

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. FAO 4530 of 2013

Anita and anotherAppellants

Versus

Mukesh and othersRespondents

2. FAO 3314 of 2013

Hem Raj Saini and anotherAppellants

Versus

Mukesh and othersRespondents

DATE OF DECISION: 04.07.2017

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Ravinder Yadav, Advocate and
Mr. Pushpinder Kumar, Advocate
for the appellants in F.A.O. No. 4530 of 2013.

Ms. Indu Bala, Advocate for
Mr. Aditya Jain, Advocate
for the appellants in F.A.O. No. 3314 of 2013.

Ms. Madhu Sharma, Advocate and
Mr. G.D. Gupta, Advocate
for respondent No.3

DAYA CHAUDHARY, J.

This judgment of mine shall dispose of two FAO's bearing Nos.
4530 of 2013 and 3314 of 2013 as the same have arisen out of the common
award dated 20.3.2013 passed by Motor Accident Claims Tribunal, Gurgaon

(hereinafter referred to as 'the Tribunal') in claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'). FAO No. 4530 of 2013 has been filed by the dependents of **deceased-Sunil**, whereas, FAO No. 3314 of 2013 has been filed by the dependents of **deceased-Parveen**. However, for the sake of convenience, facts have been extracted from FAO No. 4530 of 2013.

Briefly, the facts of the case as made out in the claim petition are that on 1.2.2012 at about 4.00 am, Sunil and Parveen (both deceased) were riding motorcycle bearing registration No. HR-36BH-1056 and were crossing a chowk near Radha Krishan Mandir, Badshahpur (Gurgaon). Said motorcycle was being driven by Parveen (deceased) whereas Sunil (deceased) was pillion rider. The offending vehicle i.e. trailer bearing registration No. HR-55M-2228 which was being driven by respondent No.1 at a very high speed and in a rash and negligent manner was coming from the side of Bus Stand, Badshahpur (Gurgaon), hit the motorcycle and dragged the same upto a distance of about 12 yards as a result thereof, Sunil and Parveen sustained serious multiple injuries and died at the spot. Said accident was witnessed by PW-2 Dharam Parkash and on his statement, FIR No. 35 dated 1.2.2012 was registered under Sections 279 and 304-A IPC at Police Station Badshahpur (Gurgaon) against respondent No.1.

The dependents of both the deceased filed two separate claim petitions, which were contested by the driver, owner and the Insurance Company. Both the claim petitions were consolidated vide order dated 15.10.2012 and claim petition titled as **Ms. Anita and another Vs. Mukesh and others** was treated as the main petition. Claim petition titled as **Ms. Anita and another Vs. Mukesh and others** was partly allowed vide award

dated 20.3.2013 and an amount of ₹94,900/- was awarded as compensation to claimant No.2 only alongwith interest at the rate of 7.5% per annum from the date of filing of the petition whereas claimant No.1, namely, Ms. Anita (married sister of the deceased-Sunil) was not held entitled for any compensation. Similarly, claim petition titled as **Hem Raj Saini and another Vs. Mukesh and others** was also allowed and an amount of ₹1,01,600/- to be shared by the claimants equally was awarded as compensation with interest at the rate of 7.5% per annum from the date of filing the petition. Aggrieved by the aforesaid award passed by the Tribunal, two separate appeals have been filed by the claimants-dependents of the deceased before this Court.

Learned counsel for the appellants in FAO No. 4530 of 2013 submits that deceased-Sunil was 21 years of age at the time of accident and was earning ₹15,000/- per month. The claim qua claimant No.1 has wrongly been rejected being married sister of the deceased, whereas, she was financially dependent upon her brother. A wrong finding has been given that it was a case of head-on-collision and contributory negligence was there on the part of deceased. Learned counsel further contends that compensation awarded is on the lower side by assessing the income of the deceased, which was less than the minimum wages. Nothing has been granted towards future prospects and multiplier has been applied wrongly.

Similarly, learned counsel for the appellants in FAO No. 3314 of 2013 submits that the amount of compensation awarded is on the lower side as the dependent-claimants have not been awarded compensation in view of ratio of various judgments of this Court as well as of Hon'ble the Apex Court. Neither the multiplier has been applied as per ratio of

judgment of Hon'ble the Apex Court in the case of **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another** 2009 (3) Recent Civil Reports 77 nor anything has been paid towards love, affection and future prospects. At the end, learned counsel for the appellants submits that the amount of compensation be enhanced in view of law laid down by Hon'ble the Apex Court in the case of **Syed Sadiq and others Vs. Divisional Manager United India Insurance Company Ltd.** (2014) 2 SCC 735. Learned counsel has also relied upon the judgments of Hon'ble the Apex Court in the cases of **Reshma Kumari and others Vs. Madan Mohan and another** (2013) 9 SCC 65, **Munna Lal Jain and another Vs. Vipin Kumar Sharma and others** 2015 (6) SCC 347, **Rajesh and others Vs. Rajbir Singh and others** 2013 (3) AWC 3164 SC, **Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and another** 1987 (3) SCC 234, of this Court in the cases of **The New India Assurance Company Ltd. Vs. Rabiya and others** 2016 SCC Online P&G 4572 and of Madras High Court in the case of **United India Insurance Co. Ltd. Vs. Poongavanam and others** 2013 ACJ 2763 (Madras), in support of his contentions.

