IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1534 of 2016(O&M)
Date of Decision: May 05, 2016

Shri Ram General Insurance Company Ltd. ...Appellant

Versus

Shanti Lal and others ...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Sanjeev Goyal, Advocate for the appellant – Insurance Company.

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HARINDER SINGH SIDHU, J.

This appeal has been filed by Shri Ram General Insurance Company Limited against the Award dated 15.10.2015 passed by Motor Accident Claims Tribunal, Sahibzada Ajit Singh Nagar (Mohali) (for short `the Tribunal), whereby, compensation of Rs.9,97,000/- was awarded to respondents No.1 to 5 on account of death of Rishu alias Gurdev Lal in a vehicular accident on 22.9.2014.

The facts, as pleaded in the claim petition, are that on 22.9.2014 at about 4.00 pm, Rishu alias Gurdev Lal, aged 19 years, was going to Landran road near Badala T-point from Bus stand, Kharar to bring coal on motorcycle No.PB-65-B-5750 being driven by Ramesh Kumar. When they reached reached near T-point Kharar-Landran road near Badala, suddenly offending truck No.HR-58-A-5282 came at a high speed and in a rash and negligent manner and hit their motorcycle, as a result of which, both the occupants of the motorcycle fell on the left side of the road. Head of Rishu alias Gurdev Lal was run over by the tyre of the truck and he died at the spot. The driver drove away with the truck from the scene, but Ramesh Kumar noted the registration number of the same. Postmortem on the body of Rishu was conducted at Civil Hospital, Kharar. FIR No.141 dated 22.9.2014 under Section 279, 337, 304-A IPC was registered in Police Station City Kharar on the statement of Ramesh Kumar.

Claim petition was filed. It was pleaded that the accident occurred due to rash and negligent driving of the truck by respondent No.6 Sonu.

Respondents No.6 and 7 – driver and owner of the offending truck filed joint written statement and denied involvement of the vehicle in the accident. Appellant – Insurance Company filed separate written statement raising objections, inter-alia, that the driver of the offending truck was not holding a valid and effective driving licence, it was being plied without valid registration and fitness certificate as also the permit. The Insurance Company also denied the accident and alleged collusion between the claimants and respondents No.6 and 7.

On the pleadings of the parties, following issues were framed:-

"*1. Whether the death of Rishu alias Gurdev Lal was in motor vehicle accident dated 22.09.2014 due to rash and negligent driving of offending vehicle No.HR-58-A-3282 by respondent No.1 Sonu? OPP.*

2. Whether the petitioners are entitled to compensation on account of death of Rishu alias Gurdev Lal in motor vehicle accident, if so, to what amount and from whom? OPP

3. Whether respondent No.1 was not holding valid and effective driving licence at the time of accident? OPR-3

4. Whether the respondent No.2 has violated the terms and conditions of the insurance policy? OPR-3

5. Relief.”

On appreciation of evidence, the Tribunal decided issue No.1 in favour of the claimants and awarded them compensation as under:-

Sr.No.	Heads of claim	Amount (in Rs.)
1.	Income (annual)	72,000/-
2.	Add 50% increase	36,000/- = 1,08,000/-
3.	Deduction ½ (one-half)	54,000/-
4.	Multiplicand (annualized)	19 years
5.	Multiplier	18
6.	Loss of dependency	9,72,000/-
7.	Funeral expenses	25,000/-
	TOTAL	**9,97,000/-**

The Insurance Company – appellant was held liable to pay the compensation.

I have heard Ld. Counsel for the appellant and gone through the records with his assistance.

Ld. Counsel has submitted, inter-alia, that there was no evidence on record to prove the rashness and negligence on the part of the driver of the offending truck, income of the deceased was assessed on higher side at Rs.6000/- per month, increase of 50% in the income towards future prospects could not be allowed in the case and the multiplier should have been allowed in view of the age of the claimants and not the deceased.

To prove issue No.1 regarding rash and negligent driving of the offending truck, Ramesh Kumar (CW2), an eye witness of the accident made statement vide his affidavit Ex.CW2/A, wherein, he has deposed that on the fateful day, he along with the deceased was going to Landran road near Badala T point from Bus stand for taking coal on the motorcycle, being driven by him and the deceased was pillion rider. When they reached at T point of Kharar to Landran road near Badala, suddenly the offending truck, being driven by respondent No.6 rashly and negligently came and struck against the motorcycle, due to which the deceased fell down and his head came under the tyre of the offending truck and he died at the spot. He has further deposed that the driver of the truck fled away from the spot, but he (witness) noted the registration number of the truck. This witness has specifically stated that the accident took place due to rash and negligent driving of the offending truck. This witness also proved the registration of the FIR (Ex.C3) and the postmortem report of the deceased (Ex.C4). The appellant – Insurance company led no evidence to rebut the evidence given by the claimants on issue No.1. In these circumstances, mere oral assertion of the Ld. Counsel that no charge-sheet was ever submitted before the Ilaqa Magistrate in this case, cannot be considered.

It is well-settled that requirement of proof in a MACT case is not so stringent as in criminal case. The Hon'ble Supreme Court in **Kusum Lata and others vs. Satbir and others, 2011(2) RCR(Civil) 379 (SC)**, while distinguishing the criminal trial and motor accident has observed that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. It has been stressed that the Court must keep this distinction in mind. Strict proof of an accident caused by a particular vehicle in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.

Accordingly, the finding of the Tribunal on the issue of rash and negligent driving of the offending truck by respondent No.1 is affirmed.

To prove the income of the deceased, Magan Kumar (CW3), owner of Tavern/Ahata near Bus Stand, Kharar, where the deceased was working as a waiter deposed before the Tribunal that he was working for 15 hours and getting Rs.12,000/- per month from him. He explained that Rs.8000/- was the salary per month for working from 8.00 am to 8.00 pm and Rs.4000/- per month were being paid for working from 8.00 pm to 11.00 pm.

Dealing with compensation claims of self employed persons from the un-organized sector, in ***Ramachandrappa v. Royal Sundaram Alliance Insurance Co. Ltd., (2011) 13 SCC 236,*** the Hon'ble Supreme Court has held that persons from the un-organized sector doing their own business cannot be expected to produce documents to prove their income. In such cases, if the claim with regard to income is not exorbitant or excessive, but, is in consonance with the ground realities then it can be accepted even without documentary evidence in support thereof. This view was followed by the Hon'ble Supreme Court in ***Syed Sadiq v. United India Insurance Co. Ltd., (2014) 2 SCC 735,*** while observing as under:-

> *"**8.** The appellant claimant in his appeal further claimed that he had been earning Rs.10,000 p.m. by doing vegetable vending work. The High Court however, considered the loss of income at Rs 3500 p.m. considering that the claimant did not produce any document to establish his loss of income. It is difficult for us to convince ourselves as to how a labour involved in an unorganised sector doing his own business is expected to produce documents to prove his monthly income. In this regard,*

this Court, in Ramachandrappa v. Royal Sundaram Alliance Insurance Co. Ltd., has held as under: (SCC pp. 242-43, paras 13-15)

> *"13. In the instant case, it is not in dispute that the appellant was aged about 35 years and was working as a coolie and was earning Rs 4500 per month at the time of the accident. This claim is reduced by the Tribunal to a sum of Rs 3000 only on the assumption that the wages of a labourer during the relevant period viz. in the year 2004, was Rs 100 per day. This assumption in our view has no basis. Before the Tribunal, though the Insurance Company was served, it did not choose to appear before the court nor did it repudiate the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning to be a sum of Rs 3000 per month. Secondly, the appellant was working as a coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant.*
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> *14. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guesswork, which may include the ground realities prevailing at the relevant point of time.*
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> *15. In the present case, appellant was working as a coolie and in and around the date of the accident, the wage of a*

labourer was between Rs 100 to Rs 150 per day or Rs 4500 per month. In our view, the claim was honest and bona fide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the appellant from Rs 4500 to Rs 3000 per month. We, therefore, accept his statement that his monthly earning was Rs 4500."

There is no reason in the instant case for the Tribunal and the High Court to ask for evidence of monthly income of the appellant claimant. On the other hand, going by the present state of economy and the rising prices in agricultural products, we are inclined to believe that a vegetable vendor is reasonably capable of earning Rs.6500 per month...."

