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

FAO No.1766 of 2016(O&M)
Date of Decision: April 26, 2016

National Insurance Company Ltd. ...Appellant

Versus

Simranjit Kaur and others ...Respondents

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

Present: Mr.Paul.S.Saini, Advocate for the appellant – Insurance Company.

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HARINDER SINGH SIDHU, J.

For the reasons stated in the applications, delay of 13 days in filing and 21 days in re-filing the appeal is condoned.

This is an appeal by the Insurance Company (National Insurance Company Limited) against the Award dated 6.10.2015 passed in MACP Case No.490 of 2013 by the Motor Accident Claims Tribunal, Kurukshetra (for short `the Tribunal') on account of the death of Satnam Singh in a vehicular accident.

Brief facts of the case are that on 30.01.2013, Satnam Singh (deceased) was going from Kaithal to Asmanpur on his motorcycle bearing No.HR-41D-7312. On the way, his motorcycle was hit by a car bearing Registration No.HR-02S-3302, which was being driven by the respondent No.3-Rishi Kesh in a rash and negligent manner. Satnam Singh suffered serious injuries in the accident and lost his life.

On the statement of Avtar Singh, FIR No.35 dated 31.1.2013 was registered against respondent No.3 in Police Station Pehowa under Sections 304-A IPC.

The dependants of the deceased filed claim petition under Section 166 of the Motor Vehicles Act, 1988 pleading that the deceased was aged about 21 years and earning Rs.65,000/- per month as he was driver in Malaysia.

Respondent No.3 (driver and owner of the offending vehicle) in his written statement pleaded false involvement of his vehicle in the accident. He also stated that if any liability occurs, the same is to be borne by the appellant Insurance Company. In its written statement, the appellant – insurer pleaded collusion of the claimants and respondents No.3, besides taking other pleas.

The Tribunal framed the following issues on the pleading of the parties:-

> "*1. Whether the accident, resulting into death of Satnam Singh took place due to rash and negligent driving of the respondent No.1, while driving car bearing registration HR-2S-3302? OPP*
>
> *2. Whether the claimants are entitled to the compensation as prayed for, from the respondents?*
>
> *3. Whether there was violation of terms and conditions of the insurance policy and respondents No.3 & 5 are not liable to pay any compensation? OPR*
>
> *4. Relief."*

Issue No.1 was decided in favour of the claimants and it was held that the accident had taken place due to rash and negligent driving of vehicle No.HR-2S-3302 (offending vehicle) by respondent Rishi Kesh. In the absence of proof of income of the deceased, the learned Tribunal assessed his income at Rs.6,000/- per month. The deceased was bachelor at the time of accident and was aged about 21 years. The Tribunal relying upon **Smt. Sarla Verma and others vs. Delhi Transport Corporation and Anr**, *2009(6) SCC 121* and **Rajesh and others vs. Rajbir Singh and others**, *2013 ACJ 1403*, granted increase of 50% in the income of the deceased and then deducted 50% towards his personal and living expenses. Multiplier of 18 was applied and the compensation was assessed as under:-

Head of Compensation	Amount (in Rs.)
Loss of dependency	9,72,000/-
Funeral expenses	25,000/-
Total	9,97,000/-

Arguments have been heard and paper-book perused with the assistance of Ld. Counsel for the appellant.

Ld. Counsel for the appellant – Insurance Company has challenged the award on three grounds:-

(i) That the involvement of the offending vehicle and rashness and negligence of respondent No.3 was not proved.

(ii) As there was no regular income of the deceased, 50% increase in his income towards future prospects was wrongly granted by the Tribunal, and

(iii) that the multiplier was required to be applied based upon the age of the dependants and not the deceased.

