25,000/-, in view of the aforesaid judgments. Loss of consortium has also been awarded only to the extent of Rs.10,000/-, whereas it should be Rs.1 lac, again in terms of the aforesaid judgments. She further submits that even though the mother of the deceased, i.e. Smt.Kamlesh Kaur-respondent No.5, is not an appellant nor a cross-objector before this Court, the fact remains that nothing has been awarded to her for the loss of love and affection of her son, at a young age.

13. Before considering the arguments of learned counsel on the question of compensation, the issue with regard to negligence in causing the accident needs to be looked into, as though, specifically learned counsel for the appellant has not argued on that issue, however, a perusal of the grounds of appeal filed by the appellant Company shows that the Award of the Tribunal, even on issue No.1, i.e. with regard to the negligence of respondent No.2 herein, in driving the "offending vehicle", has been challenged. Hence, it is necessary to deal with that issue.

It is seen from the Award that before the Tribunal, one Som Nath son of Raunki Ram, appeared as PW5 and tendered his affidavit, testifying in support thereof, to the effect that on 25.01.2009, at about 10:15 p.m., when he was going from Chandigarh to Mohali, on his motorcycle, he saw that the motorcyclist in front of him was driving at a slow speed on the left side of the road and had crossed more than half of the inter-section, when the "offending vehicle" bearing registration No.CH-03-8030, being driven at a fast speed, rashly and negligently, came from the side of Kumbra Chowk and hit the motorcycle in front of him. As a result of the accident, the deceased was dragged to a long distance by the car and died on the spot.

In other words, the facts stated in the claim petition were supported by a person who claimed to be an eye witness to the accident.

As per the impugned Award, the statement of Som Nath went unrebutted, as the driver of the “offending vehicle”, Baljinder Singh, though had filed his written statement, did not step into the witness box to testify. Hence, the Tribunal took an adverse inference, and on the basis of the aforesaid testimony, as also the fact that the number of the “offending vehicle” and the name of Baljinder Singh, both found mention in the FIR registered, accepted the version given in the claim petition. This was further on the basis of the fact that the witness, Som Nath, did not break down in any manner in his cross-examination.

Further, the post mortem report having corroborated that deceased Shivdeep Singh had died as a result of injuries sustained in a motor vehicle accident on 25.01.2009, the issue on negligence, was decided in favour of the claimant and against respondent No.2 herein, i.e. the driver Baljinder Singh.

14. In view of the above, considering that respondent driver did not even step into the witness box to rebut the testimony of the eye witness, seen with the other reasoning given by the Tribunal, I see no reason to disagree with that finding.

No doubt, though the appellant Company has referred to Rules 8 and 9 of the Rules of the Road Regulations, 1989, pertaining to caution to be exercised on inter-sections, I do not see what mileage can be derived therefrom, when the eye witness testified, with no rebuttal thereto by respondent No.2, that the deceased was driving correctly at a slow speed and had already crossed more than the half inter-section, when the “offending vehicle” driven rashly, came and hit him from the side.

15. Now coming to the issue of the compensation awarded by the Tribunal.

Having considered the arguments raised by learned counsel for the parties, as also the Award of the learned Tribunal, in my opinion, the cross-objection deserves to be allowed to the extent that the funeral expenses awarded are indeed on the lower side, as the accident took place in the year 2009 and as such Rs.25,000/- would be the amount payable, as per settled law, including the judgments in *Rajesh v. Rajbir and Vimal Kanwars'* cases (supra). The same is accordingly awarded. Similarly, the compensation awarded towards loss of consortium to respondent No.1-Cross Objector, is also enhanced to Rs.1 Lac, as per the ratio of the same judgments.

16. This Court is also to see as to whether the interest of the mother of the deceased was adequately compensated for by the learned Tribunal. In view of the fact that she has also been awarded a sum of Rs.10 Lacs, even though under a separate head she could have been awarded an additional sum for the loss of love and affection of her son, however, she not being in appeal, and not even having filed any cross objections, the sum of Rs.10 Lacs already awarded is considered adequate compensation.

However, as that amount includes the component of loss of future prospects of income, it would be subject to what has been held further ahead, in paragraph 18.