Learned counsel for respondent-Insurance Company has opposed the submissions made by learned counsel for the appellants on the ground that issue of future prospects is pending consideration before Hon'ble the Apex Court. He further submits that it was a case of head-on-collision and no negligence can be attributed to the driver of the offending vehicle. The multiplier has rightly been applied and there is breach of terms and conditions of the policy and the claimants are not entitled for compensation. Moreover, the compensation which has been awarded is

already on the higher side.

Heard the arguments advanced by learned counsel for the parties and have also gone through the impugned award as well as other documents available on the file.

Admittedly, while travelling on motorcycle, Sunil and Parveen died in an accident, which occurred with HYWA vehicle (trailer) bearing registration No. HR-55M-2228. It is also not disputed that two claim petitions were filed by the dependents of both the deceased, which were decided vide award dated 20.3.2013. Aggrieved by said award passed by the Tribunal, two appeals were filed before this Court for enhancement of the amount of compensation, wherein, following issues are required to be considered:-

- i) Whether married sister is entitled for compensation on the death of her brother or not?
- ii) Whether the multiplier is to be applied on the basis of age of the deceased or dependent?
- iii) Whether the claimants are entitled for enhanced compensation or not?
- iv) Relief.

In the present case, two claim petitions were filed under Section 166 of the Act, wherein, the claim of married sister has been declined by the Tribunal. As per Section 2 (11) of Civil Procedure Code, “legal representative” means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative

character the person on whom the estate devolves on the death of the party so suing or sued. Almost in similar terms is the definition of 'legal representative' under the Arbitration and Conciliation Act, 1966 i.e. under Section 2 (1) (g).

In view of the above, the married sister can claim compensation under Section 140 of the Act but in the present case the Tribunal has straightway rejected the claim of married sister only on the ground that she was not dependent upon the income of deceased-brother. “No Fault Liability” envisaged in Section 140 of the Act is distinguishable from the rule of “Strict Liability”. In case of “No Fault Liability”, the compensation to the tune of ₹50,000/- is fixed in case of death. It is a statutory liability. It is an amount which can be deducted from the final amount awarded by the Tribunal. The statutory compensation constitutes part of estate of the legal representative including married sister, who is entitled to inherit her estate. Accordingly, I am of the view that the married sister is entitled to receive compensation under “No Fault Liability” in terms of Section 140 of the Act. “No Fault Liability” under Section 140 of the Act in itself is within the purview of Motor Vehicles Act, 1988 and as such the claim of married sister should have been considered.

While assessing income of the deceased, the amount, which is less than the minimum wages has been taken into consideration. As per notification on Minimum Wages in Haryana w.e.f. 1.1.2012 to 30.6.2012, even the monthly income of unskilled labour comes to ₹5592.60/- per month and accordingly the claimants are entitled for enhancement.

The issue of **future prospects** is under consideration before Hon'ble the Apex Court and nothing can be said at this stage. However, the

claimants are entitled for compensation under this head subject to decision of Hon'ble the Apex Court. The claimants would be at liberty to claim compensation towards future prospects in case they feel aggrieved after decision on the issue by Hon'ble the Apex Court.

As per ratio of judgment of Hon'ble the Apex Court in **Sarla Verma's case (supra)**, multiplier of 18 is to be applied in the age group of 15-25 but the learned Tribunal has applied different multipliers keeping in view the age of the dependents. While applying the multipliers, it has also been mentioned that the deceased was in a position to support his parents to the extent of 50% of his income and incurs remaining 50% on his personal expenses. The annual dependency has been assessed by applying the multiplier of the age of the dependents.

Hon'ble the Apex Court in **Reshma Kumari's case (supra)** has held that in case the age of the deceased is less than 15 years irrespective of whether claim is under Section 166 or 163-A of the Act, the multiplier of 15 is to be applied and assessment as indicated in Schedule II is subject to correction as mentioned in column (6) of Table in **Sarla Verma's case (supra)** must be followed. Accordingly, while considering the claim petitions under Section 166 of the Act in death cases where age of the deceased is above 15 years, there is no necessity for the Tribunal to seek guidance or for placing reliance on Schedule II of the Act. It has also been held in **Reshma Kumari's case (supra)** that the Tribunals shall follow the steps and guidelines stated in para 19 of **Sarla Verma's case (supra)** for determination of compensation in cases of death. Accordingly, as per ratio of judgment of **Sarla Verma's case (supra)**, the dependents are entitled for compensation by applying the multiplier as per the age the deceased,

whereas, in the present case, different multipliers have been applied irrespective of the fact that age of both the deceased were more than 15 years but less than 25 years.

The offending vehicle i.e. trailer was insured with the respondent-Insurance Company, which was valid on the date of accident from 30.12.2011 to 29.12.2012 and the accident occurred on 1.2.2012. Driver of the offending vehicle was holding valid and effective driving licence at the relevant time. A contradictory view has been taken by holding that the driver of the offending vehicle was not having valid and effective driving licence on the date of accident but still recovery rights have been granted to respondent-Insurance Company, which are not based on proper appreciation of law and facts and the same is required to be reconsidered.

In view of the facts and law position as discussed above, both the appeals i.e. FAO Nos. 4530 and 3314 of 2013 are allowed and award dated 20.3.2013 passed by the Tribunal is set aside. Both the cases are remanded to the Tribunal for reconsideration and to decide in accordance with the observations made hereinabove as per law, within a period of four months from the date of receipt of certified copy of the order.

04.07.2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes