

Sr. No. 204

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

**FAO NO. 3373 of 2007
Decided on:12.07.2017**

Ramphal and others

.....Appellants

versus

Satyawan @ Satta and another

.....Respondents

FAO No.753 of 2008

Satyawan @ Satta and another

.....Appellant(s)

versus

Ramphal and others

.....Respondent(s)

FAO No.754 of 2008

Satyawan @ Satta and another

.....Appellants

versus

Om Parkash and another

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. S.K.Verma, Advocate
for the appellants(FAO 3373 of 2007).

Mr. Harsh Aggarwal, Advocate and
Mr. Aseem Aggarwal, Advocate
for the National Insurance Company
respondent No. 2(FAO No. 754/2008
respondent No. 3(FAO No. 3373/2007
respondent No. 5(FAO No. 753/2008).

Rajbir Sehrawat, J.

This order shall dispose of three appeals bearing FAO

Nos.3373 of 2007 and 753 & 754 of 2008.

FAO No. 3373 of 2007 has been filed by the claimants dependents of Smt. Phulli Devi, FAO No. 753 of 2008 has been filed by driver and the owner of the offending vehicle questioning the exoneration of the insurance company in the claim petition filed by the dependents of deceased Smt. Phulli wife of Ramphal and FAO No. 754 of 2008 challenging the grant of compensation to the injured Om Parkash and the exoneration of the Insurance Company from the liability.

Shorn off the intricate details, a brief compendium of the facts is that the accident took place on 8.07.2005 in which Smt. Phulli lost her life. She was aged about 50 years and was a house wife. Another person, namely, one Om Parkash was injured in that case. The dependents of Smt. Phulli filed claim petition claiming compensation on account of death of Smt. Phulli and Om Parkash filed claim petition claiming compensation for the injuries sustained by him. Learned Motor Accident Claims Tribunal(for short, 'the Tribunal') allowed both the petitions vide its award dated 9.05.2007 wherein the claimants Ramphal and others were granted a compensation of ₹ 2,15,000/- whereas Om Parkash was granted ₹ 66,500/- as compensation, Interest @ 7.5% per annum from the day of filing of the petition till realisation of the amount was also granted. It was further ordered that since the vehicle was insured, the primary responsibility to deposit the amount of compensation would be of insurance company, however, the insurance company would be entitled to recover the same from the owner/insured by filing the execution proceedings.

Aggrieved of this award, the owner and the driver have filed the appeals challenging the award on the ground that compensation should

not have been granted and that if at all it is to be granted then it is the responsibility of the insurance company. Claimants in case of Ramphal etc. have filed the appeal for enhancement of the compensation. However, no appeal is stated to have been filed by Om Parkash.

Shri S.K.Verma, learned counsel for the appellant in FAO No. 3373 of 2007 has argued that the Tribunal has gone wrong in law in assessing the income of the deceased Smt. Phulli to the only ₹ 2100/-. He has further argued that since the age of the deceased Smt. Phulli was less than 51, therefore, the multiplier of 13 should have been applied in terms of the judgment of Hon'ble Supreme Court rendered in the case of *Sarla Verma and others vs. Delhi Transport Corporation and another* 2009(3) *R.C.R.(Civil)* 77. He has further argued that the loss of consortium should have been awarded by the Tribunal at ₹25,000/- as has been held by the Hon'ble Supreme Court in the judgment rendered in the case of *Rajesh and others vs. Rajbir Singh and others* 2013(3) *RCR(Civil)*. He argues that the amount of ₹ 15,000/- only awarded on account of funeral and last rites is too insufficient and this deserves to be enhanced. Counsel for the appellant further argues that the dependency should be treated to have increased on account of future prospects in the coming years.

A perusal of the record shows that the age of the deceased Smt. Phulli has been assessed to be about 50 years i.e. less than 51 years. Therefore, as per the judgment of the Hon'ble Supreme Court in *Sarla Verma*(Supra), the multiplier of 13 is the appropriate multiplier. So far as the income and the future prospects are concerned the Tribunal has assessed the income to be ₹2100/- per month on account of services rendered by the deceased Smt. Phulli in the house-hold chorus on the logic that if one is to

hire the services which were rendered by the deceased such service would not be available for less than ₹2100/- per month. While deducting 1/3rd the dependency has been treated at ₹1400/- per month.

Although while assessing the income of the deceased who is not in service in an organised sector some guess work has to be done, yet, the guess work can not be without any basis or in vacuum. While assessing the income of the deceased the attending circumstances like the prevalent wages structures, economic environment and the prevalent value of labour has to be taken into consideration. While applying these principles, this Court has taken judicial notice of the fact that as per Economic Survey 2005-2006, Haryana as on July, 2005 the minimum wages in the State of Haryana were ₹2360/-. This wages was for an unskilled casual labour. Besides this the Government of Haryana had prescribed the minimum pay scale for a class IV post, like peon and sweepers etc., to be ₹2550-3200/- while revising the pay scales w.e.f 01.01.1996. Thereafter, the pay scales were further revised w.e.f., 1.01.2006, by Haryana Civil Services(Revised Pay) Rules, 2008, which was immediately after the accident in this case. While revising the pay scales w.e.f.1.01.2006 the State of Haryana had prescribed the pay scales of ₹4400-7440 as minimum pay scale for a peon and sweeper etc. this means that, as on the date of accident, the minimum basic pay which the class IV employee like peon and sweeper might be getting in the State of Haryana was approximately ₹3600 as basic pay.

