In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:7.9.2017

FAO No. 8435 of 2014 (O&M)

National Insurance Company Limited

---Appellant

vs.

Saroj Bala and others

---Respondents

FAO No. 8630 of 2014 (O&M)

Saroj Bala and others

---Appellants

vs.

Gurdeep Kumar and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr.R.C.Kapoor, Advocate
for the appellant in FAO- 8435 of 2014
for respondent No. 2 in FAO No. 8630 of 2014

Mr. Vipul Sharma, Advocate
for Mr. Nitin Mittal, Advocate
for the appellants in FAO-8630 of 2014
for respondent Nos. 1 to 5 in FAO-8435 of 2014

Mr. Sanjay Panghal, Advocate
for Mr. S.S.Nara, Advocate
for respondent No. 6 in FAO -8535 of 2014
for respondent No. 1 in FAO-8630 of 2014

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Rekha Mittal, J.

This order will dispose of FAO Nos.8435 and 8630 of 2014 as these have emerged out of the same award dated 14.05.2014 passed by the Motor Accidents Claims Tribunal, Chandigarh (in short, 'the Tribunal') whereby compensation has been awarded in regard to death of Mehar Singh in a motor vehicular accident that took place on 23.10.2012.

FAO No.8435 of 2014 has been filed by the National Insurance Company Ltd. (hereinafter to be referred as 'the company') whereas the other appeal has been preferred by Smt. Saroj Bala and others, claimants.

For the sake of convenience, parties shall be referred to as the 'company' and 'claimants'.

FAO No.8535 of 2014

Counsel for the company would urge that as the accident in question was a head on collision between motor cycle driven by the deceased and the alleged offending vehicle motor cycle No.HR-54-A-7985 driven by Gurdeep Kumar, the present is a case of contributory negligence, therefore, claimants are not entitled to compensation with regard to extent of negligence attributable to deceased Mehar Singh. To bring home his contention, he has invited attention of the Court towards testimony of Rinku PW2 examined in the case. It is further argued that Rinku was not present at the spot but he has been introduced as a witness later to support cause of the claimants to get compensation.

Counsel representing the claimants, on the contrary, has supported findings of tribunal on issue No.1 upholding plea of the claimants that accident was the result of rash and negligent driving of offending motorcycle by Gurdeep Kumar who had two persons on pillion seat, in violation of Section 128 of the Motor Vehicles Act, 1988 (in short "the Act"). Further argued that Rinku gave a detailed account of the accident in his affidavit PW2/A but the respondents before the Tribunal failed to elicit any such fact to shatter evidentiary value of his testimony or impeach his credibility. Gurdeep Kumar did not appear in the witness box to counter testimony of Rinku, therefore, adverse inference is liable to be drawn against the respondents before the Tribunal that accident was caused due to rash and negligent driving of Gurdeep Kumar.

Rinku, an eye witness to the occurrence tendered into evidence his duly sworn affidavit Ex. PW2/A and a relevant extract therefrom with regard to accident reads as follows:-

> "At about 9.15 p.m. when I reached within the area of village Ramgarh near country wine shop, a motor cyclist who was driving his motor cycle on the correct left hand side of the road and at a moderate speed had over took my bicycle and had covered 30-35 yards towards village Talheri. In the meantime a splendor motor cycle Bearing Regd. No. HR-54-A-7985 came from opposite side i.e. Ramgarh side. Respondent No. 1 Gurdeep was driving said motor-cycle rashly, negligently, in zig-zag manners and at an uncontrollable speed. Three persons were travelling on said motor-cycle. On seeing motor-cycle bearing registration No. HR-54A- 7985 coming from opposite side in such rash and negligent manners rider of motor cycle No. HR-54A- 4927 slow down the speed of his motor-cycle and took his motor-cycle on the extreme left hand side of the road on kacha berm.

> Respondent No. 1 Gurdeep driver of motor-cycle Bering Regd. No. HR-54A-7985 on leaving entire 30-35 ft. vide mettel vacant road without blowing any horn, without giving any indicators of his motor-cycle or signal from his hand hit against motor-cycle No. HR-54-4927 after coming on the extreme wrong side on kacha berm of the road. As a result of this accident driver of motorcycle No. HR-54-4927 fell on the road side. He suffered multiple and simple injuries including grievous head injury. Respondent No. 1 Gurdeep alongwith other occupants of offending motor-cycle also fell on the roadside alongwith their motor-cycle after covering a long distance from the place of accident towards Kalpi side. Two pillion riders namely Vinod Kumar S/o Gurdev Singh and Anil Kumar S/o Bholu Ram both residents of village Ramgarh also suffered injuries in this road side accident."

He has further deposed that:-

> "Police of Police Station, Mullana reached in the hospital and record my statement and on the basis of my statement FIR of this accident was lodged against respondent No. 1 Gurdeep S/o Gurdial Singh R/o village Ramgarh vide FIR No. 202 dated 24.10.2012 P.S. Mullana District Ambala. The offending motor cycle No. HR-54A-7985 was seized from the spot by the police of P.S. Mullana on 24.10.2012."