To prove the involvement of the offending car in the accident, Simranjit Kaur (PW1) deposed before the Tribunal on the same lines as pleaded in the petition that the accident was caused by the offending car, driven by respondent No.3. FIR was registered in Police Station Pehowa, wherein, report under Section 173 CrPC (Ex.P3) was submitted before the Ilaqa Magistrate against respondent No.3 – Rishi Kesh. Tilak Raj, Criminal Ahlmad in the Court of Judicial Magistrate was also examined as PW3. He placed on record the report under Section 173 CrPC, whereby, the Police had charge-sheeted Rishi Kesh for the offence under Sections 304-A IPC, etc.

This Court in **Girdhari Lal vs. Radhey Shyam and others, 1993(2) PLR 109**, observed about the evidentiary value of pendency of criminal proceedings against the driver, in a case of compensation under the Motor Vehicles Act, as under:-

> *"xxx xxx xxx There is no denial that Radhey Shyam respondent was being tried on account of rash and negligent driving by the Additional Chief Judicial Magistrate in a case State v. Radhey Shyam. Thus, it is prima facie safe to conclude that the accident occurred on account of rash and negligent driving of Radhey Shyam respondent in which the claimant suffered injuries. xxx xxx xxx"*

In case of **Mallamma vs. Balaji and others, 2004 ACJ 368**, the Karnataka High Court while reversing the finding of the Tribunal on the issue of negligence, held as under:-

> *"12. Therefore, under these circumstances, I am of the considered view that the Tribunal has wrongly come to the conclusion and held that the claimant has not proved the negligence on the part of the driver of the milk van involved in the accident. Filing of the charge-sheet against the driver is also a prima facie case to hold that the driver of the said lorry was responsible for the accident and burden shifts on him to*

prove the same."

In **The United India Insurance Co. Ltd. vs. Deepak Goel and others, MAC.APP.No.750/2006,** decided on 24.01.2014, while taking note of the decisions of the Hon'ble Supreme Court, it was observed by the Delhi High Court as under:-

> *"xxx xxx xxx In a criminal case in order to have conviction, the matter is to be proved beyond reasonable doubt and in a civil case the matter is to be decided on the basis of preponderance of evidence, but in a claim petition before the Motor Accident Claims Tribunal, the standard of proof is much below than what is required in a criminal case as well as in a civil case. Undoubtedly, the enquiry before the Tribunal is a summary enquiry and, therefore, does not require strict proof of liability.*
>
> *21. Nonetheless, in a case, where FIR is lodged, charge-sheet is filed and specially in a case where driver after causing the accident had fled away from the spot, then the documents mentioned above are sufficient to establish the fact that the driver of the offending vehicle was negligent in causing the accident particularly when there was no defence available from his side before the learned Tribunal. Thus, the claimants have proved negligence of the driver of the offending vehicle"*

In view of the above factual and legal position, no interference is called for in the findings recorded by the Tribunal on the issue of involvement of the offending vehicle in the accident as also its rash and negligent driving by respondent No.3.

In support of the second contention regarding grant of increase towards future prospects while assessing the income of the deceased, Ld. Counsel has submitted that the question regarding addition in the income towards future prospects in case of self employed persons is pending before the Larger Bench of Hon'ble Supreme Court in case **National Insurance Company Limited vs. Pushpa, 2015(9) SCC 166.** He argues that pending the decision of the reference, no such increase could be allowed in the income towards future prospects.

In **FAO No.1780 of 2016 titled "Reliance General Insurance Company Ltd. vs. Parveen and others**" decided on 11.4.2016, I have considered the aforesaid reference Order as also the subsequent decisions of Three Judge Bench of the Hon'ble Supreme Court in case of **Munna Lal Jain and another vs. Vipin Kumar Sharma and others, 2015(6) SCC 347** and certain decisions of this Court wherein addition on account of future prospects has been granted subsequent to the reference order, SLPs against which have been dismissed by the Hon'ble Supreme Court and concluded that addition in the income towards future prospects has rightly been granted.

Now, coming to the application of multiplier, this question was examined by three Judge 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.

April 26, 2016 **(HARINDER SINGH SIDHU)**
gian **JUDGE**