IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1) FAO No.793 of 2014
Date of Decision: August 29, 2016

Suman and others

...... Appellants

Vs.

Som Nath and others

.... Respondents

2) FAO No.1465 of 2014

National Insurance Company Limited

...... Appellant

Vs.

Suman and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not? yes
2. Whether the judgment should be reported in the Digest?

Present: Mr. R.C. Gupta, Advocate,
for the appellant.

Mr. Jagdeep Singh, Advocate,
for respondent.

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<u>AMOL RATTAN SINGH, J.</u>

These are two cross appeals, the first filed by the claimants before the learned Motor Accident Claims Tribunal, Kurukshetra, and the other by the insurance company that had insured the "offending vehicle".

2. Facts giving rise to the filing of the claim petition, as taken from the impugned Award of the learned Tribunal, are that Jasbinder Singh (deceased) was going on a motorcycle on 09.11.2011, stated to have been

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followed by his brothers Sunil Kumar and Zile Singh on another motorcycle. He was on way from village Bapda to Ladwa, when at about 10:50 p.m., a truck bearing registration No.HR-45-0961 was alleged to have been parked in the middle of the road by respondent No.1, due to which the motorcycle driven by Jasbinder Singh hit against the truck resulting in multiple injuries to Jasbinder Singh, to which he succumbed on the spot.

An FIR was registered under Sections 283 and 304-A of the IPC, at Police Station Ladwa. A post mortem examination was also conducted on the body of the deceased.

3. It was claimed in the claim petition, that a sum of Rs.40,000/- had been spent on the transportation, funeral and last rites of the deceased, who was aged about 25 years and was working as a "furniture carpenter", earning about Rs.20,000/- per month.

It was further contended that the accident was entirely due to the negligence of respondent No.1 and that the said truck was registered in the name of respondent No.3, Bal Mukand, though earlier it was owned by respondent No.2 Amit Kumar, and was insured by respondent No.4, i.e. the National Insurance Company Limited.

A compensation of Rs.15,00,000/- was claimed, alongwith the interest @ 12% per annum, thereupon.

4. On notice issued to them, respondents No.1 to 3 appeared and filed a joint written statement, taking the usual preliminary objections on maintainability etc. and on merits pleaded that the accident was not caused by the negligence of respondent No.1. It was further contended that a false FIR had been registered in connivance with the local police. Yet, it was further contended that respondent No.1 had a valid and effective driving

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licence and even though the claim was otherwise exaggerated, the insurer was liable to pay the compensation, if any.

5. The insurance company also took the usual preliminary objections and further, denied the accident altogether. Other than taking the same stand as respondents No.1 to 3, it was further contended that respondent No.1 did not have a valid driving licence and that there was a violation of the terms and conditions of the insurance policy. It was also contended that if at all the accident was proved to have taken place, it was due to the fault of the deceased himself, who struck the motorcycle against a stationary truck from behind and that the truck was parked on the left side of the road, with the parking lights switched on.

Other than that, the income and profession of the deceased were also denied.

6. The following issues were framed by the learned Tribunal:-

> "1. Whether the motor vehicle accident dated 9.11.2011 is an outcome of rash and negligent driving of truck No.HR-45-0961 by Som Nath, respondent No.1?
>
> 2. Whether the respondent-driver of aforesaid vehicle was not having valid driving licence at the time of alleged accident? OPR
>
> 3. Whether the petitioners are entitled to compensation on account of death of Jasbinder Singh in the aforesaid accident? If so, as to what amount and from whom? OPP
>
> 4. Relief.

7. The first claimant, i.e. the widow of the deceased, testified as PW1 and also examined Zile Singh as PW2. The respondents however, did not lead any evidence either documentary or oral, as per what is stated in the Award.

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Upon appraising the evidence, the learned Tribunal found that Zile Singh was an eye witness to the accident, who supported the version given in the claim petition and further stated that he had also got recorded his statement before the police, upon which a criminal case was registered against respondent No.1.

