

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

**Date of decision:9.11.2016**

1.

**FAO No.6619 of 2016(O&M)**

New India Assurance Co. Ltd.

.....Appellant

VERSUS

Kalawati and others

.....Respondents

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2.

**FAO No.6622 of 2016(O&M)**

New India Assurance Co. Ltd.

.....Appellant

VERSUS

Kamal and others

.....Respondents

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**CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**

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

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**REKHA MITTAL, J.**

This order will dispose of FAO Nos.6619 and 6622 of 2016 filed by the New India Assurance Company Ltd. against the same award dated 30.07.2016 passed by the Motor Accident Claims Tribunal, Bhiwani (in short 'the Tribunal') in regard to death of Jai Singh and Shiv Kumar @ Kala in a motor vehicular accident that took place on 30.11.2014.

Counsel for the insurance company has assailed findings of the Tribunal on issue No.1 with regard to involvement of the vehicle in the accident as well as quantum of compensation determined by the Tribunal.

The first submission made by counsel is that the First Information Report (in short 'FIR') No.513 dated 01.12.2014 was lodged at the instance of Raja PW-1 but in the FIR there is no reference to identity of

the driver of the alleged offending vehicle Alto K-10 car bearing No.HR-48A-8852. Raja PW-1 is not an eye-witness to the occurrence, therefore, his testimony is not relevant for proving that the accident took place due to rash and negligent driving of the alleged offending vehicle. Vinod PW-2 was examined to prove the accident. Presence of Vinod at the spot does not find reference in the FIR, lodged at the instance of Raja, sufficient to prove that Vinod has been introduced as a witness later for the purpose of claim proceedings. In addition, it is submitted that Vinod in his cross examination has stated that his statement was recorded by the police on the next day of the occurrence. It is argued that had Vinod been present at the spot, there was no reason for him not to lodge the FIR.

With regard to quantum of compensation awarded in favour of Smt. Kamal and others in regard to death of Jai Singh, the sole submission made by counsel is that as the matter with regard to grant of future prospects is pending consideration before a Larger Bench of Hon'ble the Supreme Court in view of reference made in **National Insurance Company Ltd. vs. Pushpa, SLP (C) No.16735 of 2014, decided on 02.07.2014**, amount of compensation representing addition towards future prospects along with interest thereon may be directed to be deposited in a fixed deposit receipt and only interest on the said amount should be permitted to be paid to the claimants till the matter is decided by the Larger Bench. For this purpose, he has made reference to order dated 07.05.2013 passed by Hon'ble the Supreme Court in **National Insurance Company Ltd. Vs. Santosh Khandelwal and others**, petition for Special Leave to Appeal (Civil) No.19803/2012.

The Tribunal has allowed compensation to Smt. Kalawati and another, parents of deceased Shiv Kumar @ Kala at Rs.43,08,636/- by

assessing his net annual income at Rs.3,16,936/- adding 50% towards future prospects besides an amount of Rs.30,000/- under conventional heads. The sole grievance expressed by counsel for the appellant is that the Tribunal has adopted a multiplier of 18 on the basis of age of deceased (an unmarried boy) in place of age of parents of deceased, who were 50-52 years old at the time of occurrence. In support of his contention, he has relied upon judgment of Hon'ble the Apex Court **Y.P. Shakuntala Vs. Manager, Reliance General Insurance Co. Ltd., 2016 ACJ 2400.** In the said case, the claimants preferred an appeal seeking enhancement of compensation in respect of death of Madhan Kumar son of Y.K. Shakuntala who died in a road accident on 27.09.2011 at the age of 21 years. The Court affirmed the findings regarding deduction to the extent of 50% and multiplier of 15 with the observations that no infirmity is found in the deduction and multiplier as the deceased was a bachelor and age of the mother was taken into consideration for determination of multiplier.

I have heard counsel for the appellant, perused the paper-book particularly the award passed by the Tribunal.

Indisputably, occurrence in question took place in the late evening of 30.11.2014. The FIR was registered on 01.12.2014 by Raja son of Ram Singh, brother of deceased Jai Singh. He tendered into evidence his affidavit by way of examination in chief and deposed that due to injuries received in the accident, Jai Singh died on the spot and Shiv Kumar died in PGIMS, Rohtak. After causing the accident, respondent No.1 left the offending car on the spot and fled away. The accident was witnessed by Vinod Kumar son of Ramdhari resident of village Pur. On the same day after the accident, he received information of the accident on mobile phone and after arranging a vehicle he visited the spot. When he

reached the spot, offending Alto K-10 car bearing No.HR-48-A-8852 and motorcycle bearing No.HR-19B-9374 were lying on the road and dead body of his brother was taken to Government hospital Tosham.

Raja PW-1 is not an eye-witness to the occurrence, therefore, there was no occasion for him to know about presence of Vinod at the spot. Vinod tendered into evidence his affidavit and stated about the date, time and manner of the accident attributing rashness and negligence to driver of the offending car resulting in serious injuries to the riders of motorcycle No.HR-19B-9374. During the course of hearing, counsel made available copies of the statement of Raja PW-1 and Vinod PW-2. Counsel has failed to point out any discrepancy or material fact elicited in cross examination of Vinod to create doubt that Vinod was not present at the spot or he had not seen the occurrence. The driver of the alleged offending vehicle did not appear in the witness box to counter case of the claimants particularly statements of Raja and Vinod. Narender- respondent No.1 (driver) has not alleged any ill-will or enmity against him by Raja and Vinod for recording their statements before the police attributing rashness and negligence to driver of the offending vehicle.

