IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 7827 of 2016 (O&M)
Date of Decision : 22.12.2016

Bharti AXA General Insurance Company Ltd. ....Appellant

Versus

Durga Devi and others ....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rajbir Singh, Advocate
for Mr. Sanjeev Goyal, Advocate
for the appellant.

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

This is appeal by Oriental Insurance Company Ltd., insurer of the vehicle bearing registration No. HR-99-MQ-Temp-0090 (later referred to as the offending vehicle), which met with an accident on 09.03.2015 resulting in death of Jogender @ Pappu (later referred to as 'the deceased'), who was husband of respondent no. 1, father of respondents no. 2 and 3 and son of respondents no. 4 and 5, against award dated 04.05.2016 passed by Motor Accident Claims Tribunal, Bhiwani (later referred to as 'the Tribunal').

2. The Tribunal allowed compensation of ₹16,50,000/- to claimants, which was computed as follows:-

Sr.No.	***Heads***	***Calculation***
(i)	Name of the deceased	Jogender @ Pappu
(ii)	Age of the deceased	38 years
(iii)	Income	₹8000 per month

(iv)	50% of (iii) added in income of the deceased towards future prospects	(₹8000x₹4000) = ₹12000 per month
(v)	Deduction of 1/4th towards personal expenses	(₹12000- ₹3000) = ₹9000 per month
(vi)	Loss of dependency after multiplier of 15 is applied	(₹9000X12X15)= ₹1620000
(vii)	Funeral expenses	₹25000
(viii)	Loss of estate	₹5000
Total		**₹1630000**

3. Learned counsel for the appellant has assailed the award on two counts. Firstly, the Tribunal has taken income of the deceased as ₹8000/- per month, which is on higher side. In the year 2015, a daily wager was getting around ₹6000/- and not ₹8000/- per month as awarded by the Tribunal. He has further argued that the matter regarding grant of addition in income of the deceased towards personal expenses as per observations of Apex Court in ***Rajesh and others vs. Rajbir Singh and others*, 2013 (9) SCC 54** and ***Munna Lal Jain and others vs. Vipin Kumar Sharma and others*, 2015 (3) RCR (Civil) 447** is pending in a reference made to a larger Bench of Apex Court in case of ***National Insurance Company Limited vs. Pushpa and others*, 2015 (9) SCC 166**, as such, the Tribunal has committed error in allowing 50% addition in income of the deceased towards future prospects.

4. Claimants have averred that deceased was working in a fiber factory situated in village Chang. On the day of accident, he was going from factory to his village on his motorcycle when he was hit by the offending vehicle and died because of the injuries suffered by him.

5. The Tribunal while assessing income of the deceased observed that sole statement of claimant Durga Devi, who appeared as PW-1, regarding income of the deceased as ₹30,000/- per month, cannot be believed in the absence of any cogent and corroborative evidence and assessed income of deceased as a daily wager. In the year 2015, even a daily wager was earning around ₹300/- per day. Income of the deceased assessed by the Tribunal as ₹8000/- per month is not on higher side. The contention of learned counsel for the appellant to this effect is discarded.

6. 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 ***National Insurance Company Limited vs. Pushpa and others (supra)***. In that case while making reference to larger Bench on the quantum of grant of addition in income towards future prospects and while differing with the view taken in case of ***<u>Sarla Verma and others</u> vs. <u>Delhi Transport Corporation and anr.</u>, (2009) 6 SCC 121,*** Apex Court observed in para 18 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.*

*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*

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

> *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.* ”

8. Reference was made to a larger Bench of Hon'ble Apex Court in case of ***Pushpa (supra)*** on 02.07.2014. In the 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, a mason, a carpenter or a daily wager. It is a matter of common knowledge that stitching charges, labour charges and daily wages have increased manifold during last two decades due to increase in expenses of material/labour charges/margin etc. 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 and 3 and son of claimants no. 4 and 5. As per claimants, the deceased was working in a fiber factory. 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 in income of the deceased towards future prospects as justified.

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

December 22, 2016 **(SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*