IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 2921 of 2016 (O&M)

United India Insurance Company Limited ....Appellant

Versus

Amandeep Kaur and others ....Respondents

and

FAO No.2930 of 2016 (O&M)

United India Insurance Company Limited ....Appellant

Versus

Mandeep Kaur and others ....Respondents

Date of decision: May 19, 2016

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr.Raj Kumar Bashamboo, Advocate
for the appellant – Insurance Company.

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HARINDER SINGH SIDHU, J.

This judgment shall dispose of two appeals, referred to above, as the same have arisen out of the same accident.

Brief background of the case is that on 13.02.2014, Chamkaur Singh and Gurpreet Singh (both deceased) were going to their village Bishanpura Khokhar, Tehsil Moonak, District Sangrur on motorcycle No.PB-64-A-1894, which was being driven by Chamkaur Singh. At 5.00 pm, when they reached at railway bridge of Chajjli, a car bearing No.PB-75-8100 came from opposite side, being driven by Hazura Singh rashly, negligently and at a very high speed, and struck against the motor cycle. As a result thereof, both the occupants of the motorcycle suffered multiple injuries. Chamkaur Singh died at the spot and Gurpreet Singh succumbed to the injuries on 14.2.2014 while on the way to PGI, Chandigarh.

Legal representatives of both the deceased filed two separate claim petitions before Motor Accident Claims Tribunal, Sangrur (for short `the Tribunal'), wherein, the Tribunal assessed the income of the deceased at Rs.6000/- treating them to be casual labourers, granted 50% increase towards future prospects (deceased were aged 27 & 28 years) and awarded compensation as under:-

In case of death of Gurpreet Singh	Rs.15,29,800/-
In case of death of Chamkaur Singh	Rs.12,49,000/-

Ld. Counsel for the appellant Insurance company, while challenging the impugned awards, has raised a common argument that no documentary proof of income was produced on record, in the absence whereof, the assessment of their income at Rs.6000/- per month 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.

Having considered the submissions, I don't find merit in the same.

The Tribunal has treated the deceased as Casual Labourers and assessed their income at Rs.6000/- per month. If they were to be treated as Casual Labourers, then the income was to be assessed as per the Minimum Wages applicable at the relevant time. It has been pleaded in the claim petitions that deceased Chamkaur Singh (FAO-2921-2016) was an agriculturist and running a milk dairy. It was also pleaded that he was earning Rs.15,000/- per month from these avocations. So far as deceased Gurpreet Singh (FAO-2930-2016) is concerned, in the claim petition filed by his legal representatives, it was pleaded that he was a barber by profession and earning Rs.15,000/- per month.

Though no proof of income was placed on record in either of the cases, but that of itself is no ground for totally disregarding the claim of their earning 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 them to be Casual Labourers. However, this would not affect the result of the appeals as they could reasonably be said to be earning at least Rs.6000/- per month from the respective sources.

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, 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 **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.

Both the appeals are dismissed.

MAY 19, 2016 **(HARINDER SINGH SIDHU)**
gian **JUDGE**

GIANENDER KUMAR
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I attest to the accuracy and
integrity of this document