In this view of the matter, I find myself unable to accept the submissions made by counsel for the insurance company or to find fault in the findings recorded by the Tribunal on issue No.1.

This brings the Court to the submissions with regard to compensation assessed qua death of Jai Singh. The Tribunal has allowed benefit of increase in income for future prospects by relying upon judgment of Hon'ble the Supreme Court **Rajesh and others Vs. Rajbir Singh and others**, 2013 ACJ 1403. The mere fact that a reference is pending before a Larger Bench is not sufficient to deny the said benefit.

Hon'ble the Supreme Court in Santosh Khandelwal and others case (supra) has directed the appellant-insurance company to deposit the added amount along with interest, rounded off to Rs.10,00,000/- in the name of Santosh Khandelwal for a period of two years, to be renewed thereafter periodically until disposal of the appeal. The interest on the fixed deposit is ordered to be paid every quarterly to Smt. Santosh Khandewal. This direction was issued by the Court as the appeal preferred by the insurance company has been kept pending in view of conflicting judgments. As in the case at hand, the appeal is being disposed of by this Court, the insurance company cannot pray for any such interim arrangement.

Counsel for the appellant has raised an issue of multiplier qua compensation paid to Ms. Kalawati and another with regard to death of Shiv Kumar @ Kala. In Y.P. Shakuntala and another case (supra), Hon'ble the Supreme Court has affirmed the findings with regard to deduction to the extent of 50% and multiplier of 15 as the deceased was a bachelor and age of the mother was taken into consideration. With due regards to the observations made in the said authority, the Court has not considered the previous judgments on the issue **Smt. Sarla Verma and others versus Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77** and a three-Judge bench decision in **Reshma Kumari and others Vs. Madan Mohan and another, 2013 ACJ 1253**. In Sarla Verma's case (supra), the Court in an effort to bring uniformity in the process of assessment of compensation in motor vehicular accident cases laid down certain principles with regard to multiplier, deductions and future prospects. The Court held that justice and justness emanate from equality in treatment, consistency and thoroughness in adjudication and fairness and uniformity in the decision-making process and the decisions. While it may not be

possible to have mathematical precision or identical awards, in assessing compensation, same or similar facts should lead to awards in the same range. When the factors/inputs are the same and the formula/legal principles are the same, consistency and uniformity and not divergence and freakiness, should be the result of adjudication to arrive at just compensation. If different Tribunals calculate calculations differently on the same facts, the claimant, the litigant, the common man will be confused, perplexed and bewildered. If there is significant divergence among Tribunals in determining the quantum of compensation on similar facts, it will lead to dis-satisfaction and distrust in the system. In that case, Hon'ble Judges were conscious of the fact of death of an unmarried person while dealing with the question of deduction to the extent of 50% by taking a view that the mother alone will be considered as a dependent. Later in Reshma Kumari's case (supra), the multipliers worked out in Sarla Verma's case (supra) were affirmed with an addition that in case age of the deceased is up to 15 years, irrespective of Section 166 or 163-A under which the claim for compensation has been made, multiplier of 15 in the assessment as indicated in the Second Schedule to the Motor Vehicles Act, 1988 subject to correction as pointed out in column 6 of the table prepared in Sarla Verma's case (supra) should be followed. Still later, after the decision in Y.P. Shakuntala's case (supra), the Apex Court in **Munna Lal Jain and others versus Vipin Kumar Sharma and others, 2015(3)**

**RCR (Civil) 447** has held in para 12 quoted thus:-

“12. The remaining question is only on multiplier. The High Court following Santosh Devi (supra), has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependants or that of the deceased, has been hanging fire for sometime; but that has been given a quietus by another three-Judge Bench decision in Reshma Kumari (supra). It was held that the multiplier is to be used with reference to the

age of the deceased. One reason appears to be that there is certainty with regard to the age of the deceased but as far as that of dependants is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average, etc., is to be taken. To quote:

“36. In *Sarla Verma*, this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section 166. It has been rightly stated in *Sarla Verma* that the claimants in case of death claim for the purposes of compensation must establish (a) age of the deceased; (b) income of the deceased; and (c) the number of dependants. To arrive at the loss of dependency, the Tribunal must consider (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in *Sarla Verma*.”

In view of enunciation of law laid down in *Sarla Verma's case* (supra) and the judgments rendered by a three-Judge Bench in *Reshma Kumari's case* (supra) and *Munna Lal Jain and another's case* (supra), I find it difficult to be persuaded by the submissions of counsel for the insurance company that the Tribunal has committed an error by adopting multiplier of 18 in place of multiplier as per age of mother of the deceased and, therefore, compensation awarded to parents of the deceased Shiv Kumar @ Kala is liable to be reduced.

No other point has been raised.

In view of what has been discussed hereinabove, the appeals fail and are accordingly dismissed in *limine*.

**NOVEMBER 9, 2016**

‘D. Gulati’

**(REKHA MITTAL)**

**JUDGE**

Whether speaking/reasoned : yes/no

Whether reportable : yes/no