IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Decided on: 23.11.2016

1. FAO No.5025 of 2015

United India Insurance Company Limited ....Appellant

Versus

Baldev Singh and others ....Respondents

2. FAO No.3069 of 2015

United India Insurance Company Limited ….Appellant

Versus

Baldev Singh and others ….Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Ram Avtar, Advocate
for the appellant (in FAO Nos.5025 and 3069 of 2015)

Mr. Ashwani Arora, Advocate
for respondents No.1 and 2.
(in FAO Nos.5025 and 3069 of 2015)

REKHA MITTAL, J.

This order will dispose of FAO Nos.5025 and 3069 of 2015 titled *'United India Insurance Company Limited vs Baldev Singh and others'* as these have emerged out of the same award dated 19.01.2015 passed by the Motor Accidents Claims Tribunal, Chandigarh (in short 'the Tribunal') whereby compensation has been awarded in regard to death of Sh. Mohinder Singh and Smt. Joginder Kaur (husband and wife) in a motor vehicular accident that took place on 01.10.2012.

With regard to death of Sh. Mohinder Singh, the Tribunal assessed his income at Rs.36,318/- per month (rounded off to Rs.36,320/- per month), deducted 1/3rd for personal expenses, adopted a multiplier of 9 and after making statutory deduction of income-tax to the extent of 10% computed loss of dependency at Rs.2,61,504/-. In addition, an amount of Rs.25,000/- for funeral expenses and Rs.50,000/- for loss of estate was awarded making total compensation to Rs.24,28,536/-.

With regard to death of Smt. Joginder Kaur, notional income of the deceased by taking into consideration value of her services as a housewife was assessed at Rs.6,000/- per month, applied multiplier of 13 to compute loss of dependency at Rs.9,36,000/-. In addition, an amount of Rs.25,000/- for funeral expenses and Rs.50,000/- on account of loss of estate has been awarded making total compensation to Rs.11,11,000/-.

FAO No.5025 of 2015

Counsel for the appellant (hereinafter to be referred as 'the insurance company') would submit that Mohinder Singh deceased was working as a lineman with Power Corporation, Punjab as proved by Anmol Khurana PW3. He was born on 05.04.1957, therefore, he was more than 55 years old at the time of occurrence. Wife of Sh. Mohinder Singh namely Smt. Joginder Kaur also died in the same occurrence. The claimants – Baldev Singh and Gurpreet Singh are the adult sons of the deceased. One of them namely Baldev Singh has got compassionate appointment in lieu of services rendered by Sh. Mohinder Singh and Baldev Singh is getting salary approximately Rs.15,000/- per month. Gurpreet Singh, younger son of Mohinder Singh is also working as a driver, therefore, the claimants cannot be held to be dependent upon income of the deceased. It is argued that keeping in view the facts and circumstances of the present case, it is a fit case where split multiplier is liable to be applied in the light of observations made by Hon'ble the Supreme Court of India ***"Puttamma and others vs K.L. Narayana Reddy and another",*** **2014(1) R.C.R. (Civil) 443.**

Counsel for the claimants, on the contrary, has supported the award with the submissions that the very fact that one of the sons of the deceased has got compassionate appointment in lieu of services rendered by Sh. Mohinder Singh negates plea of the insurance company that sons of the deceased were not dependent on his earnings. Another submission made by counsel is that even if the second son of the deceased is working as a driver at a meagre salary of Rs.6,000/- per month, in view of prices of daily necessities of life, the said income is not sufficient to deny him compensation for the death of his father who was getting salary more than Rs.30,000/- per month. For this purpose, he has relied upon judgment of this Court ***"National Insurance Company Limited vs Gurbachan Singh and others",*** **2008 ACJ 979**. Further reference has been made to judgments of this Court ***"New India Assurance Company Limited vs Kuldeep Singh and others"*****, FAO Nos.5452 of 2012 and 5462 of 2012 decided on 02.08.2013**, ***"National Insurance Company Limited vs Paramjit Singh and others",*** **FAO No.1901 of 2016 decided on 10.08.2016**, ***"Kuldeep Kaur and others vs Sarvesh and others",*** **FAO No.2662 of 2012 decided on 18.05.2016**. It has further been argued that Hon'ble the Supreme Court in ***"Gujarat State Road Transport Corporation,***

