IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1780 of 2016(O&M)
Date of Decision: April 11, 2016

Reliance General Insurance Company Ltd. ...Appellant

Versus

Parveen and others ...Respondents

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

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

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HARINDER SINGH SIDHU, J.

This is an appeal by the Insurance Company (Reliance General Insurance Company Limited) against the Award passed in MACT Case No.71 of 2014 by the Motor Accident Claims Tribunal (for short `the Tribunal') on account of the death of Naseem in a vehicular accident.

Brief facts of the case are that on 8.9.2014, Naseem (deceased) along with Yasin had gone from Panipat to Kundli after hiring a loading vehicle bearing No.UP-19T-1184. Shaukeen and Mohd. Saddam also accompanied them. In the night, they loaded bananas in their vehicle from Kundli and left for Panipat. On 9.8.2014 at about 7.00 a.m., when they reached near village Garhi Kalan, the rear tyre of their vehicle got punctured. During the process of changing the tyre, Arun Kumar – respondent No.7, while driving his vehicle No.DL-1-LT-0580 at a very high speed and in a rash and negligent manner came from Delhi side and hit Naseem, who was standing on the side of the road. After the accident, he stopped his vehicle and came to see injured Naseem, but when Yasin and other companions of Naseem were busy in taking care of him, respondent No.7 fled from there along with his vehicle. Naseem died at the spot due to the injuries.

The dependants of the deceased filed claim petition under Section 166 of the Motor Vehicles Act, 1988 pleading that the deceased was aged about 35 years and earning Rs.70,000/- per month from the business of purchasing and selling bananas.

Upon notice, respondents No.7 and 8 filed joint written statement controverting the case of the claimants and stating that their vehicle was falsely implicated in the case. Appellant – insurer filed separate written statement and pleaded collusion of the claimants and respondents No.7 and 8, besides taking other pleas.

Pleadings of the parties led to the framing of following issues:-

> "*1. Whether the accident took place due to rash and negligent driving of vehicle bearing No.DL-1-LT-0580 by its driver-respondent No.1 on 08.08.2014 within the jurisdiction of police station, Ganaur resulting into death of Naseem son of Sh.Sabbir? OPP*
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> *2. If issue No.1 is proved in the affirmative to what amount of compensation, the petitioners are entitled to and from whom? OPP*
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> *3. Whether the claim petition is not maintainable and petitioners have no cause of action and locus-standi to file the present claim petition? OPR*
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> *4. Whether respondent No.1 was not holding valid and effective driving license at the time of alleged accident, if so, its effect? OPR*
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> *5. Whether the respondent No.1 was driving the vehicle bearing registration No.DL-1-LT-0580 in violation of terms and conditions of Insurance Policy? OPR*
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> *6. 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.DL-1-LT-0580 by respondent Arun Kumar. In the absence of proof of income of the deceased, the Tribunal assessed his income at Rs.6000/- per month, enhanced it by 50% towards future prospects and then considering the number of dependants (6) deducted 1/4th towards personal and living expenses of the deceased. It applied the multiplier of 15 and total loss of income was assessed at Rs.12,15,000/-. Besides, Rs.1,00,000/- for loss of consortium, Rs.1,00,000/- for loss of love and affection and guidance to minor children and Rs.25,000/- for funeral expenses were also awarded.

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

Ld. Counsel has submitted that though it was proved that the deceased was involved in the business of sale/purchase of bananas, but in the absence of any documentary proof regarding his income, the Tribunal assessed his income at Rs.6000/- per month, which is on higher side. His further contention is that since it was not assured income accruing from a permanent job in the Government or private sector, therefore, no increase of 50% could be made towards future prospects. He 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, increase on account of future prospects ought not be granted.

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)*
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> > *"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.

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.

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 occurred on 8.9.2014. It was proved on record that the deceased was dealing in sale/purchase of bananas. I find that assessment of the income of the deceased at Rs.6000/- cannot be said to be excessive. It appears just and fair.

On the question of addition in income, 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.*
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> ***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)*
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> > *"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."*
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> *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.

No other point was argued.

Appeal is dismissed.

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

April 11, 2016

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(HARINDER SINGH SIDHU)
JUDGE