

FAO No.3209 of 2016 (O&M)
Date of decision: June 01, 2016

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Brief facts of the case are that on 14.2.2014, Rohit Kumar (deceased) along with his friend Arun Kumar and uncle Rajbir was going to their village Kamheda, Tehsil Gangoh, District Saharanpur. Rohit Kumar and his friend Arun Kumar were riding on motorcycle No.HR-71-B-1405 and their uncle Rajbir was following them on separate motorcycle. At about 4.30 p.m, when they reached near village Gheer, then Amar Singh -respondent No.3 while driving his car No.HR-02AA-0043 at a very high

speed and in a rash and negligent manner, came from opposite side and struck his car against the motorcycle of Rohit Kumar straightaway. Rohit Kumar died at the spot due to the injuries sustained by him in the accident. Amar Singh-respondent No.3 ran away after leaving his car at the spot. FIR No.43 dated 14.2.2014 under Sections 279, 337 and 304-A of the Indian Penal Code was registered at Police Station Kunjpura against Amar Singh-respondent No.3 regarding this accident.

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 20 years and working as a salesman at Pooja Medical Agency, Gangoh, District Saharanpur and earning Rs.10,000/- per month.

Upon notice, respondents No.3 and 4 (driver and owner) filed written statement controverting the case of the claimants and stating that their vehicle was falsely implicated in the case. 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 took place due to rash and negligent driving of car bearing registration No. HR-02AA-0043 by respondent No.1 as alleged? OPP.*
- 2. If issue No.1 is proved, whether the claimants are entitled to compensation on account of death of their son Rohit due to the injuries sustained in the accident in question, if so, how much and from whom? OPP.*
- 3. Whether the respondent No.1 was not holding any valid and effective driving licence at the time of this accident and the offending car was being plied in violation of the terms and conditions of the insurance policy, if so, to what effect? OPR.*

4. *Relief.*”

On appreciation of evidence led before it, the Tribunal returned the finding that the accident was caused due to rash and negligent driving of car No.HR-02AA-0043. The income of the deceased was assessed at Rs.8000/- and 50% increase therein was granted towards future prospects. Thereafter, 50% of the income of the deceased was deducted towards his personal and living expenses and multiplier of 18 was applied to assess the loss of dependency. Besides, Rs.1,00,000/- and Rs.50,000/- under the heads of 'loss of love and affection' and 'transport and funeral expenses', respectively, were awarded.

Challenging the award, Ld. counsel for the appellant-Insurance Company has argued that since there was no documentary proof of the income of the deceased, therefore, the Tribunal should have awarded compensation as per the notification issued by the State of Haryana regarding the wages of unskilled labour. 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 argued that pending the decision of the reference, increase on account of future prospects ought not be granted. It is also argued that since the deceased was a bachelor, multiplier based on the age of his parents was required to be applied.

So far as the income of the deceased is concerned, father of the

deceased had appeared in the witness box as PW-1 and deposed that his son was employed with Pooja Medical Agency, Gangoh, District Saharanpur and at the time of the accident, he was getting monthly salary of Rs.10,000/-. PW-2 Ankur Sharma, who is the proprietor of said Pooja Medical Agency, while appearing before the Tribunal deposed that the deceased was supplying medicines since April 2012 and was being paid Rs.10000/- as salary per month. He further stated that two other persons were also employed by him who were getting salary of Rs.7500/- to Rs.8000/- per month. PW-2 also produced on record photo copies of registration and allotment of Tin number as Mark-A, PAN Number as mark B, J-Card as mark C, Renewal slip as mark D and drug licences as mark E and F. It was on the basis of this evidence that the Tribunal assessed the income of the deceased at Rs.8000/- per month, which in my view does not call for any interference, as the deceased could not be equated with Labourer.

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 **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.

The question regarding application of multiplier was examined by three Judge Bench of the Hon'ble Supreme Court in the case of **Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65**, in which **Smt.Sarla Verma and others v. Delhi Transport Corportaion and another, 2009(3) RCR (Civil) 77**, was considered and it was held that multiplier as given in Smt.Sarla Verma's case (supra) has to be applied. In the said case, Supreme Court applied the multiplier as per age of the deceased. Therefore, the multiplier was correctly applied. In a recent judgement in **Munna Lal Jain's case** (supra), the Hon'ble Supreme Court has upheld the same view that multiplier is to be applied with reference to the age of the deceased and not age of dependents of deceased.

No other argument was raised.

Appeal dismissed.

June 01, 2016

**(HARINDER SINGH SIDHU)
JUDGE**