IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O No. 3743 of 2016
Date of decision:- 14.07.2017

Santosh ...Appellant

Versus

Kailash Chand & ors. ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Sandeep Kotla, Advocate
for the appellant.

Mrs. Vandana Malhotra, Advocate,
for respondent No. 3-Insurance Company

RITU BAHRI J. (Oral)

1. The present appeal has been preferred by the claimant-appellant (for short 'the appellant'), seeking enhancement of the amount of compensation awarded by the learned Motor Accident Claims Tribunal, Fatehabad (for short, 'the Tribunal') to the tune of Rs.3,50,000/-, vide impugned award dated 09.10.2015.

FACTS NOT IN DISPUTE

2. On 30/31.12.2013, Lilu Ram (since deceased) being the conductor upon truck bearing registration No. RJ-19G-9814 along with its driver Ran Singh, who is his nephew was going to Jodhpur from Jaipur after loading grocery items in the said truck, which was being driven by Ran Singh at a moderate speed and adhering to traffic rules. At about 6:30 A.M, when they were crossing Nareli culvert at Ajmer, then a truck-trailer bearing registration No. RJ-32GA-2804 was lying parked stationary in a transverse manner in the middle of the road without any indicator and further fencing by its driver negligently and without adhering to traffic rules. Due to this, the truck bearing registration No. RJ-19G-9814 struck against the above

said stationary truck by the conductor side, as a result of which, Lilu Ram sustained multiple grievous and serious injuries and died at the spot. On the basis of statement of Ran Singh, a case under Sections 279/304-A IPC was registered.

3. The learned counsel for the appellants contends that the Tribunal has erred in awarding the compensation, in view of the judgment of '***Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) Page 77', 'Rajesh and others vs. Rajbir Singh and others, 2013 (9) SCC 54' and 'Munna Lal Jain and another vs. Vipin Kumar Sharma and others, 2015(3) Recent Apex Judgments 459', Asha Verman and others vs. Maharaj Singh and others, 2015(2) RCR (Civil) 520 and Kalpanaraj and others v. Tamil Nadu State Transport Corporation, 2015(2) SCC (Civil) 193.***

4. On the other hand, the learned counsel for the respondent-Insurance Company have vehemently opposed the present appeal.

5. I have heard learned counsel for the parties and gone through the record.

6. The learned Tribunal while granting the compensation to the appellant had assessed the income of the deceased at Rs.5000/- per month and thereafter, after deducing ½ of the income towards personal expenses, multiplier of 11 was imposed. Rs20,000 was awarded towards funeral expenses.

7. In the instant case, the deceased was 50 years of age at the time of the accident. The deceased used to earn Rs.1,50,000/- per annum. The accident in question is not in dispute and the offending vehicle was fully insured with the Insurance Company.

8. In view of the above mentioned judgments, the compensation is re-assessed as under:-

Sr. No.	***Heads***	***Calculations***
(i)	Salary	Rs.6000 per month
(ii)	30% of (i) above to be added as future prospects=	Rs.6000+Rs.1800=Rs.7800/- per month
(iii)	1/2 of (ii) deducted as personal expenses of the deceased=	Rs.7800-Rs.3900=Rs.3900 per month
(iv)	Compensation after multiplier of 13is applied	Rs.3900 X 12 X 13= Rs.6,08,400/-
(v)	Loss of love and affection to two major daughters	Rs.1,00,000/- (Rs.50,000/- each)
(vi)	Funeral Expenses	Rs.25,000/-
(vii)	Total Compensation awarded	Rs.7,33,400/- (rounded off to Rs.7,33,000/-)
(viii)	***Enhanced amount of compensation***	***Rs.7,33,000-Rs.3,50,000=Rs.3,83,000/-***

9. The enhanced amount of compensation of Rs.3,83,000/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in a case of ***Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others, 2015(1) SCC 539***. Remaining conditions of disbursal of amount shall remain unaltered.

10. Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

11. However, now coming to the argument of learned counsel for the Insurance Company that since the issue with regard to the payment of future prospects in case of a daily wager has been referred to larger Bench by Hon'ble the Supreme Court in a case of ***National Insurance Co. v. Pushpa and others, 2015 (9) SCC 166,*** therefore, till the decision is pending, the daily wagers are not entitled to payment of future prospects.