With the respondents not having led any evidence whatsoever to rebut the testimony of the eye witness, or of the first claimant, the Tribunal, citing two judgments of this Court, wherein it was held that since the truck was proved by the testimony of the eye witness, to have been parked in the middle of the road, without any parking lights on, at about 10:50 p.m. in the winter season, no contributory negligence could be attributed to the deceased.

Consequently, respondent No.1 was held guilty of having caused the accident due to wrong parking of his truck on the highway.

8. As regards the income of the deceased, since the claimants could not prove that he was working as a carpenter, earning Rs.20,000/- per month, it was held that as an able-bodied person the deceased must have been earning at least Rs.5400/- per month as a labourer, in terms of the minimum wages notified for the year 2011-2012.

Citing the judgments of **Rajesh and others v. Rajbir Singh and others** (2013)(9) SCC 54 and **Smt. Sarla Verma and others v. Delhi Transport Corporation and another** (2009) 6 SCC 121, 50% of the aforesaid income was added by way of loss of future prospects of an increased income to the deceased, thereby arriving at a total sum of Rs.8100/- per month or Rs.97,200/- per annum. A 1/4th deduction was applied on the aforesaid sum towards the personal expenses of the deceased

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and the annual dependency was thereby worked out to Rs.72,900/-.

The deceased being 25 years of age, a multiplier of 17 was applied and the total loss of income to the claimants was calculated to be Rs.12,39,300/-.

Towards loss of consortium to appellant-claimant No.1, and loss of love and affection to the other claimants, as also towards funeral expenses and loss of estate, a total sum of Rs.50,000/- was awarded by the Tribunal.

Hence, the total compensation awarded was Rs.12,89,300/-.

9. Upon examination of the driving licence of respondent No.1, it was found that it was a licence valid upto 05.02.2013, valid for driving even a heavy goods vehicle. Hence, liability to pay compensation was foisted upon all the respondents, jointly and severally.

10. Before this Court, Mr. Jagdeep Singh, learned counsel for the appellants-claimants (in FAO No.793 of 2014), submitted that firstly, the Tribunal wholly erred in applying a multiplier of 17 when the deceased was held to be 25 years of age, because as per the ratio of *Sarla Vermas'* case (supra), for the age group of 15 to 25, a multiplier of 18 is to be applied.

He further submitted that the total compensation of Rs.50,000/- awarded towards the loss of consortium, loss of love and affection, loss of estate and funeral expenses, to all the claimants jointly, is highly inadequate and wholly against the ratio of the judgments in *Rajesh v. Rajbirs'* case (supra), **Vimal Kanwar and others vs. Kishore Dan and others** (2013) 7 SCC 476 and **Reshma Kumari and others v. Madan Mohan and another** (2013) 9 SCC 65.

Hence, he submitted that the compensation awarded needs to be suitably enhanced, as per the law settled on the issue.

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11. Mr. R.C.Gupta, learned counsel for the insurance company (appellant in FAO No.1465 of 2014), *per contra* submitted first on the issue of negligence, that the learned Tribunal wholly erred in appreciating the evidence to the effect that the alleged eye-witnesses to the accident were stated to be the brothers of the deceased, Zile Singh and Sunil Kumar, who had alleged that they were travelling on a motorcycle behind the deceased and when they reached the point of accident, the truck driven by respondent No.5, was parked in the middle of the road, with no hazard lights/indicator on, to show that it had been so parked. He submitted that as per PW2, Zile Singh, the motorcycle driven by the deceased, which was ahead of them, was driven on the correct (left) side of the road. He, therefore, submitted that if the motorcycle was travelling on the left side and the truck was allegedly parked in the middle of the road, even with a little diligence, the deceased could have easily avoided the truck, if not completely by-passing it, he being on the extreme left side and the truck being in the middle, as averred. He further submitted that in any case, even if some truth is attached to the aforesaid testimonies, since they went unrebutted, with the driver of the 'offending vehicle' not stepping into the witness box, as the deceased admittedly hit the truck from behind, contributory negligence would still need to be passed on to the deceased himself, which the tribunal has completely glossed over.

He further referred to the site plan (Ex.R3) before the trial Court, in this regard.