The house wife being a manager of the household chorus can not be treated less than even a peon or sweeper who perform merely 8 hours of duty. She is a 24 hours manager without any leave. The true significance of a house-wife is realised only in her absence. She performs extensive

duties and in fact take cares of the entire family. In view of this situation, if the duties which are being performed by a house wife are to be got performed by a hired person that would translate into remuneration much larger than an ordinary labourer, the peon or a mere sweeper. Therefore, if the labour done by the house wife has to be calculated in terms of remuneration quantifiable in terms of money then the value of her labour can not be assessed to be less than the labour of a peon or a sweeper working in the government office. No person with a reasonable mind can dare assess the worth of the labour and duties of a house wife less than those of a sweeper or a peon. Hence, the income of a house wife has to be assessed atleast at par with the minimum class IV basic pay prevalent in the government in the area. Keeping the income of the deceased has to be assessed at ₹36,00/- per month, taking 1/3rd on personal expenses, dependency in this case is assessed to be ₹2400/- per month.

So far as future prospects are concerned, the judgment of Hon'ble the Supreme Court in the Sarla Verma's case(supra) lays down that when deceased was self employed the Court will usually take actual income at the time of death and the departure therefrom should be made only in a rare and exceptional case involving special circumstances. However, the case of house wife constitute special circumstances because the worth of her labour and work can not be restricted to the level of a self employed person, who may or may not get the work to perform regularly and to earn the money. As stated above, the house wife is a 24 hours manager of the household, therefore, she constitute a separate category. Reasonable increase in her effort quantifiable in terms of money has to be presumed. Therefore, it would be appropriate if an increase of 15% is granted in this

case on account of future prospects. Hence, the dependency in this case is assessed to be ₹2400+360=2760/-. In terms of the case of *Rajesh and others(supra)*, the funeral expenses have to be atleast ₹25,000/-. So far as, loss of consortium is concerned although value of this sentiment can not be assessed in terms of money, however, while awarding the money on this account the amount has to be reasonable and justifiable. Therefore, the amount on account of loss of consortium is enhanced to ₹25,000/-.

In view of the above, the compensation awarded to the appellant Ramphal and others would be ₹2760 x 12 x 13 = ₹4,30,560/-. Besides this amount of ₹25,000/- is awarded for funeral expenses and ₹25,000/- for loss of consortium. Hence, the total amount awarded to the appellants in this case is assessed at 25,000+25,000+4,30,560= ₹4,80,560/-. This amount shall carry the interest as ordered by the Tribunal.

In FAO Nos. 753 & 754 of 2008, at the time of argument, counsel for the appellant had stated that he does not press the appeal against the claimants. He restricted his appeal to the claim against the insurance company praying that the liability has to be borne by the insurance company because the vehicle was duly insured and was being driven by a person holding a valid driving license. Learned counsel further argues that learned Tribunal has gone wrong in law in absolving the insurance company merely on the ground that about 20 persons were travelling in the offending vehicle whereas it was meant for a sitting capacity of 6 persons.

Shri Aseem Aggarwal, learned counsel appearing for the insurance company has submitted that since the vehicle was meant for a sitting capacity of 6 persons and at the time of accident about 20 persons were travelling in the vehicle, therefore, vehicle was being driven in

violation of the insurance policy and hence the insurance was rightly absolved of the liability.

Considering the respective arguments, it come out that the vehicle, of course, is registered with sitting capacity of 6 persons and the premium is also charge for 6 persons, as stated by the counsel for the insurance company. However, this does not absolve the insurance company of its liability to pay the compensation arising from the accident of the insured vehicle. 'Extent of liability' and the liability '*per se*' are two different things. So far as the liability *per se* is concerned, the counsel for the insurance company could not point out any terms in the policy agreement to show that once the persons more than the registered sitting capacity of the vehicle are travelling in a vehicle then the insurance policy becomes void and the insurance company is not liable to pay the compensation. Therefore, at the best, he can plead qua the extent of liability of the insurance company.

So far as the extent of liability of the insurance company is concerned the Hon'ble Supreme Court of India in the judgment rendered in the case of *National Insurance Co. Ltd. vs. Anjana Sharma and others* (2007)7 SCC and *United India Insurane Co. Ltd. vs. K.M.Poonam and others* PLR Vol.CL.XII(2011-12) has held that if more persons than maximum registered sitting capacity of the vehicle are travelling in the vehicle at the time of accident then the liability of insurance company would be limited only to the extent of persons dead or injured in the accident, upto the number of the registered sitting capacity of the vehicle and if more persons than registered sitting capacity are dead or injured then the liability of the insurance company has to be apportioned on the basis of the

registered sitting capacity based on highest awards upto the number of registered sitting capacity. However in the present case, the registered sitting capacity is of 6 persons whereas only 1 person is dead and 1 person is injured. Therefore, the persons, on account of which the compensation is being claimed, are less than the registered sitting capacity of the vehicle. Therefore, the insurance company would be liable to pay the entire amount of compensation, being the insurance company of the offending vehicle.

As a result of above, the award of the learned MACT, Jind is modified in the above terms. The appellants Ramphal and others shall be entitled to a compensation of ₹4,30,560/- alongwith the interest as awarded by the Tribunal. Still further respondent No. 3, the insurance company, shall be liable to pay the entire compensation amount. The award of the Tribunal to the extent it gives the recovery rights to the insurance company is set aside. All the three appeals are allowed in the above terms.

12th July, 2017

Shivani Kaushik

[RAJBIR SEHRAWAT]

JUDGE

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*