

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

**FAO No.6422 of 2016 (O&M)
Date of Decision: October 19, 2016.**

United India Insurance Company Ltd.

.....APPELLANT(s).

VERSUS

Palwinder Kaur and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.C. Kapoor, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This is appeal by United India Insurance Company against the award dated 21.07.2016 passed by Motor Accident Claims Tribunal, Kurukshetra (later referred to as 'the Tribunal') allowing compensation of ₹22,11,000/- for the death of Bhupinder Singh (later referred to as 'the deceased'), husband of claimant No.1 Palwinder Kaur, father of claimant No.2 Prince, aged 7 years and son of claimant No.3 Jarnail Singh, aged 62 years in a motor vehicle accident with car bearing registration No.HR-08S-5443 (later referred to as 'the offending vehicle').

2. Learned counsel for the appellant has argued that it was a head on collision between the motorcycle of the deceased and the offending vehicle and in such a case, the Tribunal must have assessed the contributory negligence of the deceased, who could avoid the accident in case he had been vigilant. He further argued that the Tribunal relied on the statement of Gurmukh Singh, eyewitness, who is brother of the deceased, despite the fact

that several persons gathered at the spot and no independent witness was examined. In the absence of any documentary evidence, the Tribunal took the income of the deceased as ₹10,200/- per month, which is on higher side. In case, he had been taken as unskilled worker, the minimum salary of unskilled worker as notified by the Labour Commissioner, Haryana vide notification No.6316-6381 dated 13.02.2015 was ₹5,812.75p. He has further argued that the Tribunal has also allowed addition in the income of the deceased towards future prospects despite the fact that the matter of grant of addition in the income of the deceased towards future prospects is under consideration of Hon'ble Apex Court in case of *National Insurance Company Limited Vs. Pushpa and others 2015(9) SCC 166*. He further submits that the amount of compensation allowed towards future prospects may be paid to the claimants either against surety bond/indemnity bond or this amount be invested in the fixed deposit till the decision of the reference made to the larger Bench of Apex Court. He further submits that Hon'ble Apex court in case of *National Insurance Company Ltd. Vs. Santosh Khandelwal & Ors, Special Leave to Appeal (Civil) No.19803/2012* vide order dated 07.05.2013, got deposited the enhanced amount of compensation awarded by the High Court in fixed deposit in the name of the claimant.

3. Firstly, I take the plea raised by learned counsel for the appellant that there was contributory negligence on the part of the deceased in causing the accident. The Tribunal, while assessing negligence aspect in the accident observed in para 15 of the award as follows:-

“15. In their written statements, the respondents No.1 to 3 have denied the accident. However, the respondents No.1 to

3 have not examined the respondent No.1 or any other person alleged to have witnessed the accident to depose that no accident took place with the car in question or due to rash and negligent driving of the car in question by the respondent No.1. It may also be added here that the respondents No.1 and 2 have not produced any oral or documentary evidence to prove that the respondents No.1 to 3 made any complaint to SHO, Police Station Dhand or Higher Police authorities regarding false involvement of the respondent No.1 and the car bearing registration No.HR-08S-5443 in the accident. Since the respondent No.1 (i) fled from the spot and has not offered any explanation for his act, (ii) did not make any complaint to the concerned SHO or Higher police officers regarding his false implication and (iii) has not stepped into the witness box to rebut the evidence against him, rash and negligent driving on the part of the respondent No.1 must be held to be the sole cause of the accident. Reliance in this regard may be placed on the observations in ***Ranjit Kaur and others Versus Jaipal Singh and others 1989 (II) ACC 627 (Punjab and Haryana High Court)***, ***Lakhu Singh and others versus Udey Singh and others 2008 (III) ACJ 1608 (Punjab and Haryana High Court)***; ***Sudama Devi and others Vs. Kewal Ram and others (2008-1) PLR 444 and Krishna Bus Service Limited Versus Smt. Mangli and others 1976 ACJ 184 (Supreme Court)***. It is also pertinent to observe that the car had caused the accident by going to the extreme wrong side of the road which fact also proves the rash and negligent driving of the car by the respondent No.1 to be the sole cause of the accident and falsifies/negatives any contributory negligence on the part of deceased. In these facts and circumstances of the case, the respondents No.1 to 3 must be held to have failed to prove their defence and to rebut the evidence produced by the claimants.”