12. As regards the compensation awarded, learned counsel for the company submitted that in view of the fact that the deceased was admittedly not on a fixed salary, the question of whether or not he should have been

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awarded any amount for loss of future prospects of income would also require careful consideration, in view of the fact that the issue has been referred to a larger Bench of the Supreme Court, in **National Insurance Company Limited v. Pushpa and others** (2015) 9 SCC 166.

Learned counsel further submitted that even if the issue of negligence is decided in favour of the respondents-claimants even to some extent, the compensation awarded would further be revisable to the extent that the father of the deceased, i.e. respondent No.4, Bichha Ram, would not be entitled to any compensation as admittedly, he has two other sons living, and in any case, in terms of the ratio of the judgment in *Sarla Vermas'* case, a father cannot be held to be dependent on the son, unless he is specifically proved to be so.

Hence, learned counsel for the insurance company submitted that the appeal of the Company deserves to be allowed and that of the claimants dismissed.

13. Having heard learned counsel for the parties and having considered the Award of the learned Tribunal, the first thing that needs to be pointed out is that though it is stated in the Award of the Tribunal that not even documentary evidence was led on behalf of the respondents, photocopies of the driving licence of respondent No.1 (in the claimants' appeal) were produced as Ex.R1 and R5 and the insurance policy was produced as Ex.R4. Hence, it is obvious that the statement in the Award to that extent is incorrect.

Be that as it may, as regards the issue of negligence, I am partly in agreement with the learned counsel for the insurance company, that even accepting the fact that the truck was parked on the road, whether in the

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middle or on the side, without any indication on to show that it was parked, as is unfortunately too true in a very large number of cases in our country, if the version of the claimants is to be wholly believed, to the effect that the truck was in the middle of the road and the deceased was driving extremely on the left side, obviously he would have bye-passed the truck. Therefore, even taking it to be that the truck was parked on the road, even if it was half on the metalled portion and half off it, as is usually the case, or even accepting the claimants' version that it was in the middle of the road, the deceased cannot be totally absolved of negligence. This would be, inasmuch as, the 9th of November is not deep winter and as such, it cannot be accepted to be a completely foggy night, with in any case no evidence led in that regard. Thus, since the impact of the motorcycle against the truck was obviously so great, that it led to multiple injuries to the deceased, he obviously must have been driving at more than a moderate speed and consequently, could not avoid hitting the truck. (Whether or not he was wearing a helmet, has not been either proved or disproved by any kind of evidence, even oral, to that effect).

The reason for respondent No.1, i.e. the driver of the truck, not stepping into the witness box, as contended by counsel for the company, is that it is not the driver or the owner in the present case who are to pay the compensation, with the truck duly insured and the driver knowing that he had a valid driving licence.

In these circumstances, it must be held that though the prime negligence would be that of respondent No.1, in parking his truck on the road without any warning sign to on coming traffic from behind, some negligence has to be attributed to the deceased. Hence, 20% negligence is

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foisted upon the deceased himself.

14. Coming next of the issue of the quantum of compensation awarded by the Tribunal. No evidence to the contrary has been proved by the counsel for the insurance company, that the assessment of an income equivalent to the minimum wages of a labourer, was erroneous on the part of the Tribunal. Hence, accepting that the income of Rs.5400/- per month was correctly assessed by the Tribunal, I, however, agree with learned counsel for the company that since the matter is under consideration before the hon'ble Supreme (larger Bench) in *Pushpas'* case (supra), wherein the issue is that when the deceased was not in permanent employment, would claimants in such a case still be entitled to loss of future prospects of income or not, such component of the compensation may not be disbursed to the claimants.

Though otherwise, of course, it cannot be lost sight of that even in a case of a labourer, loss of future prospects of income would accrue, inasmuch as, even minimum wages are revised from time to time as per inflationary trends; however, in view of the reference to a larger Bench by the hon'ble Supreme Court, this Court has been calculating such loss of future prospects of an increased income to the deceased, and has then been directing that the insurance company would deposit the said sum with the Tribunal, which would not disburse it to the claimants till the decision in *Pushpas'* case.

