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

FAO No.1481 of 2004(O&M)
Date of Decision: **April 07, 2017**

Smt.Indrawati and others ...Petitioners

Versus

Deepak and others ...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Pankaj Mehta, Advocate for
the claimants – appellants.

Mr.Harjinder Singh, Advocate for
respondent No.3 – Insurance company.

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HARINDER SINGH SIDHU, J.

This appeal has been filed by the claimants for enhancement of compensation.

Brief facts of the case are that on the morning of 27.3.2001, the dead body of Jaggu was found lying in the middle of the road near the brick-kiln of Rameshwar in the area of Police Station Sadar, Hansi. Head and face of the body were badly mutilated and it appeared that some vehicle might have caused the accident in the night. On 6.4.2001, Mahabir came to Indrawati, widow of Jaggu (deceased) and informed her that on 26.3.2001 at about 11.30 p.m., he was travelling in Maruti Car No.HR-21B/0619, driven by Deepak- respondent No.1 and they were going from Barwala to village Kulana. Respondent No.1 was driving the car in a rash and negligent manner. He took the vehicle on the wrong side of the road and struck against a person. He also disclosed that he (Mahabir) told respondent No.1 Deepak that he has killed a man, but he did not stop the vehicle and also threatened him (Mahabir) not to disclose about the accident to anyone. This information was also given to the police, but it did not take any action. Hence a criminal complaint under Sections 279/304-A IPC was filed in the court of Sub Divisional Judicial Magistrate, Hansi.

Indrawati, widow of deceased Jaggu and their five minor children filed claim petition under Section 166 of the Motor Vehicles Act, 1988 before the Motor Accident Claims Tribunal, Hisar (for short 'the Tribunal').

Respondents No.1 and 2 – driver and owner of the offending car filed joint written statement. They admitted the accident, but stated that it occurred due to fault of the deceased. The car was being driven at a moderate speed and it was the deceased, who suddenly came between the road and struck against the car. The Insurance Company denied the accident and alleged collusion between the claimants and respondents No.1 and 2.

On the pleadings of the parties, following issues were framed:-

> "*1. Whether the accident in question took place due to rash and negligent driving of Maruti Car No.HR-21B/0619 by Deepak – respondent No.1? OPP*
>
> *2. Whether the applicants are entitled to any compensation on account of death of Jaggu, if so, how much and from whom? OPP*
>
> *3. Whether the Insurance Company is liable to make the payment of compensation, if awarded, or not? OPR*
>
> *4. Relief.*"

On appreciation of evidence, the Tribunal decided issue No.1 in favour of the claimants . The age of the deceased was taken to be 40 years based on the post mortem report and as mentioned in the claim petition. The income of the deceased being a brick kiln labourer was assessed at Rs.. 2100 per month. The compensation was assessed as under:-

Sr.No.	Calculation heads	Amount (in Rs.)
1.	Income (monthly)	2,100/-
2.	Deduction of 1/3rd for personal living expenses	700/-
3.	Monthly dependency	1,400/-
4.	Annual dependency	16,800/-
5.	Multiplier of 16	2,68,800/-
6.	Last rites expenses	4,200/-
	TOTAL	**2,73,000/-**

The respondent - Insurance Company was held liable to pay the compensation.

Mr.Pankaj Mehta, Ld. Counsel for the claimants/appellants relying on the decisions of Hon'ble Supreme Court in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and Anr**, *2009(6) SCC 121,* **Rajesh and others vs. Rajbir Singh and others**, **2013 ACJ 1403, Reshma Kumari v. Madan Mohan**, **(2013) 9 SCC 65, Vimal Kanwar and others Vs. Kishore Dan and others, 2013 (7) SCC 476** and **Munna Lal Jain and another vs. Vipin Kumar Sharma and others, 2015(6) SCC 347**, contended that increase in the income on account of future prospects to the extent of 50% was to given. Further, only 1/4th of the income was required to be deducted towards personal living expenses of the deceased, considering the number of dependants. He also submitted that the claimants are also entitled to compensation for 'loss of love and affection' and 'loss of consortium', besides increase in the amount of funeral expenses.