Gurmukh Singh, eye-witness to the accident stated that he was

going with his brother on his separate motorcycle along with his father when the accident took place. He has stated *“after seeing the offending Car, Bhupinder Singh lowered down speed of his motorcycle and came on extreme left hand side of the road, but despite that the offending Car struck against the motorcycle after coming on wrong side of the road. As a result, Bhupinder Singh fell down along with the motorcycle and received multiple serious and grievous injuries on various parts of his body and died at the spot.”* In the cross-examination of this witness not a single suggestion was given that the accident took place in the manner other than described by him or there was any contributory negligence on the part of the deceased in causing the accident. The statement of this witness though he is brother of the deceased, is credible and unrebutted and duly proves that there was no contributory negligence on the part of the deceased in causing the accident. This accident cannot be termed as a head on collision because the deceased had taken his motorcycle on the extreme left hand side of the road when hit by the offending vehicle by coming on the wrong side of the road. The arguments of learned counsel for the appellant in this regard has no merits and is discarded. The statement of Gurmukh Singh regarding the manner of accident is unrebutted and police has also filed final report against the driver of the offending vehicle after investigation. The argument of learned counsel for the appellant that in the absence of independent corroboration, statement of Gurmukh Singh, who was brother of the deceased, cannot be relied, carries no weight. The Tribunal has committed no error while concluding that accident was caused due to rash and negligent driving of offending vehicle by its driver.

5. PW2 Gurmukh Singh has stated that his brother was an agriculturist and also running dairy business, thereby earning ₹20,000/- per month. The deceased was on his motorcycle, whereas his brother along with his father was on separate motorcycle. The Tribunal took the wages prescribed by the Deputy Commissioner, Kurukshetra for unskilled labourer vide order dated 20.02.2015 as ₹10,200/-. Even otherwise, it is a well-known fact that in this age of high costs of living, even an unskilled worker is earning around ₹350/- per day and they tried to add to their income by doing extra-work/overtime. The Tribunal has committed no error while taking income of deceased as ₹10,200/- per month. The wages prescribed by Labour Commissioner, Haryana for unskilled workers has no relevance. This salary is prescribed for the workers employed in the factories where they get a number of facilities and other emoluments. The argument of learned counsel for the appellant on this score is also discarded.

6. The Tribunal has granted addition in the income of the deceased keeping in view the observation of Hon'ble Apex Court in case of ***Rajesh and others Vs. Rajbir and others (2013)9 SCC 54*** and ***Munna Lal Jain and others Vs. Vipin Kumar Sharma and others 2015(3)RCR (Civil) 447***.

7. In the case of ***National Insurance Company Limited Vs. Pushpa and others (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.”

8. In case of *Rajesh and others Vs. Rajbir and others (2013)*⁹ *SCC 54*, 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** (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 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. ”

9. Reference was made to a larger Bench of Hon'ble Apex Court in case of *National Insurance Company Limited Vs. Pushpa and others (supra)*, on 02.07.2014. In 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 and others Vs. Rajbir and others (supra)*.

10. 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. For instance, I take instance of an unskilled labourer. It is a matter of common knowledge that daily wage of an unskilled labourer have seen upward trend during last decade. This is because of high increase in the cost of living. Prices of goods of daily need and food items have increased manifold during this period. The dependants of deceased 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.

11. As the view taken in case of ***Rajesh and others Vs. Rajbir and others (supra)*** has been followed by the Hon'ble Apex Court in ***Munna Lal Jain and others Vs. Vipin Kumar Sharma and others (supra)***, the Tribunal committed no error while allowing 30% addition of the income towards future prospects while allowing the compensation to the claimants.

12. In case of ***National Insurance Company Ltd. Vs. Santosh Khandelwal & Ors (supra)***, the compensation was enhanced by the High Court but Hon'ble Apex Court during the pendency of the appeal ordered the same to be deposited in the bank as fixed deposit. The order was passed by the Hon'ble Apex Court as interim measure.

13. In this case, the Tribunal has already ordered 75% of the amount of share of claimants No.1 and 3 to be deposited in fixed deposit for a period of five years and complete share of minor claimant No.2 to be deposited in fixed deposit till he attains majority, as such, no direction to obtain any surety/indemnity bond from the claimants is required.

14. No other argument has been advanced by learned counsel for the appellant.

15. As a sequel of my above discussion, this appeal has no merits.
Dismissed.

October 19, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

√
Yes/No

Whether Reportable:

√
Yes/No