IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2642 of 2016(O&M)
Date of Decision: August 27, 2016

National Insurance Company Limited ...Appellant

Versus

Neetu Devi and others ...Respondents

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

Present: Mr.Ravinder Arora, Advocate
Mr. Neeraj Khanna, Advocate for
the appellant – Insurance Company.

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HARINDER SINGH SIDHU, J.

This is an appeal by the Insurance Company (National Insurance Company Limited) against the Award passed in MACT Case No.181 of 2015 by the Motor Accident Claims Tribunal, Chandigarh (for short `the Tribunal'), whereby, a sum of Rs.22,85,000/- along with interest was ordered to be paid as compensation for the death of Shreekant in a vehicular accident.

Brief facts of the case are that on 9.3.15, Shreekant (deceased) was going on his motorcycle No.CH-01-AV-2755 from Industrial Area, Phase II, Chandigarh towards Hallo Majra, UT, Chandigarh on his correct left side at normal speed. At about 1.00 pm, when he reached near the poultry farm chowk, Chandigarh, respondent No.5 - Rakesh Kumar came driving offending truck No.HR-37-D-0149 at a very high speed in a rash and negligent manner and hit the motorcycle. As a result, Shreekant fell down on the road and suffered multiple injuries on vital organs of his body including head injury. He was taken to GMCH, Sector 32, Chandigarh, where, he was declared `brought dead'.

The legal representatives of the deceased filed claim petition under Section 166 of the Motor Vehicles Act, 1988 pleading that the deceased was aged about 25 years and was working as a Carpenter with M.D.Sales Agencies, Plot No.412A, Phase II, Industrial Area, Chandigarh and earning Rs.25,000/- per month approximately. It was also pleaded that the deceased was the sole earning member of the family.

Upon notice, respondent No.5, owner and driver of the offending truck, filed written statement controverting the case of the claimants and stating that the accident occurred due to the fault of the deceased. The police has falsely implicated him in the said case and false FIR was registered. Appellant – insurer, in its separate written reply, took objection that the driver of offending truck No.HR-37-D-0149 was not holding a valid and effective driving licence at the time of alleged accident.

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

> "*1. Whether deceased Shreekant Kumar died in a motor vehicle accident, which took place on 9.3.2015 at about 1.00 pm due to rash and negligent driving by respondent No. 1? OPA*
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> *2. Whether the claimants are entitled to compensation on account of death of Shreekant Kumar, if yes, from whom and to which extent? OPA*
>
> *3. Whether the driver of offending vehicle was not holding a valid driving licence at the time of accident? OPR-3*
>
> *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-37-D-0149 by respondent Rakesh Kumar. The Tribunal assessed the income of the deceased at Rs.10,000/- per month and granted 50% enhancement towards future prospects. 1/3rd of the income (Rs.15,000) was deducted towards personal and living expenses of the deceased, and monthly dependency was assessed at Rs.10,000/-. It applied the multiplier of 18 and the total loss of dependency was assessed at Rs.21,60,000/-.

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

The cause of the accident and the liability to pay the compensation is not in dispute.

Learned counsel for the appellant-insurer has challenged the award on two grounds – (i) That in the absence of any documentary proof regarding the income of deceased Shreekant Kumar, the assessment of his income at Rs.10,000/- per month is on higher side, and (ii) that since the deceased did not have any permanent income, therefore, increase in his income towards future prospects could not be granted in view of reference of this question to the larger Bench by Hon'ble the Supreme Court in **National Insurance Company Limited vs. Pushpa, 2015(9) SCC 166.**

Dealing with the first contention regarding the income of the deceased, the claimants in the petition have claimed that the deceased was a skilled carpenter. He was employed with M/s M.D.Sales Agencies, Plot No.412A, Phase II, Industrial Area, Chandigarh and was earning Rs.25,000/- per month. Neetu Devi, wife of the deceased while appearing in the witness box as PW1 stated that the deceased was sending about Rs.18,000/- per month to her. PW5 Shree Gopal, who was duly authorised on behalf of the aforesaid agency to give evidence in the case, also stated that the deceased was employed as skilled carpenter in the agency and was being paid Rs.18,500/- per month. He also produced on record salary certificate Exhibit PW5/1 issued by the proprietor of M.D.Sales Agencies, wherein also, it is mentioned that the deceased was drawing salary of Rs.18,500/- per month. PW5 further apprised the court that the promotion of the deceased was due in August 2015.

Not only this, regarding the employment of the deceased, copies of his Attendance Cards, duly attested by the proprietor of the firm were also placed on record as Exhibit PW5/2 to PW5/7, wherein, the deceased has been regularly marked present. A perusal of the attendance cards further reveals that he occasionally did some overtime work. Some advance payments made to the deceased have also been entered in the Attendance Cards. During the month of October 2014, the deceased had taken total advance of Rs.34,000/- on different dates between 9.10.2014 to 30.10.2014. Similarly, in the Attendance Card for the month of November 2014, the deceased is shown to have received an advance of Rs.10,000/-. In the next Attendance Card Exhibit PW5/4 (month not mentioned) the deceased is shown to have received an advance of Rs.15,000/-. Similarly, in Attendance Card Exhibit PW5/5 (month not mentioned) the petitioner is shown to have received Rs.15,000/- as advance. To the same effect is the Attendance Card Exhibit PW5/6, wherein, the deceased is shown to have received an advance of Rs.10,500/-. In other words, in five months, the deceased was paid Rs.84,500/- by his employer, average of which comes to Rs.16,900/- per month. The employment of the deceased with M.D. Sales Agencies as also the Attendance Cards, were proved by the authorised representative of the agency (PW5). Though, no evidence in the shape of financial records of the agency was led to prove the salary of the deceased, but in the light of the evidence discussed above, particularly, the advance payments made to the deceased by his employer, the assessment of his monthly income at Rs.10,000/- cannot be said to be unreasonable, without basis or unjust.

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 not regularly 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."*

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. 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 raised.

Appeal dismissed.

August 27, 2016 **(HARINDER SINGH SIDHU)**
JUDGE

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Whether speaking/reasoned - Yes / No

Whether reportable - Yes / No