Mr.Harjinder Singh, Ld. counsel appearing for the respondent – Insurance Company has opposed the submission made on behalf of the appellants on the point of granting increase in the income towards future prospects. He submitted that the question regarding addition in the income towards future prospects in case of self-employed persons has been referred to a a larger Bench of the Supreme Court in case **National Insurance Company Limited vs. Pushpa, 2015(9) SCC 166.** In support of his submission, he has also relied upon order dated 3.3.2017 passed by the Supreme Court in **Bhogireddi Varalakshmi and others vs. Mani Muthupandi and others,** SLP(Civil) No.1636 of 2016, as also the decision dated 28.2.2017 in **Chikkamma and another vs. Parvathamma and another,** Civil Appeal No.3409 of 2017 arising out of SLP(C) No.5587 of 2016. He has further argued that as per the settled law in **Smt.Sarla Verma's case**, considering the age of the deceased to be 40 years, multiplier of 15 was required to be applied, but the Tribunal fell in error while applying the multiplier of 16.

I have heard Ld. Counsel for the parties and gone through the records with their assistance.

In the instant case, the deceased was aged about 40 years and was having 6 dependents, so, in view of **Sarla Verma's case** (supra), deduction of only $1/4^{th}$ of the income should be made towards his personal living expenses and multiplier of 15 needs to be applied to assess the total loss of dependency. The claimant-children are also entitled to get compensation under the heads of `loss of love and affection' and claimant-wife under the head of 'loss of consortium'. That apart, the amount of Rs.4200/-, awarded for the last rites is also on the lower side and is required to be suitably enhanced.

Regarding the contention of the Ld. Counsel for the respondent on the issue of addition to the income towards future prospects, it is not in dispute that the question whether increase in income towards future prospects could be allowed to those who are self employed or employed in the un-organized sector was referred to the Larger Bench of Hon'ble Supreme Court in **Pushpa's case (supra)** in view of the conflict of observations in case of **Rajesh** and **Reshma Kumari's cases (supra).** The observations in case of **Pushpa**, while referring the matter to the Larger Bench are as follows:-

> *"**11.** Be it noted, though the decision in Reshma [(2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] was rendered at earlier point of time, as is clear, the same has not been noticed in Rajesh [(2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] and that is why divergent opinions have been expressed.*
>
> ***12.** We are of the considered opinion that as regards the manner of addition of income for future prospects there should be an authoritative pronouncement. Therefore, we think it appropriate to refer the matter to a larger Bench. Let the papers be placed before the Hon'ble the Chief Justice of India for constitution of appropriate larger Bench."*

In regard to the aforesaid Reference Order, it needs to be noted that there is no direction by the Hon'ble Supreme Court while making the reference that pending the decision, increase in income towards further prospects be not granted.

To the contrary, a three Judge Bench of the Hon'ble Supreme Court, in **Munna Lal Jain and another vs. Vipin Kumar Sharma and others, 2015(6) SCC 347** (decided on 15.5.2015 after the reference order dated 2.7.2014 in **Pushpa's** case), allowed future prospects in the case of self-employed persons following the observations made in case of **Rajesh and others (supra):**

> *"**10.** As far as future prospects are concerned, in Rajesh v. Rajbir Singh [(2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149], a three-Judge Bench of this Court held that in case of self-employed persons also, if the deceased victim is below 40 years, there must be addition of 50% to the actual income of the deceased while computing future prospects. To quote: (SCC p. 61, para 8)*
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> > *"8. Since, the Court in Santosh Devi case [Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421 : (2012) 3 SCC (Civ) 726 : (2012) 3 SCC (Cri) 160 : (2012) 2 SCC (L&S) 167] actually intended to follow the principle in the case of salaried persons as laid down in Sarla Verma case [Sarla Verma v.DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] 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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> *The deceased being of the age of 30 years, 50% is the required addition."*

This Court in various first appeals including **FAO No.1502 of 2015 titled "National Insurance Company Limited vs. Pushpa Singh Chauhan and others**" decided on 20.3.2015 and **FAO No.4299 of 2015 titled "Oriental Insurance Company Limited vs. Swarna Devi and others"** decided on 1.9.2015 has upheld the addition to the income towards future prospects, where, the deceased were either self-employed or working in un-organised sectors. The Special Leave Petitions filed against the aforesaid decisions have been dismissed by Hon'ble the Supreme Court. All these decisions are after the reference to the larger Bench in **Pushpa's** case (supra).

