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

FAO No.2918 of 2016 (O&M)
Date of decision: July 08, 2016

The New India Assurance Company Limited .....Appellant

Versus

Pinki Devi and others .....Respondents

CORAM: HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr. Vinod Gupta, Advocate
for the appellant.

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HARINDER SINGH SIDHU, J.

This is an appeal by the Insurance Company (The New India Assurance Company Limited) against the Award dated 06.01.2016 passed in Claim Petition No.164 of 2014 by the Motor Accident Claims Tribunal, Bhiwani (for short `the Tribunal') for the death of Ashish in a vehicular accident.

Brief facts of the case are that on 18.10.2012, Ashish (since deceased) son of Lila Ram along with Naresh, Vijay Kumar and Jai Bhagwan boarded bus No.HR-61-4429. He was going from village Ramalwas to Charkhi Dadri. Several other persons were also travelling in the said bus. The bus was being driven by respondent-Satish Kumar rashly and negligently. When it reached at Mahendergarh turn, Charkhi Dadri, respondent-Satish Kumar took a sharp turn towards Bhiwani road, due to which Ashish who was standing in the bus fell down and was run over by its rear tyres and died. FIR No.375 dated 18.10.2012 under Sections 279/304-A of the Indian Penal Code was registered at Police Station Sadar Dadri against respondent- Satish Kumar.

The dependants of the deceased filed claim petition under Section 166 of the Motor Vehicles Act, 1988 pleading that the date of birth of deceased was 18.11.1993. He was doing AMIETE which was recognised by Government of India at par with B.E./B.Tech. He also used to take tuitions and was earning Rs.15,000/- per month.

Upon notice, driver respondent No.3-Satish Kumar filed written statement controverting the case of the claimants and stating that vehicle was falsely implicated in the case. It was averred that deceased himself was standing in the bus negligently and could not control himself on the turn and in the process of his getting down from the bus, he fell down on the road. Owners of the offending bus, Respondents No.4 and 5 filed their joint written statement on the same lines. Appellant – insurer filed separate written statement and pleaded collusion.

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

"*1. Whether the accident in question resulting into death of Ashish son of Lila Ram, took place on 18.10.2012 due to rash and negligent driving of bus bearing registration No. HR-61-4429 by respondent No.1? OPP.*

2. If issue No.1 is proved, whether the claimants are entitled to compensation, if so, to what amount and from whom? OPP.

3. Whether respondent No.1 was not having a valid and effective driving licence at the time of accident, if so its effect? OPR-4

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 the bus by respondent Satish Kumar. In the absence of proof of income of the deceased, the Tribunal assessed his income at Rs.8000/- per month, enhanced it by 50% on account of future prospects and then considering the number of dependants and the fact that deceased was a bachelor deducted 1/2 towards personal and living expenses of the deceased. Multiplier of 18 was applied and total loss of income was assessed at Rs.12,96,000/-. Besides, a sum of Rs.25,000/- was assessed towards `funeral expenses'.

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

Ld. Counsel for the appellant has argued that the claimants had only claimed that the deceased used to take tuitions, but no documentary proof regarding his income was produced. Hence the assessment of his income at Rs.8000/- per month, is on higher side. His further contention is that as the avocation of the deceased was not of permanent nature, therefore no increase of income on account of future prospects was permissible. 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. He has also questioned the regarding maintainability of the claim petition contending that the deceased Ashish had been adopted by

Duli Chand, whereas, the claim petition was filed by Smt.Pinki Devi and Lila Ram, the mother and father of the deceased.

To prove the income of the deceased, mother of the deceased, namely Pinki deposed before the Tribunal as PW1. She reiterated the averments made in the petition that the deceased was doing AMIETE, which was recognised by the Government of India at par with B.E./B.Tech. She also stated that he used to do tuition work and was earning Rs.15,000/- per month.

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)

> *"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."

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 deceased was a student of AMIETE, a degree recognised by the Government of India at par with B.E./B.Tech. and thus, a judicial notice can be taken of the fact that he cannot be equated with skilled/unskilled labourer, to assess his income.. Keeping in mind that he was going to acquire a technical professional qualification and that he was a laborious young boy doing tuition work at home, as also the fact that the accident had taken place in the last quarter of 2012, the assessment of his income made by the Tribunal at Rs.8000/- cannot be said to be excessive. It appears just and fair.

The second argument regarding grant of increase in the income of the deceased towards future prospects is also without merit.

In **Rajesh and others vs. Rajbir Singh and others**, **2013 ACJ 1403**, the Hon'ble Supreme Court has held that in case of self-employed or persons with fixed wages, below 40 years, there must be an addition of 50% 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 **<u>Munna Lal Jain and another vs. Vipin Kumar Sharma and others, 2015(6) SCC 347</u>**, 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.

So far as the last contention regarding the maintainability of the petition on the ground of the deceased being adopted son of Duli Chand is concerned, the same was dealt with by the Tribunal as under:-

> *"Further, it is no doubt true that in FIR mark A and in post mortem report, Ex.P1, deceased Ashish has been described as adopted son of Duli Chand, whereas the present claim petition has been filed by Smt.Pinki Devi and Lila Ram, being his parents. It is also no doubt true that in the earlier claim petition, Smt.Pinki deposed that Ashish was taken in adoption by Duli Chand, brother of grand father of Ashish prior to the birth of her son Ritim i.e. in the year 2002 and Ashish used to reside with his adoptive father Duli Chand. But this fact does not affect the case of the petitioners because in the copy of*

secondary school examination certificate of deceased Ashish, mark G issued by Central Board of Secondary Education, his mother's name has been mentioned as Pinki Devi and father's name as Lila Ram. Further in the copies of fees paid certificates mark F, mark I, mark J and mark K, the father's name of deceased Ashish has been recorded as Lila Ram. In the copy of ration card, mark H, Ashish has been shown as the son of Lila Ram and Pinki Devi (petitioners). In certificate mark E also, the father's name of deceased Ashish has been recorded as Lila Ram. No documentary evidence has been produced by the respondents to rebut the aforesaid evidence of the petitioners that they were the parents of deceased Ashish and he was not the adopted son of Duli Chand. More so, Duli Chand has not come forward to lay any claim in this petition being the adoptive father of the deceased. In the absence of any such evidence, it can easily be presumed that deceased Ashish was the son of petitioners and this claim petition is maintainable."

I do not find any error in the reasoning recorded by the Ld. Tribunal while rejecting the contention regarding the deceased being adopted son of Duli Chand.

No other point was argued.

Appeal is dismissed.

July 08, 2016 **(HARINDER SINGH SIDHU)**
gian **JUDGE**