IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 7728 of 2015 (O&M)
Date of Decision : 05.05.2016

National Insurance Co. Ltd. .....Appellant

Versus

Raj Kumari and others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vipul Sharma, Advocate
for Mr. Paul S. Saini, Advocate
for the appellant.

Surinder Gupta, J.

This is appeal filed by National Insurance Company Ltd. against award dated 01.07.2015 passed by Motor Accident Claims Tribunal, Fatehabad (later referred to as 'the Tribunal') whereby compensation of ₹15,60,474/- was allowed for death of Rambeer Singh in a motor vehicle accident with vehicle bearing registration N. DL-4CAE-6119 (later referred to as 'the offending vehicle').

2. The accident took place on 20.03.2014. The Tribunal discarded the plea taken by claimants that the deceased was a skilled painter and was earning ₹20,000/- per month and assessed his monthly income as ₹6000/- considering him to be a labourer. The compensation of ₹15,60,474/- allowed to claimants was calculated by the Tribunal as follows:-

Sr. No.	***Heads***	***Calculation***
(i)	Income of the deceased Rambeer Singh	₹6000 per month

(ii)	40% of (i) above to be added as future prospects	₹6000+₹2400 = ₹8400 per month
(iii)	1/4th of (ii) deducted as personal expenses of the deceased	₹8400-₹2100 = ₹6300 per month
(iv)	Compensation after multiplier of 17 is applied	(₹4680X12X17) = ₹1285200
(v)	Loss of consortium, love and affection	₹100000
(vi)	Funeral expenses and last rites and transportation	₹10000
(vii)	Medical bills	₹165274
	Total	₹1560474

3. Learned counsel for the appellant has challenged the award on two grounds. Firstly, that it was a case of contributory negligence as the accident took place when the deceased was about to cross the red-light. Secondly, the Tribunal has wrongly allowed future prospects by relying on the judgment in case of ***Anjani Singh and others*** ***vs.*** ***Salauddin***, ***2014 ACJ 1565,*** which relates to grant of future prospects in the case of permanent Government employee.

4. The first submission of learned counsel for the appellant carries no weight in view of the fact that respondents before the Tribunal including the Insurance Company has nowhere pleaded that the accident took place due to contributory negligence on the part of deceased. This fact was denied in the written statement filed by Insurance Company that Rambeer Singh was hit by the offending vehicle when he was in the process to cross the red-light. There is no evidence on record that the accident had taken place when the deceased had crossed the red-light. It appears from perusal of FIR and the details of manner in which accident took place as given in the

petition that place of accident has been described as red-light *chowk*. It is also mentioned in para 26 of the petition that one Ram Naresh resident of Lajpat Nagar, who was running a berger *rehri* on 'red-light' reached the spot. It shows that place where the accident had taken place has been described by claimants as red-light *chowk* and mentioning by claimants that the deceased was in the process of crossing red-light when the accident took place signifies that they want to convey that accident had taken place when the deceased was about to cross the 'Red Light' *chowk*. There is no evidence that deceased was rash and negligent or in any manner contributed in the accident. RW-1 SI Ramesh Kumar has elaborated the fact that deceased did not cross 'Red Light'. He has stated that accident took place at 09.30 p.m. while Traffic Lights are generally switched off at 08.00 p.m. He was investigating officer in the FIR relating to accident by police and has nowhere suggested that traffic lights were on when the accident took place.

5. The second plea of claimants that the Tribunal has wrongly allowed addition in income of the deceased towards future prospects is also without merit. Learned counsel for the appellant has referred to observations of three Judges Bench of the Apex Court in case of ***Reshma Kumari and ors. vs. Madan Mohan and anr., 2013 (9) SCC 65***, wherein it has been observed as follows:-

> *"36. The standardization of addition to income for future prospects shall help in achieving certainty in arriving at appropriate compensation. We*

approve the method that an addition of 50% of actual salary be made to the actual salary income of the deceased towards future prospects where the deceased had a permanent job and was below 40 years and the addition should be only 30% if the age of the deceased was 40 to 50 years and no addition should be made where the age of the deceased is more than 50 years. Where the annual income is in the taxable range, the actual salary shall mean actual salary less tax. In the cases where the deceased was self-employed or was on a fixed salary without provision for annual increments, the actual income at the time of death without any addition to income for future prospects will be appropriate. A departure from the above principle can only be justified in extraordinary circumstances and very exceptional cases."