17. As regards the contention of learned counsel for the appellant that with respondent No.5, Kamlesh Kumari, having been proceeded against *ex parte* even before the learned Tribunal and as such, no compensation is payable to her, that argument does not lie in the mouth of any of the respondents before the Tribunal, including the present appellant. The question of apportionment of the compensation can only be objected to by the claimants in the claim petition, in view of the fact

that whether the total amount of compensation is paid to one particular claimant or is apportioned in any particular manner *inter se* amongst the claimants/other legal heirs of the deceased, is entirely between such persons and cannot concern those who in any case are liable to pay the entire compensation amount.

In the present case, the cross-objector, i.e. the widow of the deceased, has not raised any objection to such apportionment and, in fact, learned counsel for the cross-objector-respondent No.1, has argued that the mother of the deceased, respondent No.5 herein, has not been given adequate compensation for the loss of love and affection of her son. Hence, with the claimants before the Tribunal not raising any objection even at this stage, to the payment of compensation to the mother of the deceased, who was also a respondent before the Tribunal, the insurance company that is liable to pay the entire compensation, whether to one person or the other, cannot object to such apportionment.

18. Coming to the issue of grant of compensation for the loss of future prospects of income, the hon'ble Supreme Court, in ***Shashikala and others Vs. Gangalakshmamma and another 2015 ACJ 1239,*** has referred the matter to a larger Bench, on the ground that the judgments in *Rajesh v. Rajbir* and *Vimal Kanwars'* cases did not notice the earlier judgment in ***Reshma Kumari Vs. Madan Mohan 2013 ACJ 1253.*** Hence, though I agree with the learned counsel for the Cross-Objector that 50%, instead of 30%, of the last proved income of the deceased should have been factored in by the Tribunal, to calculate the loss of future prospects of income, and such amount is now being added by this Court to the last income of the deceased, to calculate the loss of future prospects of income to respondents No.1 and 5, such amount (though so calculated), is ordered to be kept in abeyance and not disbursed to the claimants till the decision of the hon'ble

Supreme Court (by the larger Bench).

However, the additional calculated amount shall be deposited by the appellant-Insurance Company with the learned Tribunal, which would then have the said sum deposited in a fixed deposit in a nationalized bank, so as to carry maximum interest thereupon. The enhanced amount now calculated, would carry interest @ 6% per annum, running from the date of the filing of the claim petition, till the date of deposit in the nationalized bank.

If the judgment of the Supreme Court holds eventually in favour of the insurance company/vehicle owners, to the effect that the loss of future prospects of income are not to be paid in such like cases, the appellant insurance company would be refunded the amount deposited. On the other hand, if the hon'ble Supreme Court holds in favour of claimants in such like cases, then it would be disbursed to respondent No.1-Cross Objector and respondent No.5 in equal amounts, without further reference to this Court, in the same manner as an Award of the Tribunal is executed.

19. As such, the compensation now being awarded to respondents No.1 and 5 herein, would be as follows hereinafter.

As regards the assessment of the last income earned by the deceased, I see no reason to disagree with the findings of the Tribunal, on the basis of the income tax returns filed by the deceased, that his income was Rs.1,91,340/- per annum. Hence, the stand in the grounds of appeal, as was taken before the Tribunal, that his actual income was Rs.2,00,000/- per month, cannot be accepted, without any firm proof in that regard. Consequently, the finding of the Tribunal in that regard is upheld and the income of the deceased at the time of his death, is taken to be Rs.1,91,340/- per annum. However, in view of what has been discussed hereinabove, with regard to the issue on granting of future prospects of income, the actual loss of income, minus the loss of future prospects of income added by the Tribunal, have to be calculated.

Thus, applying a 1/3rd cut on the aforesaid sum of Rs.1,91,340/-, towards the personal living expenses of the deceased, the annual loss of dependent income, to respondents No.1 and 5 herein, works out to be Rs.1,27,560/-. To that amount, a multiplier of 16 is to be applied in terms of the ratio of judgment in *Sarla Vermas'* case (supra) and accordingly is applied, as was applied by the Tribunal. Thus, the total loss of dependant income to respondents No.1 and 5 herein, minus the addition of loss of future prospects of income, comes to Rs.20,40,960/-.

