IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 8269 of 2015 (O&M)
Date of Decision : 09.11.2016

Oriental Insurance Company Ltd. ....Appellant

Versus

Bhupinder Kaur and others ....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. D.P. Gupta, Advocate
for the appellant.

Mr. Ashwani Arora, Advocate
for respondents no. 1 to 5.

<u>Surinder Gupta, J.</u>

This is appeal by Oriental Insurance Company Ltd. against the award dated 03.08.2015 passed by Motor Accident Claims Tribunal, SAS Nagar, Mohali (later referred to as 'the Tribunal') awarding compensation of ₹15,94,000/- to claimants for death of Rajinder Singh (later referred to as 'the deceased'), husband of claimant no. 1, father of claimants no. 2 to 4 and son of claimant no. 5, on 28.08.2014 in a motor vehicle accident with car bearing registration no. PB-65-V-3245 (later referred to as 'the offending vehicle').

2. The Tribunal allowed compensation of ₹15,94,000/- to claimants, which was computed as follows:-

Sr.No.	***Heads***	***Calculation***
(i)	Name of the deceased	Rajinder Singh
(ii)	Age of the deceased	48 years
(iii)	Income	₹9000 x 12 = ₹108000

(iv)	Multiplier @ 16	₹108000x13 = ₹1404000
(v)	Future prospects @ 30%	₹421200
(vi)	Deductions @ 1/4th	₹456300
(vii)	Loss of dependency	₹1368900
(viii)	Funeral expenses	₹25000
(ix)	Loss of consortium	₹100000
(x)	Loss of love and affection	₹100000
Total		**₹1594000**

3. Learned counsel for the appellant has assailed the award on three counts. Firstly, that income of the deceased has been taken as ₹9000/- per month by treating him as a daily wager, which is on higher side. The Tribunal took the daily wager income as ₹300/- per day but did not take notice of the fact that a daily wager may not get employment on all the days of month. Secondly, the Tribunal also allowed addition in income of the deceased towards future prospects despite the fact that question for grant of addition in income of deceased in a motor vehicle accident, towards future prospects has been referred to a larger Bench of Apex Court in case of ***National Insurance Company Limited* vs. *Pushpa and others*, 2015 (9) SCC 166**. Thirdly, the Tribunal also allowed interest on the compensation allowed towards future prospects which could not be allowed as amount of future prospects has to accrue in future and not on the date of filing of claim petition.

4. Firstly, I take point regarding income of the deceased raised by learned counsel for the appellant. In the FIR (Ex. PW-2/B), it is mentioned that the deceased was employed with Gillco Valley, Kharar. Complainant was Ravinder Singh, member *panchayat* of village Gharuan, neighbour of

the deceased. He was going on his Pulsar motorcycle towards his village. The deceased met him at Bus Stand, Kharar where he had come after completing his night duty with Gillco Valley. He took him on his motorcycle and proceeded towards the village. The version given in FIR by complainant is natural version without any pre-meditation. Complainant has described profession of the deceased and his reason for standing at Bus Stand. There was no reason for the complainant to mention in FIR that the deceased was employed with Gillco Valley and was standing at Bus Stand, Kharar after completing his night duty. This shows that the deceased was employed with Gillco Valley. Claimant examined Kulwant Singh, Senior Executive, Gillco Developers and Builders Pvt. Ltd. as PW-3, who has stated that the deceased was employed with them at the basic salary of ₹9000/- per month. He proved his salary receipt for the months of April to July, 2014 as Ex. PW-3/A to PW-3/D. He has stated that last salary of the deceased was paid at the time of his *Bhog* ceremony and total amount of ₹1,23,000/- towards salary and overtime charges in the last year of his service from the period of September, 2007 to August, 2008 were paid. He had also proved salary certificate of the deceased as Ex. PW-1/D and had brought attendance register, which was also seen by learned counsel for the appellant during course of arguments. This witness further stated that a sum of ₹1,50,000/- was paid to family of the deceased by collecting this amount from other employees. The Tribunal discarded this evidence on the ground that no appointment letter of the deceased was placed on record. Though, reasons recorded by the Tribunal while discarding the credible evidence regarding income of the deceased are not sound but still the quantum of compensation as assessed by the Tribunal cannot be said to be without evidence on record. The Tribunal was sensible while discarding the evidence to hold that income of the deceased can otherwise be taken as ₹9000/- per month even by treating him as a daily wager. This observation by Tribunal depict that it was convinced by the evidence produced on file regarding income of deceased, but was reluctant to accept the same as the appointment letter of deceased was not produced on file. I find no reason to differ with Tribunal on the issue of quantum of income of deceased.

5. The second argument of learned counsel for the appellant is that the matter regarding grant of future prospects is pending before the Apex Court in a reference made in ***Pushpa's case (supra)***.

6. While making reference to larger Bench on the quantum of grant of addition in income towards future prospects in the case of ***Pushpa's case (supra)***, while differing with the view taken in case of ***Sarla Verma and others* vs. *Delhi Transport Corporation and anr.*, (2009) 6 SCC 121,** Apex Court 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."*

7. In case of ***Rajesh and others vs. Rajbir Singh 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***[1] *(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.*
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> *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*

[1] *Santosh Devi v. National Insurance Co. Limited, (2012) 6 SCC 421*

> *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.* "

8. Reference was made to a larger Bench of Hon'ble Apex Court in case of ***Pushpa (supra)*** on 02.07.2014. In the recent judgment dated 15.05.2015 in case ***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 (supra)***.

9. 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. I take instance of a tailor. It is a matter of common knowledge that stitching charges have increased manifold during last two decades due to increase in expenses of material/labour charges/margin of persons in this profession, with consequential increase in their income. This is because of high increase in the cost of living. The prices of grocery items of daily need have also increased manifold. The dependents of a victim in accident 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.

10. In this case the deceased was husband of claimant no. 1, father of claimants no. 2 to 4 and son of claimant no. 5. As per claimants, the

deceased was employed as security guard. A person in his capacity as husband, father and son performs various other duties for the family, which also justify the grant of addition towards his monthly income. He looks after and manages all the family affairs like bank accounts, LPG connection, payment of electricity and water bills, fee of school and college going children, their career, medical and health care of family etc. Services rendered by him also carry value on the same terms as services rendered by a house-wife. This is another aspect on which I find the grant of addition of 30% in income of the deceased towards future prospects as justified.

11. The Apex Court while making addition in income of the deceased towards future prospects in case of ***Rajesh's case (supra)*** and ***Munna Lal Jain's case (supra)*** has not made any distinction for the purpose of future interest in the amount of compensation allowed to claimants, as such, this argument of learned counsel for the appellant that interest cannot be allowed to claimants on the compensation allowed towards future prospects, carries no weight.

12. As a sequel of my above discussion, this appeal has no merit and the same is dismissed.

November 09, 2016 **(SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*