The order and the decision cited by Ld. Counsel for the respondent cannot be relied on to support the contention that pending the decision of the reference by the Supreme Court, future prospects are not to be granted. In **Bhogireddi Varalakshmi's case** *(supra)*, the Supreme Court considered the decisions in cases of **Sarla Verma, Reshma Kumari** and **Rajesh** *(supra)* as also the reference order in **Pushpa's** case, as an interim measure directed payment of compensation under the other heads but as regards enhancement under the head of `future prospects' it posted the matter for hearing after the reference is answered. It was observed as under:-

> *"10. On 02.07.2014, a two-Judge Bench of this Court in **National Insurance Company Limited v. Pushpa and others**, taking note of the conflicting positions as far as addition of future prospects after the age of 50 years, in **Reshma Kumari** (supra) and **Rajesh** (supra), has made a reference of this aspect to a larger Bench. We are informed that the Reference is still pending.*
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> *11. Under the above circumstances, we are inclined to pass an interim Order on compensation as far as the undisputed areas are concerned and then post this petition after the Reference is answered by the larger Bench.*
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> *12. Therefore, by way of an interim measure, it is ordered that the petitions shall be entitled to enhancement of compensation by fixing the multiplier as "11". The widow shall be entitled for loss of consortium to the tune of Rs.1,00,000/- and the children together are entitled to compensation of Rs.1,00,000/- towards loss of love, care, guidance and protection. The compensation shall carry interest at the rate of 9 per cent from the date of filing of the claim petition. The Insurance Company shall e-work the compensation as above and deposit the amount with the Tribunal within three weeks. On such deposit, it will be open to the claimants to withdraw the same*
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> *13. As far as enhancement under the head "future prospects", post this petition after the Reference is answered by the larger Bench."*

In **Chikkamma's** case , considering the pendency of the question of future prospects before the larger Bench, and that some enhancement of compensation has already been made by it, the Court did not go into the question of claim on account of future prospects. It was observed:

> "9. *Taking into account the fact that the deceased was a self employed person and also as the question with regard to award of future prospects of a self employed person is presently pending before a larger Bench of this Court and as some enhancement of compensation has already been made by us,* ***we are of the view that in the facts of the present case, the claim for future prospects ought not to be gone into by us****. The said claim, therefore, is rejected."*

Thus, in **Bhogireddi 's** case Hon'ble Supreme Court directed that for enhancement on account of 'future prospects' the petition be posted after the decision of the Reference by the Larger bench. In **Chikkamma,** apart from the fact that the question of future prospects of self employed persons was pending before the Larger Bench, the claim for future prospects was not gone into, in the facts of that case, as some enhancement had already been made by the Supreme Court. These orders are clearly case specific and do not purport to lay down any law or issue any general direction not to grant enhancement on account of future prospects pending the decision by the larger bench.

As against the above, as the view taken in **Rajesh's case (supra)** regarding grant of increase on account of future prospects has been followed by the Hon'ble Apex Court in **Munna Lal Jain's case (supra)**, as also by this Court in various decisions, SLPs against which have been dismissed after the reference in **Pushpa's** case (supra), in my view the income of the deceased needs to be enhanced by 50% towards future prospects.

In view of above, the claimants are entitled to compensation as under:-

Sr.No.	Heads	Calculation (In Rs.)
(i)	Income (after 50% increase)	2100+[2100x50/100] = 3150 p.m.
	$1/4^{th}$ of (i) deducted as personal living expenses of deceased	3150-[3150x1/4] 2362.5
	Total Loss of dependency after applying multiplier of 15	2362.5x12x15= 4,25,250/-
(ii)	Loss of Love and Affection (Rs.50,000/- to each child)	50,000 x 5 = 2,50,000/-
(iii)	Loss of Consortium (exclusively for the widow of deceased)	1,00,000/-
(iv)	Funeral Expenses	25,000/-
	Total Compensation awarded	**8,00,250/-**

Accordingly, the appeal is allowed and the Award of the Tribunal is modified to the extent that the appellants are held entitled to total compensation of Rs.8,00,250/-, that is, Rs.5,27,250/- (800250-273000) over and above the amount awarded by the Tribunal. Interest shall be paid on the enhanced amount at the rate of 7.5% per annum from the date of filing of claim application till realisation.

That amount awarded under heads at Sr.No.(ii) and (iii) `loss of love and affection' and `loss of consortium' shall be payable to the claimants, as indicated therein. The remaining enhanced amount shall be payable to the appellants, in the same proportion, as awarded by the Tribunal.

The Insurance Company is directed to disburse the amount to the appellants within three months of receipt of certified copy of this judgment and submit compliance report before the Tribunal.

April 07, 2017 **(HARINDER SINGH SIDHU)**
gian **JUDGE**