There are two divergent opinions with regard to giving of future prospects, have been expressed in the judgments of Hon'ble the Supreme Court of India in cases of ***Reshma Kumari and others vs. Madan Mohan and anr. 2013(9) SCC 65 and Rajesh and others vs. Rajbir Singh and others, 2013(9) SCC 54.*** There is a difference of 10 days in the above judgments, as the judgment in ***Reshma Kumari's case (supra)*** decided on 02.04.2013 and the judgment in ***Rajesh Kumar's case (supra)*** decided on 12.04.2013.

In ***Reshma Kumari's case (supra),*** Hon'ble the Supreme Court was dealing with a case of a deceased who was 15 years of age at the time of the accident. Hon'ble the Supreme Court while referring to a judgment of Sarla Verma's case (supra) held that where the deceased was self employed or was on fixed salary without provision for annual increments, the actual income at the time of death without any addition to income for future prospects will be appropriate. A departure from the above principle can only be justified in extraordinary circumstances and very exceptional cases.

After this judgment, Hon'ble the Supreme Court in ***Rajesh's Kumar case (supra)*** while referring to the judgment of Hon'ble the Supreme Court of India in a case of ***Santosh Devi vs. Union of India and others, 2016(3) S.C.T 102*** had explained in detail with regard to the self employed who get fixed income. It has been held that it cannot be denied that there has been incremental enhancement in the income of those who are self employed and even those engaged on daily basis, monthly basis or even seasonal basis. With a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. An example of tailor was given who earns his livelihood by stitching clothes. If the cost of living increases and the prices of essential go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour like barber, blacksmith, cobbler, mason etc. In para 11 and 12, it has been observed as under:-

> *11. Since, the Court in Santosh Devi's case (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 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.*

In ***Pushpa's case (supra)***, Hon'ble the Supreme Court was dealing with a case of 30 year old whose income was taken to be Rs.13,300/- per month and thereafter, 30% future prospects were given to him, as per judgment of ***Santosh Devi.*** In this judgment, the Tribunal awarded a sum of Rs.27,35,744/- and Hon'ble the Supreme Court directed the Insurance Company to deposit Rs.20,00,000/- before the Tribunal within four weeks and the Tribunal was directed to distribute it proportionately as per the directions given in its award and the rest of the award amount was stayed. Thereafter, the matter was referred to Larger Bench

On the other hand, in ***Rajesh Kumar's case (supra)***, the judgment of ***Sarla Verma and Santosh Devi*** have been examined in detail and there are reasons given for giving future prospects to the daily wagers.

This Court is of the view that there are some more reasons for granting future prospects to a daily wager, which has been referred as under:-

(i) Reference at this stage can now be made to a judgment of Hon'ble the Supreme Court of India in a case of ***New India Assurance Co. Ltd v. Gopali and others, 2012(4) RAJ 87*** whereby Hon'ble the Supreme Court was examining a case of death of poor person having income below Rs.5000/- per month. It was held that rule of 1/3rd deduction from income towards personal expenses could not be applied in case of poor people and only 1/10th deduction should be made. Rule of 1/3rd deduction was held to be applied to rich people. In para 15, 16 and 17, it has been observed as under:-

> *"15 Here, we are dealing with a case in which the deceased had 8 dependents including four sons and one daughter. The question which arises for our consideration is whether in 1992 a person having an income of less than Rs.3,000/- and a family of 9 could think of spending 1/3rd of his income on himself. On a conservative estimate, it is possible to say, he would have spent at least 50% of the income on the purchase of foodgrains, milk, etc., and for payment of water, electricity and other bills. 25% of the income would have been spent on the education of children which would have included school/college fee, cost of books, etc. 15% of the income would*

have been used for meeting other family necessities, like, clothes, medical expenses, etc. He would have then been left with 10% of his income, a portion of which could be used to meet unforeseen contingencies and on the occasion of festivals. In this scenario, any deduction towards personal expenses would be unrealistic. In any case, where the family of the deceased comprised of 5 persons or more having an income of Rs.3,000/- to Rs.5,000/-, it is virtually impossible for him to spend more than 1/10th of the total income upon himself.

