

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

FAO No.582 of 2016

Date of decision: 25.01.2016

Reliance General Insurance Company Ltd.

... Appellant

Versus

Mitesh Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Subhash Goyal, Advocate and
Mr. Nitin Mittal, Advocate,
for the appellant.

AMOL RATTAN SINGH, J.

1. This appeal by the appellant Insurance Company, impugns the Award of the learned Motor Accident Claims Tribunal, Sonapat, dated 17.11.2015, by which respondents No.1 to 3 have been awarded a compensation of Rs.14,87,560/-, alongwith interest @ 7% per annum, from the date of filing of the claim petition till the actual realisation thereof.

The said respondents are the husband and two minor children respectively, of late Smt. Bimla, who is stated to have died after a truck owned by respondent No.5 and driven by respondent No.4 struck against

her and ran over both her legs.

The accident is stated to have taken place on 18.04.2013, when respondent No.1 and Bimla were making some purchase at Biswa Mill Chowk. Bimla is said to have been standing on the road side while her husband was making purchases from a handcart . The time is shown to be 10:30 AM, when a truck bearing registration No.HR-55-K-9398 came from the side of village Jatheri at a very fast speed, allegedly driven in a rash and negligent manner.

The truck is stated to have hit Bimla and run over her legs, after which respondent No.4, who was driving the truck, stopped the vehicle at some distance, came back and gave his name to be Jai Bhagwan. However, while respondent No.1 was looking after his wife, Jai Bhagwan is stated to have fled away from the spot. Bimla was taken to hospital in an ambulance, medico-legally examined and referred to the Post Graduate Institute of Medical Sciences, Rohtak. However, respondent No.1 started taking her to Delhi instead but she succumbed to her injuries on the way and was brought back to the General Hospital, Sonapat.

An FIR is also stated to have been registered against respondent No.4 at Police Station, Rai, District Sonapat, on the statement of respondent No.1.

2. In the claim petition filed before the learned Tribunal, deceased Bimla Devi is shown to have been doing the work of tailoring and stitching in the village where she resided with her family, from which she is stated to have been earning Rs.15,000/- per month, other than maintaining her home and looking after the claimants. Due to her untimely death, other than mental shock, agony and tension that the claimants went through, for which

they claimed compensation, loss of future income of the deceased was also claimed, with a total of Rs.30,00,000/- sought by way of compensation.

3. Respondents No.4 and 5 (respondents No.1 and 2 before the Tribunal) filed a joint written statement, denying the accident and claiming false implication.

The appellant Insurance Company (respondent No.3 before the Tribunal) filed a separate written statement, claiming that the owner of the vehicle (presently respondent No.5) had breached the terms and conditions of the insurance policy and further that the accident was not caused due to the rash and negligent driving of respondent No.4.

Other than that, the compensation claimed was also disputed, as highly exaggerated.

4. Respondent No.1 appeared as PW1 before the Tribunal and reiterated the facts given in the claim petition.

In his cross-examination, nothing adverse could be elicited from him.

He also examined one Narinder Kumar, an Additional Ahlmad, with regard to the criminal case registered against respondent No.4.

Copies of the FIR, the post mortem report, of the report submitted under Section 173 Cr.P.C., of the site plan and of the charge sheet against respondent No.4, were also produced in evidence as exhibits, by respondent No.1.

5. The respondents did not lead any evidence whatsoever, in their defence. In fact, as recorded in the impugned Award, even the driver of the vehicle in question (respondent No.4), did not step into the witness box to rebut the allegations made against him in the claim petition and the

documentary evidence submitted.

Consequently, on the issue of negligence, the learned Tribunal held in favour of the claimants and thereafter proceeded to assess the compensation to be awarded.

6. Though the claimants had averred that deceased Bimla was earning Rs.15,000/- per month, no documentary proof or any evidence in that regard was produced before the Tribunal. Consequently, her monthly income was taken to be Rs.6430/- on the basis of the minimum wages notified for the year 2013-14, the accident having taken place on 18.04.2013, i.e. immediately after the closing of the said financial year.

In view of the fact that there were three dependents (claimants), i.e. the husband and two minor children of the deceased, a 1/3rd deduction towards her personal expenses was made, on the touchstone of the law laid down in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and others**, (2009) 6 SCC 121. Thus, a loss of dependent income of Rs.4287/- was assessed in favour of the claimants, by the Tribunal.

The age of the deceased, as per the post mortem report, having been shown to be 35 years, 50% of the said amount was added by way of loss of prospects of future income, again on the touchstone of the law laid down in **Santosh Devi v. National Insurance Co. Ltd.** (2012) 6 SCC 421, read with the judgment in **Rajesh and others v. Rajbir Singh and others** (2013) 9 SCC 54.

A multiplier of 16 was applied, also as per the ratio of the judgment in *Sarla Verma's case* (supra), aforesaid cases, thereby bringing the total loss of income to the claimants to be Rs.12,34,560. An amount of Rs.1,00,000/- was awarded for loss of consortium to respondent No.1 and

another amount of Rs.1,00,000/- was awarded to respondents No.2 and 3, for loss of care and guidance to these two minor children. Rs.25,000/- was awarded towards funeral expenses and another sum of Rs.20,000/- towards pain, loss and sufferings. Rs.3,000/- was also awarded by way of transportation expenses, thereby bringing the total compensation amount to be Rs.14,87,560/-.