The accident had occurred in September 2014, therefore, considering the rising inflation as also the statement of CW3, I do not find the assessment of the income of the deceased at Rs.6000/- excessive or exorbitant.

Coming to the next argument regarding addition to the income towards future prospects, it is not in dispute that the question whether increase in income towards future prospects could be allowed to those self employed was referred to the Larger Bench of Hon'ble Supreme Court in **Pushpa's case (supra)** in view of the conflict of observations in case of **Rajesh and others Vs. Rajbir and others (2013)9 SCC 54**, and **Reshma Kumari and others Vs. Madan Mohan and another (2013) 9 SCC 65.** The observations in case of **Pushpa** (supra), while referring the matter to the Larger Bench are as follows:-

*"**11.** Be it noted, though the decision in Reshma [(2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] was rendered at earlier point of time, as is clear, the same has not*

been noticed in Rajesh [(2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] and that is why divergent opinions have been expressed.

12. *We are of the considered opinion that as regards the manner of addition of income for future prospects there should be an authoritative pronouncement. Therefore, we think it appropriate to refer the matter to a larger Bench. Let the papers be placed before the Hon'ble the Chief Justice of India for constitution of appropriate larger Bench."*

In regard to the aforesaid Reference Order, it needs to be noted that there is no direction by the Hon'ble Supreme Court while making the reference that pending the decision, increase in income towards further prospects be not granted.

To the contrary a three Judge Bench of the Hon'ble Supreme Court, in **Munna Lal Jain and another vs. Vipin Kumar Sharma and others, 2015(6) SCC 347** (decided on 15.5.2015 after the reference order dated 2.7.2014 in Pushpa's case), allowed future prospects in the case of self-employed persons following the observations made in case of **Rajesh and others (supra):**

*"**10.** As far as future prospects are concerned, in Rajesh v. Rajbir Singh [(2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] , 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: (SCC p. 61, para 8)*

> *"8. Since, the Court in Santosh Devi case [Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421 : (2012) 3 SCC (Civ) 726 : (2012) 3 SCC (Cri) 160 : (2012) 2 SCC (L&S) 167] actually intended to follow the principle in*

> *the case of salaried persons as laid down in Sarla Verma case [Sarla Verma v.DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] 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."*

The deceased being of the age of 30 years, 50% is the required addition."

This Court in various first appeals including **FAO No.1207 of 2014 titled "Reliance General Insurance Company Ltd. vs. Sayera Khatoon and others**" decided on 3.3.2014, **FAO No.1502 of 2015 titled "National Insurance Company Limited vs. Pushpa Singh Chauhan and others**" decided on 20.3.2015 and **FAO No.4299 of 2015 titled "Oriental Insurance Company Limited vs. Swarna Devi and others"** decided on 1.9.2015 has upheld the addition to the income towards future prospects, where, the deceased were either self-employed or working in un-organised sectors. The Special Leave Petitions filed against the aforesaid decisions have been dismissed by the Hon'ble Supreme Court. All these decisions are after the reference to the larger bench in **Pushpa's** case (supra).

As the view taken in **Rajesh's case (supra)** has been followed by the Hon'ble Apex Court in **Munna Lal Jain's case (supra)**, as also by this

Court in various decisions, SLPs against which have been dismissed after the reference in **Pushpa's** case (supra), in my view the Tribunal has committed no error while allowing 50% addition in the income towards future prospects and granting compensation to the claimants accordingly.

Now, coming to the application of multiplier, this question was examined by three Judges Bench of the Hon'ble Supreme Court in the case of **Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65**, in which the decision in **Sarla Verma's case (supra)** was considered and it was held that multiplier as given in Sarla Verma's case (supra) has to be applied. In the said case, Supreme Court applied the multiplier as per age of the deceased. Therefore, the multiplier was correctly applied.

Once again, in a recent judgement in **Munna Lal Jain**'s case (supra), the Hon'ble Supreme Court has upheld the same view that multiplier is to be applied with reference to the age of the deceased and not age of dependents of deceased.

No other point was raised.

Appeal dismissed.

The statutory deposit of Rs.25,000/- at the time of filing the appeal, be remitted to the Tribunal for onward disbursement to the claimants.

May 05, 2016 **(HARINDER SINGH SIDHU)**
JUDGE

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I attest to the accuracy and
integrity of this document