16. What we have observed hereinabove may not apply to rich people living in urban areas who can afford to spend a substantial amount of their income in clubs, hotels and on drinks parties. In those cases, there may be a semblance of justification in applying the rule of 1/3rd deduction but it would be wholly unrealistic to universally apply that rule in all cases.

17. On the basis of the above discussion, we hold that the learned Single Judge of the High Court did not commit any error by not following the rule of 1/3rd deduction towards the personal expenses of the deceased."

In this judgment, further reference has been made to National Sample Survey Report No. 527 on Household Consumer Expenditure in India 2006-07, which was prepared after conducting thorough research on the subject contains the figures of monthly per capita expenditure of various classes. The same was mentioned in para No. 14 of the judgment. After this, the appeal filed by the Insurance Company was dismissed and the Hon'ble Supreme Court *suo moto* re-determined the amount of compensation i.e Rs.10,63,040/-, which was to be given to the claimants with 12% interest from the date of filing of claim petition. Further appellant-Insurance Company was directed to give Rs.5 lacs to the claimants as costs, as the appellant-Insurance Company enjoyed the ex parte interim order passed by

Hon'ble the Supreme Court.

(ii) This Court is also dealing with a number of cases wherein on account of lack of evidence, the income of the deceased has been taken to be a daily wager, as per notifications issued by respective States i.e State of Punjab and Haryana from time to time wherein the maximum amount has been fixed at Rs.5000-6000 per month of a daily wager. It is not believable that the persons who are doing the work of daily wagers and his wife and children are dependent upon him, can survive on the meager amount of Rs.5000/- or Rs.6000/- per month, as fixed by respective States.

(iii) Even if the daily wager is earning more than Rs.5000/- per month, in the absence of lack of evidence, his income has been taken as to be that of unskilled labour at Rs.5000/- or Rs.6000/- per month for giving compensation to the claimants.

(iv) The daily wagers even though are earning more than the rates prescribed by the respective States but this Court are taking their income as per the rates prescribed by the respective States from time to time. This situation will continue for the next 50 years as well, as the poor people will not have the income proofs. Once the price are rising, the income of the poor people also rises from time to time, as observed in ***Santosh Devi's case (supra).*** It would not be reasonable to accept that a daily wager employee without increase of his income is looking after 4-5 members of his family.

(v) Today, self employed persons are using T.V, Fridge, Mobile etc. Thus, he is a daily consumer of the basic amenities which are sold in the market.

(vi) Another fact which can be taken into consideration that today

Government has initiated number of schemes for un-organized labour sector and the benefit of said scheme don't reach to the poor people but still with the sheer hard work, the poor self employed people are surviving on their own. Thus, if future prospects will not be added to his income for determining the compensation amount, then his dependents will be compelled to live a miserable life, thus, this Court is of the view that till the pendency of the reference petition before Hon'ble the Supreme Court in ***Pushpa's case,*** the daily wagers are entitled for grant of future prospects for determining the compensation amount where income is taken at less than Rs.10,000/- per month, keeping in view the high rise price in today's time.

(vii) This Court has seen that in case of farmers, the income tax returns are being filed showing their income to be more than Rs. 2 lacs per annum. In that case also, once the income tax return is filed, the grant of future prospects cannot be denied as they are same farmers and doing small business of diary. There is reasonable increase in their income as well. Keeping in view the price rise index, the State Governments has revised the minimum wages from time to time.

Taking into consideration the judgments mentioned above, this Court is of the view that in view of ***Sarla Verma's case (supra)***, the case of the daily wagers falls in rare and exceptional cases involving special circumstances for the purpose of grant of future benefits in the absence of any direct evidence where the income of the deceased of daily wagers is taken at less than Rs.10,000/- and thus, his legal heirs are entitled for grant of future prospects for determining the compensation, keeping in view the high rise price in today's time.

July 14, 2017 (***RITU BAHRI***)
G Arora ***JUDGE***

Whether speaking/reasoned ***Yes***
Whether reportable ***Yes***