15. Accordingly, the component of the loss of future increased income of the deceased having been taken otherwise correctly by the Tribunal to be Rs.2700/- per month (50% of Rs.5400/-), the annual loss of such income to the deceased would be Rs.32,400/-, to which a deduction of

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1/4th is to be applied towards the personal expenses of the deceased, thereby coming to a loss of dependency on such future income to be Rs.24,300/-. To that, a multiplier of 18 is to be applied (the Tribunal erroneously having applied a multiplier of 17), thus coming to a total loss of future prospects of income to the claimants, to be Rs.4,37,400/-.

That amount would be deposited by the insurance company herein, with the Tribunal, which would then have the amount deposited in a fixed deposit with a nationalised bank, so as to draw maximum interest upon it.

If the ratio of the judgment in *Pushpas'* case comes in favour of the claimants, the aforesaid amount, alongwith the interest that would have accrued upon it in the fixed deposit, would be disbursed to the claimants, in the same manner as other compensation is disbursed, with no further reference to this Court.

If, on the other hand, the ratio of the judgment in *Pushpas'* case is to the effect that in such cases, claimants are not entitled to loss of future prospects of income, then the insurance company would be entitled to have the sum deposited by it, refunding to itself, alongwith the interest that would have accrued upon it in the fixed deposit.

16. As regards the amount of Rs.50,000/- awarded by the Tribunal under other 'conventional' heads, I agree with the learned counsel for the claimants, that as per settled law, the claimants were entitled to far more than the aforesaid amount. Hence, under various other heads, compensation is awarded to the claimants as follows:-

i) Loss of consortium (to appellant-claimant No.1) : Rs.1,00,000/-

ii) Towards loss of love & affection, care & guidance of her father to appellant No.2

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	(two year old daughter)	: Rs.2,00,000/-
iii)	Towards loss of love and affection of their son to appellants No.3 and 4 @ Rs.50,000/- each	:Rs.1,00,000/-
iv)	Towards last rites and transportation expenses etc.	:Rs.25,000/-
	Total :	**4,25,000/-**

17. As already said, even towards the loss of actual dependent income to the claimants, a multiplier of 18 should have been applied to the annual income of the deceased after deduction of 1/4th of that amount towards his personal expenses. Hence, the amount of compensation under the head of loss of income would be Rs.48,600/- per annum (Rs.5400/-x 12 – 25%). To that amount, a multiplier of 18 is to be applied, the deceased being 25 years of age, thereby coming to a loss of dependent income of Rs.8,74,800/-.

18. Therefore, the total compensation otherwise awardable to the claimants comes to Rs.12,99,800/-.

However, since 20% negligence has been attributed by this Court to the deceased himself, the aforesaid compensation is to be reduced in that proportion. Hence, less the loss of future prospects of income, (even if eventually payable to the claimants), they would be now disbursed a total compensation of Rs.10,39,840/-. Of this amount, Rs.5,00,000/- would be paid to the widow of the deceased, Rs.2,39,840/- would be payable to claimant No.2, i.e. the minor daughter of the deceased. (That amount would be deposited in a fixed deposit in her name, in a nationalised bank, so as to draw maximum interest, till the time she attains majority). Out of the remaining amount of Rs.3,00,000/-, Rs.50,000/- would be paid to appellant-claimant No.4, Bichha Ram, i.e. the father of the deceased and Rs.2,50,000/- to appellant-claimant No.3, i.e. the mother of the deceased.

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This is so, because in terms of the judgment in *Sarla Vermas'* case, followed thereafter also, the father of the deceased, unless shown to be specifically dependent upon him, cannot be awarded compensation towards loss of income but would still be entitled to compensation for loss of love and affection of his son.

The entire compensation would carry an interest @ 7.5.% per annum as awarded by the Tribunal, running from the date of the filing of the claim petition till the date of deposit by the insurance company.

19. The disbursement of the loss of future prospects of an increased income, would remain subject to the outcome of the judgment of the Supreme Court in *Pushpas'* case (supra), and presently, that component of the compensation shall be deposited by the insurance company, as directed in paragraph 15 hereinabove.

20. Both the appeals are disposed of accordingly, with no order as to costs.

August 29, 2016 **(AMOL RATTAN SINGH)**
dinesh **JUDGE**

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