Ahmedabad vs Raman Bhai Prabhatbhai and another", **AIR 1987 (SC) 1690** has approved judgment of the Gujarat High Court ***"Megjibhai Khimji Vira vs Chaturbhai Taljabhai",*** **AIR 1977 (Gujarat) 195** by holding that the view taken by Gujarat High Court is in consonance with the principles of justice, equity and good conscious having regard to the conditions of the Indian society. Every legal representative who suffers on account of death of a person due to a motor vehicle accident should have a remedy for realization of compensation and that is provided by Section 110-A to 110-F of the Motor Vehicles Act (in short 'the Act'). These provisions are in consonance with the principles of law of torts that every injury must have a remedy. The same view was reiterated by Hon'ble the Supreme Court in ***"Montford Brothers of St. Gabriel and another vs United India Insurance and another, etc.",*** **2014 ACJ (SC) 667**.

So far as plea of the insurance company with regard to split multiplier, counsel would urge that in ***Puttamma and other's case (supra)*** the deceased was a Typesetting Assistant in Computer Section of The Printers Mysore (P) Limited. The High Court applied a multiplier of 10 for the multiplicand of Rs.8,295/- and multiplier of 2 for the multiplicand of Rs.4,147/- keeping in view that the deceased was 50 years old and had he remained alive, he would have been in active service for a period of 10 years and thereafter he would have been entitled to pension to the extent of 50% of his gross salary. Hon'ble the Supreme Court set-aside judgment of the High Court adopting a split multiplier method and further held that in absence of any specific reasons and evidence on record, the Tribunal or the Court should not apply split multiplier in routine course and should apply multiplier as per decision of the Court in ***"Smt. Sarla Verma and others vs. Delhi Transport Corporation and another",*** **2009(3) R.C.R. (Civil) 77**, as affirmed in ***"Reshma Kumari and others vs Madan Mohan and another",*** **2013(2) RCR (Civil) 660.** It is argued that in ***"Sarladevi and others vs Divisional Manager, M/s Royal Sundaram Alliance Insurance Company Limited and another",*** **2014 ACJ (SC) 2391**, Hon'ble the Supreme Court set-aside the split multiplier adopted by the High Court as the deceased was 58 years at the time of accident and the Tribunal has taken the multiplier as 8. The High Court allowed loss of dependency at Rs.10,98,000/- for the first 02 years and for the balance 07 years only 50% annual income was taken into consideration to compute loss of dependency at Rs.19,21,500/-. In ***"K.R. Madhusudhan and others vs Administrative Officer and another",*** **2011(2) RCR (Civil) 207 (SC),** the High Court reduced the compensation granted by the Tribunal. The split multiplier adopted by the High Court was set-aside with the observations that the High Court introduced the concept of split multiplier and debarred from the multiplier used by the Tribunal without disclosing any reason. Further reliance has been placed upon the judgment of this Court ***"The Oriental Insurance Company vs Smt. Premwati and another",*** **FAO No.6396 of 2012 decided on 27.02.2016** wherein this Court did not accept the judgment of a Co-ordinate Bench ***"Balbir Kaur vs Manjinder Singh and others",*** **FAO No.5250 of 2013 decided on 11.12.2014** allowing split multiplier. Counsel has apprised that the judgment ***Smt. Prewati and another's case (supra)*** was challenged by way of petition for special leave to appeal before Hon'ble the Supreme Court but the special leave petition was dismissed on 26.08.2016 and findings of this Court negating plea of the insurance company to apply split multiplier by relying upon judgment ***Balbir Kaur's case (supra)*** have been affirmed.

I have heard counsel for the parties, perused the paperbook and the records.

It is an undisputed position of the case that Sh. Mohinder Singh and Smt. Joginder Kaur, parents of the claimants died in the same accident and they left behind two sons, more than 25 years of age. One of the sons (elder one) got compassionate appointment in lieu of services rendered by his father. The very fact that one of the claimants got compassionate appointment in place of the deceased is sufficient to prove that the deceased was dependent upon his father. Further the income earned by that claimant is in lieu of services rendered by the deceased, cannot be adjusted against compensation for loss of dependency. The other son is stated to be working as a driver at a salary of Rs.6,000/- per month. In the given facts and circumstances, it is difficult to accept plea of the insurance company that the claimants are not dependent upon earnings of the deceased or they are not entitled to get compensation or there are special circumstances obtaining in the case justifying adopting of a split multiplier. The judgments referred to by counsel for the claimants consistently discouraged adopting of a split multiplier. After getting a clue from the various judgments relied upon by the claimants, I find myself unable to accept submissions of the insurance company that either the claimants cannot be held to be dependent legal representatives of the deceased or split multiplier is liable to be adopted. In this view of the matter, I do not find any reason to interfere in compensation *qua* loss of dependency assessed by the Tribunal in regard to death of Sh. Mohinder Singh.

For the foregoing reasons, the appeal fails and is accordingly dismissed.

FAO No.3069 of 2015

Counsel for the insurance company has submitted that the deceased was held to be 50 years old and the claimants are the adult sons of the deceased. The Tribunal has assessed notional income at a higher rate and the same is liable to be reduced. For this purpose, he has relied upon judgment of Hon'ble the Supreme Court of India ***"Jitendra Khimshankar Trivedi and others vs Kasam Daud Kumbhar and others",*** **2015 ACJ (SC) 708**.

Counsel for the claimants, on the contrary, has supported the award with the submission that in ***Jitendra Khimshankar Trivedi and other's case (supra),*** the occurrence took place on 21.09.1990 and there is a gap of more than 20 years. It is further argued that Hon'ble the Supreme Court in ***"Lata Wadhwa and other vs State of Bihar and others",*** **2001(4) RCR (Civil) 673,** a case pertaining to the year **1989**, the Court assessed value of services of a housewife at Rs.3,000/- per month. He has further submitted that in ***"United India Insurance Company Limited vs Sube Singh and others",*** **FAO No.218 of 2014 decided on 15.01.2014**, this Court affirmed notional income at Rs.9,000/- per month for a housewife assessed by the Tribunal and the petition for special leave to appeal filed against decision of this Court was dismissed by the Apex Court vide order dated 08.09.2014. Further reference has been made to the judgment of this Court ***"Om Parkash vs Jagdish and others",*** **FAO No.7579 of 2015 decided on 26.10.2016** wherein this Court affirmed income of a house-maker at Rs.6,000/- per month, assessed by the Tribunal.

I have heard counsel for the parties, perused the paperbook and the records.

The deceased was approximately 50 years old and rendering services to the family consisting of her husband and two sons. There is nothing on record suggestive of the fact that deceased was suffering from any infirmity/disability rendering her unable to discharge her multifarious duties as a house-maker. In ***Jitendra Khimshankar Trivedi and other's case (supra)*** the matter pertains to the year 1990. There is an upward increase in the price index since 1990 up to 2012. Even a domestic help available round the clock would not agree to work at Rs.6,000/- per month. The value of services of a housewife (member of the family) is much more than that of a domestic help. Keeping in view the multifarious duties to be performed by a house-maker and after getting a clue from the judgments passed by this Court and duly affirmed by Hon'ble the Supreme Court, I find no reason to interfere in assessment of notional income at Rs.6,000/- per month by the Tribunal.

The Tribunal has awarded an amount of Rs.50,000/- for loss of estate but the same would not be admissible in the circumstances that the deceased was not gainfully employed and compensation qua loss of dependency has been assessed by taking into consideration value of her services as a house-maker. However, as the Tribunal has not allowed compensation for loss of love and affection, the amount of Rs.50,000/- for loss of estate is ordered to be adjusted towards loss of love and affection to the claimants.

No other point has been raised.

In view of what has been discussed hereinabove, the appeals fail and are accordingly dismissed. No order as to costs.

23.11.2016 **(REKHA MITTAL)**
yakub **JUDGE**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No