IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 5688 of 2015 (O&M)
Date of Decision : 19.02.2016

United India Insurance Company Ltd. ....Appellant

Versus

Palwinder Kaur and others ....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sanjiv Pabbi, Advocate
for the appellant-Insurance Company.

<u>Surinder Gupta, J. (Oral)</u>

This is appeal by United India Insurance Company Ltd. challenging the award dated 10.07.2015, passed by the Motor Accident Claims Tribunal, Chandigarh (later referred to as 'the Tribunal') allowing compensation of ₹35,98,000/- to claimants for death of Lakhwinder Singh in a motor vehicle accident with Scorpio Jeep bearing registration No. CH-01-AF-2781 (later referred to as 'the offending vehicle')

2. Learned counsel for the appellant has challenged only the quantum of compensation awarded by the Tribunal, as such, detail facts of the case are not being discussed.

3. The accident took place on 05.07.2012, when the deceased was going on his motorcycle from Panchkula to Morinda via Kurali. When he reached near brick kiln, village Dhangrali, the offending vehicle, being driven by respondent no. 4-Jaswinder Singh, came from opposite side and hit the deceased.

4. Claimants alleged before the Tribunal that the deceased was appointed at the monthly salary of ₹32,500/- by

M/s V.K. Gupta & Associates Engineers and Contractors vide appointment letter dated 16.05.2012. The Tribunal discarded the appointment letter and the document relating to payment of salary @ ₹32,500/- per month raising doubt about the genuineness of these documents. However, the Tribunal relied on the duly proved and authentic documentary evidence regarding employment and salary of the deceased prior to his alleged appointment with M/s V.K. Gupta & Associates Engineers and Contractors. The Tribunal concluded about income of the deceased in para 16 of the award as follows:-

> *"16. On the other hand, CW-3 A.K. Sinha, Chief Account Officer, office of SSECL, Industries Ltd., D-146, Industrial Area, Phase-VII, Mohali has brought the original record and proved copy of letter of intent dated 03.11.2011 as Ex. CW-3/A and copy of ledger account as Ex. CW-3/C. The witness has categorically stated that last salary drawn by deceased Lakhwinder Singh was ₹15,500/- which fact has also been reflected in said two documents. Apart from above, perusal of his academic record Ex. C-10 to Ex. C-18 reveals that he was Graduate from Panjab University, Chandigarh and Graduate Diploma in Material Management from All India Institute Management Study, Chennai. With this academic qualification, the deceased was capable of earning ₹15,500/- per month. Needless to say that nothing has been*

> *brought on record to justify more than this. In the circumstances, monthly income of deceased at the time of his death is assessed @ ₹15,500/- per month."*

5. Learned counsel for the appellant has argued that documents pertaining to employment of deceased in the office of SSECL, Industries Ltd. pertained to his employment in the year 2011, which could not be taken into account by the Tribunal as these were prior to the date of accident. The Tribunal has discarded the evidence regarding employment of the deceased at the time of accident terming the same as forged. This means that at the time of accident the deceased was unemployed and assessment of his salary as ₹15,500/- per month and allowing addition of 50% of his income towards future prospects by the Tribunal was erroneous.

6. On giving careful thought to the submission of learned counsel for the appellant, I find the same devoid of any merit. Claimants have placed on record evidence regarding income of the deceased at the time of his death, which was discarded by the Tribunal finding certain lacunae therein. Claimants have also placed on record evidence regarding employment of the deceased with SSECL Industries Ltd. The Chief Account Officer of the above industry has produced on record relevant record including ledger of the account and has stated that last drawn salary of the deceased was ₹15,500/- per month. It was proved on file that the deceased was a Graduate from Panjab University, Chandigarh and he also possessed a Graduate Diploma in

Material Management from All India Institute Management Study, Chennai. With above qualifications the Tribunal found deceased as capable of earning ₹15,500/- per month and while discarding the plea of claimants that he was getting ₹32,500/- per month as salary, assessed his monthly income as ₹15,500/-. I find no illegality or infirmity in the observations of the Tribunal, which has very cautiously evaluated evidence on record, as such, no reason is made out to interfere with the same.

7. The other submission of learned counsel for the appellant is that the Tribunal has wrongly allowed 50% addition in income of the deceased towards future prospects by relying on the observations of Apex Court in the case of ***Rajesh and others vs. Rajbir Singh and others*, 2013 (9) SCC 54**, particularly when the matter is under consideration before the Hon'ble Apex Court in the reference made in case of ***National Insurance Company Limited Vs. Pushpa and others* Appeal (C) No.8058 of 2014 decided on 02.07.2014 (MANU/SC/1246/2014)** and ***Shashikala and others vs. Gangalakshmamma and another*, *2015 (2) RCR (Civil) 510***.

4. In the case of ***Pushpa (supra)***, while differing with the view taken in case of ***Sarla Verma and others vs. Delhi Transport Corporation and anr.*, (2009) 6 SCC 121,** it was observed as follows:-

> *"18. Therefore, we do not think that while making the observations in the last three lines of para 24 of **Sarla Verma** judgment, the Court had intended to lay down an absolute rule that there will be no*

addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30% increase in his total income over a period of time and if he/she becomes the victim of an accident then the same formula deserves to be applied for calculating the amount of compensation."

5. In case of ***Rajesh (supra)***, a three Judges Bench of Hon'ble Apex Court has observed in para 11 and 12 as follows:-

*"11. Since, the Court in **Santosh Devi's case**[1] (supra) actually intended to follow the principle in the case of salaried persons as laid in **Sarla Verma's case** (supra) 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*

1Santosh Devi v. National Insurance Co. Limited, (2012) 6 SCC 421 *deceased was in the age group of 40 to 50 years.*

*12. In **Sarla Verma's case** (supra), it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter. "*

6. Reference was made to a larger Bench of Hon'ble Apex Court in case of ***Pushpa (supra)***, on 02.07.2014. In the recent judgment dated May 15, 2015 in case titled ***Munna Lal Jain and others vs. Vipin Kumar Sharma and others 2015 (3) RCR (Civil) 447,*** a three Judges Bench of Hon'ble Apex Court allowed future prospects in the case of self-employed persons following the observations made in case of ***Rajesh (supra)***.

7. The concept of future prospects envisages chances or opportunities for success and further progress in life which is a normal course of event for every human being involved in any avocation. Even if, keeping in view his ability, capacity etc., one may not be in a position to rise in life, there is another aspect that justifies the grant of addition in the income of the deceased, which is the 'inflationary trend' in which we all are living. I take instance of a tailor. It is a matter of common knowledge that

stitching charges have increased manifold during last two decades due to increase in expenses of material/labour charges/margin of persons in this profession, with consequential increase in their income. This is because of high increase in the cost of living. The dependents of a deceased in accident have also to face the same situation. The amount of compensation is required to be just and reasonable keeping the inflationary trend in view, where the prices of the basic amenities of life are likely to increase further.

8. As the view taken in case of ***Rajesh (supra)*** has been followed by the Hon'ble Apex Court in ***Munna Lal Jain (supra)***, the Tribunal while computing amount of compensation awarded to claimants committed no error by allowing 50% addition of the income towards future prospects.

No interference in the award on this score is called for.

No other point has been argued by learned counsel for the appellant.

This appeal has no merits. Dismissed.

February 19, 2016 **(SURINDER GUPTA)**
jk **JUDGE**