Hence, the loss of income assessed by the Tribunal, by adding 30% to the income of the deceased by way of loss of future prospects of income, is now, minus such loss of future prospects of income, assessed at the aforesaid sum of Rs.20,40,960/-. Having calculated the above, the amount now awarded by this judgment, (to repeat, minus the loss of future prospects of income) is as follows:-

i)	Loss of actual income	:	Rs.20,40,960/-
ii)	Loss of consortium to respondent No.1 herein, i.e. widow	:	Rs.1,00,000/-
iii)	Loss of love and affection of her son to respondent No.5 herein	:	Rs.50,000/-
iv)	Towards funeral expenses and last rites	:	Rs.25,000/-
	Total	:	Rs.22,15,960/-

18. Thus, the aforesaid sum is Rs.4,37,288/- less than the amount of Rs.26,53,248/- awarded by the Tribunal.

This is so, despite the fact that this Court has awarded Rs.90,000/- more to respondent No.1 towards loss of consortium and Rs.20,000/- more towards funeral expenses. The reason for the lower compensation assessed now by this Court, is obviously because the loss of future prospects of income has not been factored in by this Court, to the above compensation, whereas the Tribunal had added 30% to the last income of the deceased as already repeated many times earlier.

Even so, the appellant insurance company is not held entitled to recover the difference from respondents No.1 to 5 at this stage, because the learned counsel for respondent No.1/cross-objector has submitted that the amount already stands disbursed and as such, to order recovery, when the issue of payment of compensation for loss of future prospects of income is still pending before the Supreme Court, is not appropriate, in my opinion. Of course, if eventually the Apex Court holds that such compensation is not payable, then the appellant would be entitled to recovery of the difference of Rs.4,37,288/-, subject naturally, to whatever is held by their Lordships.

19. Coming now to calculating the loss of future prospects of income which respondents No.1 and 5 would be entitled to, depending upon the outcome of the decision of the hon'ble Supreme Court on the issue of grant of such compensation in such like cases, where the deceased was not on a fixed salary in a regular job but was, as in this case, a businessman.

Calculation is being made in terms of what has been held in *Sarla Vermas*' case, read with *Rajesh v. Rajbirs'* and *Vimal Kanwars'* cases (supra), inasmuch as, 50% of the actual income of the deceased is being added to that income, to determine the loss of future prospects of income to respondents No.1

and 5 herein. Since the loss of actual income, based upon the annual income of the deceased (of Rs.1,91,340/-), has already been calculated, only the remaining loss towards future prospects of income, i.e. 50% of that amount of annual income, is to be now calculated. 50% of Rs.1,91,340/- is Rs.95,670/-. From that, a 1/3rd deduction towards the personal living expenses of the deceased is to be made, i.e. a sum of Rs.31,890/-. Thus, the annual loss of future prospects of income to respondents No.1 and 5 comes to Rs.63,780/-. Again, a multiplier of 16 is to be applied to the said sum, thereby bringing the total loss of future prospects of income to the said respondents to be Rs.10,20,480/-. Since loss of future prospects of income to the extent of 30% of the deceaseds' last income have already been awarded and paid as compensation to respondents No.1 and 5, the appellant is now required to deposit only the difference between the amount calculated by way of adding 50% and 30% to the actual income of the deceased.

Loss of future prospects of income by adding 30% to the income of Rs.1,91,340/-, after a deduction of 1/3rd towards the personal living expenses of the deceased and by applying a multiplier of 16 thereafter, works out to Rs.6,12,288/-. Thus, the difference between that amount and Rs.10,20,480/- now calculated, comes to Rs.4,08,192/-

Therefore, this is the amount which is now to be deposited by the appellant, with the Tribunal, alongwith 6% interest thereupon, running from the date of filing of the claim petition to the date of such deposit. The Tribunal would immediately thereafter, as already directed in paragraph-18, deposit the aforesaid amount in a fixed deposit in a nationalized bank, carrying maximum interest.

Upon decision of the hon'ble Supreme Court on the issue aforesaid, the amount would accordingly be disbursed, with the interest accrued upon it, either to respondents NO.1 and 5 in equal amounts, or be refunded to the appellant, as the case may be.

Consequently, this appeal and the cross-objections thereto, are disposed of as above, with no order as to costs.

29.03.2016 **(Amol Rattan Singh)**
anil **Judge**