IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2470 of 2016(O&M)
Date of Decision: May 10, 2016

Reliance General Insurance Company Ltd. ...Appellant
Vs.
Anguri Devi 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 dated 01.03.2016 passed in MACT Case No.55 of 2014 by the Motor Accident Claims Tribunal, Karnal (for short `the Tribunal') on account of the death of Ishwar Chand in a motor vehicular accident.

Brief facts of the case are that on 15.06.2014, Ishwar Chand (deceased) along with his nephew Jagdish Kumar was coming to his village from his fields on motor cycle No.HR-05H-8197. Jagdish Kumar was driving the motorcycle, while the deceased was riding on pillion seat. At about 10.00 a.m, when they reached near house of Mamraj Rana resident of Nadana, Sagga Road, a car bearing No.HR-05-X-3556 driven by respondent No.7 – Raj Singh at a fast speed in a rash and negligent manner, came from behind and hit the motor cycle. As a result of this accident, Ishwar Chand fell down on the road and sustained multiple injuries on his head. He succumbed to the injuries on 17.6.2014 at PGIMER, Chandigarh.

The dependants of the deceased filed claim petition under

Section 166 of the Motor Vehicles Act, 1988 pleading that the deceased was aged about 45 years and earning Rs.15,000/- per month by running milk dairy and *kiryana* shop.

Upon notice, respondents No.7 and 8 (driver and owner) filed joint written statement pleading false involvement in the case. Appellant – insurer filed separate written statement taking stands of locus standi, maintainability, and collusion etc.

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

"*1. Whether the deceased Ishwar Chand son of Mangal Ram had died in a road side accident which took place on 16.06.2014 at about 10.00 P.M near Sagga road, Karnal, because of rash and negligent driving of the respondent No.1 being driver of the offending vehicle bearing no. HR-05-X-3656? OPP*

2. If issue No.1 is proved in affirmative, whether the claimants Anguri Devi, Babita, Rubi Devi minor, Sujata minor, Naresh minor and Mohit minor are entitled for compensation, on account of death of deceased Ishwar Chand, if so to what amount and on what terms and conditions and from whom? OPP

3. Whether respondent No.1 was not having a valid and effective driving licence at the time of this accident and the vehicle in question was being plied, if so to what effect? OPR3

4. Whether the vehicle in question was being plied without a valid policy and in contravention of terms and conditions of the policy, if so to what effect? OPR3

5. 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-05-X-3556 by respondent Raj Singh. However, no documentary proof was produced on record regarding the income of the deceased and the Tribunal determined the income of the deceased at Rs.6800/- p.m by treating him as a unskilled labour. 30% increase in the income was granted and 1/4th was deducted towards personal and living expenses of the deceased. The Tribunal applied the multiplier of 14 and awarded compensation of Rs.13,38,840/- along with interest**.**

While challenging the Award, the Ld. Counsel for the appellant – Insurance Company has raised two arguments; (i) that in the absence of documentary proof, the Tribunal ought to have assessed the income of the deceased at Rs.5547/- as per the minimum wages fixed by the State Government, and (ii) that Tribunal should not have granted 30% increase in the income of the deceased towards future prospects, as the question regarding addition in the income towards future prospects in case of self employed persons or un-organised sector has been referred to the Larger Bench of Hon'ble Supreme Court in **National Insurance Company Limited vs. Pushpa, 2015(9) SCC 166.** He argues that pending the decision of the reference, the Tribunal ought not to have granted the increase towards future prospects.

The Tribunal has treated the deceased as unskilled labourer and assessed his income at Rs.6800/- per month. While it cannot be denied that if he were to be treated as unskilled Labourer, then his income was to be assessed as per the Minimum Wages applicable at the relevant time, but that was not the case of the claimants. It has been pleaded in the claim petition that the deceased Ishwar Chand was running a milk dairy besides, having a *kiryana* shop. It was also pleaded that he was earning Rs.15,000/- per month from these avocations.

Though no proof of income was placed on record, but that of itself is no ground for totally disregarding the claim of earning of the deceased from the avocations, pleaded in the petition.

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...."

In view of the aforesaid, the Tribunal has erred in treating the deceased to be unskilled labourer. However, this would not affect the result of the appeal as he could reasonably be said to be earning at least Rs.6800/- per month from the sources pleaded by the claimants.

On the question of addition in income towards future prospects, the Hon'ble Supreme Court in **Rajesh and others vs. Rajbir Singh and others**, **2013 ACJ 1403**, has held that in case of self-employed or persons with fixed wages, in the age group of 40-50 years, there must be an addition of 30% to the actual income of the deceased.

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 view taken in **Rajesh's case** (supra) has been followed by the Hon'ble Apex Court in **Munna Lal Jain and another vs. Vipin Kumar Sharma and others, 2015(6) SCC 347**, as also by this Court in various decisions (referred to above), SLPs against which have been dismissed after the reference in **Pushpa's** case (supra). Thus, 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 dismissed.

May 10, 2016 **(HARINDER SINGH SIDHU)**
gian **JUDGE**