6. While making above observations it was observed in para 35 as follows:-

"35. With regard to the addition to income for future prospects, in ***Sarla Verma***[1]*, this Court has noted earlier decisions in* ***Susamma Thomas***[2]*,* ***Sarla Dixit***[3] *and* ***Abati Bezbaruah***[4] *and in paragraph 24 of the Report held as under:-*

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1 *Sarla Verma and ors. vs. Delhi Transport Corporation and another, (2009) 6 SCC 121*
2 *General Manager, Kerala State Raod Transport Corporation, Trivandrum vs. Susamma Thomas (Mrs.), 1994 (2) SCC 176*
3 *Sarla Dixit (Smt.) vs. Balwant Yadav, 1996 (2) RRR 90; 1996 (3) SCC 179*
4 *Abati Bezbaruah vs. Dy. Director General, Geological Survey of India, 2003 (3) SCC 148*

> *24. ……….In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances."*

7. The matter of grant of addition towards future prospects was again discussed by the Apex Court in case of

Santosh Devi* vs. *National Insurance Co. Ltd.*, 2012 (6) SCC 421**. In case of ***Rajesh and others vs. Rajbir Singh and others*, 2013 (9) SCC 54**, a three Judges Bench of the Apex Court while making reference to the observations in the case of ***Santosh Devi (supra) observed in para 9 as follows:-

> *"9. In a recent decision, in* **Santosh Devi** *vs.* **National Insurance Co. Limited and Ors.** *(2012) 6 SCC 421, authored by one of us (G.S. Singhvi, J.),* **Sarla Verma's case** *(supra) has further been explained with regard to the settled norms. It has been held in Paragraph 11 as follows:*
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> > *"11. We have considered the respective arguments. Although, the legal jurisprudence developed in the country in last five decades is somewhat precedent-centric, the judgments which have bearing on socioeconomic conditions of the citizens and issues relating to compensation payable to the victims of motor accidents, those who are deprived of their land and similar matters needs to be frequently revisited keeping in view the fast-changing societal values, the effect of globalization on the economy of the nation and their impact on the life of the people."*

8. The Bench also took note of the observations in paras

14 to 18 in ***Santosh Devi's (supra)*** and observed in para 11 of the judgment in case ***Rajesh (supra)*** 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."*

9. The above observations in case of ***Rajesh (supra)*** were also followed by three Judges Bench in case of ***Munna Lal Jain and others*** ***vs.*** ***Vipin Kumar Sharma and others*****, 2015 (3) RCR (Civil) 447**. It is by now a well settled legal proposition and keeping in view the fast changing societal values, changing economic conditions and its impact on the lives of people that addition in income of the deceased in a motor vehicle accident while computing amount of dependency is to be allowed. In case

of ***Santosh Devi (supra)***, the Apex Court has observed that rise in cost of living affects everyone across the board. It is a fact which nobody can deny and dependents of the deceased in a motor vehicle accident case also fall in the said category and cannot be ignored. The Apex Court in paras 15 and 16 in case of ***Santosh Devi (supra)***, has observed as follows:-

> *"15. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put in extra efforts to generate additional income necessary for sustaining their families.*
>
> *16. The salaries of those employed under the Central and State Governments and their agencies/ instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five*

> *figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lakh."*

10. The Apex Court has given reasons while further elaborating the law laid down in case of ***Sarla Verma (supra)*** while allowing addition in income of the deceased in a motor vehicle accident towards his future prospects. It has taken note of the observations in case of ***Sarla Verma (supra)***, which was relied in case of ***Reshma Kumari (supra)*** and the development of law as given in ***Rajesh's case (supra)*** and followed in case of ***Munna Lal Jain (supra)*** is to be respected.

11. In view of my above discussion, learned Tribunal has committed no error of law and fact while allowing addition in income of the deceased towards future prospects. The submissions made by learned counsel for the appellant in this regard has no merit and is discarded.

12. As a sequel of my above discussion, the instant appeal is without merit and the same is dismissed.

May 05, 2016 **(SURINDER GUPTA)**
jk **JUDGE**