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

**FAO No.2693 of 2016(O&M)**
Date of Decision: May 18, 2016

The New India Assurance Company Ltd. ...Appellant

Versus

Rabiya and others ...Respondents

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

Present: Ms. Vandana Malhotra, Advocate for the appellant – Insurance Company.

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HARINDER SINGH SIDHU, J.

This is an appeal by the Insurance Company (The New India Assurance Company Ltd.) against the Award dated 23.02.2016 passed in MACT Petition No.200 of 2016 by the Motor Accident Claims Tribunal, Gurgaon (for short `the Tribunal') granting compensation of Rs.18,56,500/- for the death of Majid Khan in a vehicular accident.

Brief facts of the case are that on 31.10.2014, Majid Khan (deceased) along with his uncle Salim Khan was going to Badshahpur in Auto bearing No.HR-55G-0331 being driven by deceased at slow and moderate speed. When they reached in front of gate of Devi Lal Stadium, Gurgaon, Majid Khan stopped the auto as Salim Khan was to go for urination. When the deceased was going towards another side of the road, a Haryana Roadways bus bearing No.HR-74A-2159 being driven rashly and negligently at a very high speed came from the side of Sohna and hit the deceased. As a result of this, Majid Khan sustained serious and multiple injuries and died on the spot. The driver and conductor of the bus fled away from the spot. FIR regarding the accident was registered on the statement of Salim Khan, uncle of the deceased.

Mother, widow and two minor children of the deceased filed claim petition under Section 166 of the Motor Vehicles Act, 1988 pleading that the deceased was aged about 28 years and earning Rs.18,000/- per month by driving auto.

Upon notice, respondent No.5 – Rakesh (driver of offending bus) filed written statement and took the objections regarding concealment of true and material facts, petition being bad for non-joinder and mis-joinder of necessary parties, estoppel, etc. It was also pleaded that he was falsely involved in the case. Respondent No.6 - General Manager, Haryana Roadways Nuh through its GPA Inspector Satish Kumar (owner of bus) filed the written statement and took the preliminary objections regarding maintainability, concealment of material facts, etc. It also stated that the vehicle was insured with the New India Assurance Company-Appellant at the time of accident. Appellant-Insurance Company filed the written statement taking the stands regarding locus standi, cause of action, contributory negligence and that respondent No.5-Rakesh(driver of the bus) was not holding valid and effective driving license.

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

"*1. Whether the accident dated 3.10.2014 took place due to rash and negligent driving of vehicle bearing No. HR-74A-2159 by respondent No.1, resulting into the death of Majid Khan? OPP*

*2. Whether the claimants are entitled to receive any* *compensation. If so, to what extent and from whom? OPP*

*3. Whether the respondent No.1 was not having valid and effective driving licence on the date of accident. If so its effect? OPR(3)*

*4. Whether there was violation of terms and conditions of insurance policy by respondent No.1. If so its effect?OPR(3)*

*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 offending vehicle No.HR-74A-2159 by respondent Rakesh. In the absence of proof of income of the deceased, the Tribunal assessed his income at Rs.7000/- per month, enhanced it by 50% towards future prospects and then considering the number of dependants (4) deducted 1/4$^{th}$ towards personal and living expenses of the deceased. It applied the multiplier of 17 and total loss of income was assessed at Rs.16,06,500/-. Besides, Rs.25,000/- for funeral expenses, Rs.25,000/- for loss of estate, Rs.1,00,000/- for `loss of consortium' to the wife and Rs.1,00,000/- towards `loss of love and affection' to the children, was awarded. The Tribunal held that all the respondents are jointly and severally liable to pay the compensation amount.

Challenging the award, Ld. Counsel for the appellant - Insurance Company has raised two submissions.

(i) That the income of the deceased was assessed at higher rate at Rs.7000/-, whereas, as per the Notification of the Government of Haryana minimum wages of an unskilled worker were fixed at Rs.5547/-, and

(ii) that since the deceased was not having a permanent income, therefore, the Tribunal erred in granting 50%

increase in the income towards future prospects.

Regarding the first contention, it is specifically noted by the Tribunal that from the reading of the FIR recorded on the day of accident itself, it is apparent that the deceased was driving the auto rickshaw. Secondly, Rubina, the wife of the deceased, who stepped into the witness box as PW1 also stated that the deceased was working as driver and earning Rs.18,000/- per month. On the strength of such oral evidence, at least, the fact that the deceased was an auto driver, is proved. So far as the assessment of the income of the deceased is concerned, Hon'ble the Supreme Court 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,*** 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."*
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> *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 October 2014, therefore, considering the profession of the deceased i.e. driving as also the increasing inflation and the statement of PW1, I do not find the assessment of the income of the deceased at Rs.7000/- (About Rs.233/- per day) excessive or exorbitant. Thus the contention of the Ld. counsel that the Tribunal should have granted the minimum wages at Rs.5547/- fixed by the State of Haryana for unskilled labour is devoid of merit.

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)*
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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.

May 18, 2016 **( HARINDER SINGH SIDHU )**
**JUDGE**

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