All the respondents before the Tribunal, i.e. presently respondents No.1 and 2 and the present appellant, were held jointly and severally liable to pay the compensation, with the appellant being held to have first liability towards payment.

7. The claim of the present appellant, that respondent No.4 was not having a valid driving licence, was found to be false, as the driving licence held by him was valid till 07.05.2015, having been issued on 14.03.2012.

8. Mr. Subhash Goyal, learned counsel appearing for the appellant, submitted that as regards the compensation, the Tribunal had wholly erred in assessing the monthly income of Bimla as Rs.6430/-, in view of the fact that she was admittedly not a daily wage earner but a home maker and as such, the income assessed was wholly excessive.

He further submitted that in any case, nothing towards loss of future income could have been awarded to a lady working only at home.

He, therefore, submitted that the compensation awarded be reduced, by removing the component of loss of future prospects of income and also reducing the monthly income of the deceased, as was assessed by the Tribunal.

9. Having heard learned counsel for the appellant, I do not find

merit in the submission made on behalf of the Insurance company.

The contention that just because the deceased was a lady working only at home, minimum wages cannot be assessed, is a misconceived argument in my opinion, as even a household lady contributes to the income of the family in a two fold manner. Firstly, with household work being wholly done by her, the need to employ any person to do such work is dispensed with and as such, whatever would be payable to a person managing household affairs, including all kinds of work such as cooking, cleaning etc., needs to be taken as the loss of income on the death of a home maker.

Secondly, by ensuring smooth functioning of the home, the contribution made by a home maker, is enhanced by the fact that the bread-earner does not have to divide his attention from his work towards household chores, including looking after the children.

Hence, the contribution of a home maker towards the income of a family can never be under estimated and needs to be given its due recognition and importance.

The Supreme Court, in **Arun Kumar Agrawal and another Vs. National Insurance Company and others**, AIR 2010 SC 3426, held that when the deceased is not earning an active income, the loss of income is to be assessed as per clause 6 of the 2nd schedule to the Motor Vehicles Act, 1988. That income is shown to be Rs.15,000/- per annum. However, the 2nd schedule having been incorporated alongwith the Motor Vehicles Act, enforced w.e.f. 01.07.1989, obviously fixation of income at Rs.15,000/- per annum (Rs.1250/- per month), at wages prevalent 24 years before the accident in question took place, would now be wholly irrational.

Hence, assessment by the learned Tribunal, of an income of Rs.6430/- per month, notionally in the hands of the deceased, on the basis of minimum wages prescribed by the Haryana Government upto 01.02.2013, does not seem to be excessive at all, in my opinion. It must be noticed that the minimum wages as have been assessed by the learned Tribunal, have not been challenged by the appellant on the ground that the quantum assessed is not as per the minimum wages notified by the Government of Haryana, for the year 2013-14.

10. On the same reasoning as is applicable for calculating the notional income of a home maker, awarding loss of prospects of future income at the rate of 50% of the assessed income of the deceased, when the deceased was 35 years old, also is not excessive; because inflation, even in the case of a household lady whose income is assessed on the basis of minimum wages prescribed for an unskilled labourer, would naturally increase, at least for the period that the multiplier is applied, i.e. 16 years, by 50%, as per past trends of inflation. In fact, over a period of 15 to 16 years, income normally doubles at least. However, keeping in view imponderables, it was held in *Sarla Vermas' case* (supra), that in the case of a deceased person below 40 years of age, the loss of future prospects of income should be assessed at 50% of the current income. Though that was held only in respect of salaried persons, thereafter, in *Rajesh v. Rajbir Singhs' case* (supra), following the ratio of the law laid down in *Santosh Devis' case* (supra), the Supreme Court held that loss of future prospects of income cannot be limited only to those who are earning a fixed salary, but is also applicable to those who are making their living by other means.

In the opinion of this court, even in the case of a household lady, her notional earnings, in terms of her contribution to the work of the household, as discussed above, would increase with inflation, just as a daily wage workers' income would increase over the years.

11. It also needs to be noticed here that applying a multiplier of 16, would mean that the period for which loss of income of the deceased is paid to the claimants, is for 16 years only, i.e. till the time, in the case of a 35 year old, the deceased would have reached the age of 51 years.

Normally, a person continues to earn well beyond that age, but again, because of imponderables, the multiplier applied is restricted and is not applied as per the normal life expectancy of a human being. Thus, in any case, in the case of the death of a young person, even by adding 50% of his/her current income/notional income, by way of loss of future prospects of income, the complete amount of income lost is never paid to the claimants.

Therefore, in the opinion of this court, the compensation awarded by the Tribunal suffers from no error in that respect.

In fact, the compensation awarded for loss of love and affection of their mother, to the minor children, is also insufficient but this not being an appeal by the claimants, obviously, nothing further needs to be said on that issue.

12. Keeping in view the above discussion, finding no merit in the appeal, it is dismissed *in limine*, with no orders as to costs.

25.01.2016

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VIKAS CHANDER
2016.02.01 14:23
I attest to the accuracy and
integrity of this document

(AMOL RATTAN SINGH)
JUDGE