This witness was cross examined by the respondents but no such fact has been brought forth in order to substantiate plea of the company that any negligence for causing the accident can be attributed to deceased Mehar Singh. It has been rightly argued by counsel for the claimants that an adverse inference is to be drawn against Gurdeep Kumar who failed to appear in the witness box to counter testimony of Rinku or explain the circumstances under which the occurrence in question took place. In this view of the matter, I do not find any error much less illegality in determination of issue No. 1 in favour of the claimants and against the respondents, by the Tribunal.

FAO Nos.8435 and 8630 of 2014

Counsel for the company has challenged quantum of compensation qua loss of dependency assessed by the Tribunal on few counts. The first submission made by counsel is that the Tribunal has wrongly relied upon testimony of Harish Chawla PW3 to determine income of the deceased at Rs. 12,000/- per month. It is argued that Harish Chawla did not produce any documentary evidence like appointment letter, attendance register, salary register, account books etc. to corroborate his oral version that the deceased was working as a Supervisor on his wine shop much less at a salary of Rs. 12,000/- per month.

Another submission made by counsel is that the Tribunal has allowed benefit of increase in income to the extent of 50% but the matter with regard to grant of future prospects is pending consideration before a Larger Bench of Hon'ble the Supreme Court in view of reference made in **National Insurance Company Limited vs. Pushpa.** In addition, it is submitted that Hon'ble the Supreme Court has not allowed benefit of future prospects in **Chikkamma and another vs. Parvathamma and another**

2017 ACJ 1855 and **Bhogireddy Varalakshmi and others vs. Mani Muthupandi and others 2017 ACJ 1891.**

Counsel has further argued that the Tribunal has allowed deduction to the extent of 1/4th but the same should be 1/3rd as brother and father of the deceased cannot be held to be dependent upon earning of Mehar Singh.

Counsel representing the claimants, on the contrary, has supported findings of the Tribunal with regard to assessment of income of the deceased by relying upon testimony of Harish Chawla PW3 as well income tax returns Exs. P-2 and P-3 proved by the witness. It is further submitted that Mehar Singh has left behind a family consisting of his widow, two minor children, a handicapped brother and old aged father. He would not have stagnated at a monthly salary of Rs. 12,000/- had he remained alive, therefore, increase in income for future prospects is justified. In addition, it is argued that compensation awarded by the Tribunal under conventional heads needs enhancement.

I have heard counsel for the parties, perused the paper book and records of the Tribunal.

The Tribunal has assessed income of the deceased at Rs. 12,000/- per month, added 50% towards future prospects and deducted income tax of 10% and expenses of the deceased to the extent of 1/4th and computed loss of dependency at Rs. 1,45,800/- per annum. Indisputably, income of the deceased has been assessed on the basis of statement recorded by Harish Chawla PW-3. Harish Chawla tendered into evidence his affidavit Ex. PW3/A and documents i.e. salary certificate Ex. P-1, income tax returns for the assessment years 2012-13 Ex. P-2 and 2013-14 Ex. P-3. The salary certificate Ex. P-1 was not prepared on the basis of any records maintained by Chawla Sons Wine Contractor, Preet Nagar Barara (Ambala). In his cross examination, the witness has deposed that he maintains salary register of his employees but has not brought the same which is with his Accountant. However, that register was not got produced by the claimants to corroborate testimony of Harish Chawla. One of the income tax returns for the assessment year 2012-13 has been filed prior to death of Mehar Singh but the second return was certainly filed after his death. In the first income tax return Ex. P-2, there is reference to salary and wages of Rs. 5,40,000/- per annum. On page 12 of Ex. P-2, there is detail of salary of six employees and name of Mehar Singh is shown at Sr.No. 3. Type writing/computer writing of this page is different from the remaining pages of the income tax return, sufficient to create a doubt if this was a part of return filed by Harish Chawla. It appears to the Court that page 12 has been added later in order to corroborate plea of the claimants that deceased was drawing salary at Rs. 12,000/- per month or 1,44,000/- per annum. At the same time, Harish Chawla was cross examined at length and there is no challenge to his testimony that he is a wine contractor. Nothing has been brought forth in his cross examination that Harish Chawla is related to family of Mehar Singh to depose falsely. Taking into consideration statement of Harish Chawla that he had employed six persons in his business of wine contractorship coupled with amount of wages/salary shown in the income tax return Ex. P-2, income of the deceased is taken at Rs. 90,000/- per annum.

The deceased was less than 40 years of age. The Tribunal has allowed addition of 50% for future prospects. The deceased left behind his widow, two minor children aged 12 and 10 years, a disabled brother aged 32 years and old aged father, held entitled to get compensation by the Tribunal. The State Governments revise minimum wages at short intervals, may be, quarterly or biannually. This Court cannot overlook that price index is moving upward. The mere fact that a reference is pending before a Larger Bench of Hon'ble the Supreme Court is not sufficient to deny benefit of increase in income for future prospects till the judgment ***Rajesh and others vs. Rajbir Singh and others 2013(3) RCR (Civil) 170*** is varied or set aside.

To be fair to the company, counsel has referred to latest judgment of Hon'ble the Supreme Court **Bhogireddy Varalakshmi and others' case (supra).** Hon'ble the Supreme Court has made an order to post the petition for enhancement under future prospects after the reference is answered by a Larger Bench meaning thereby that the Court has not declined the claim. In **Chikkamma and another's case (supra)**, the Court refused to allow benefit of future prospects by taking into account that the matter is pending consideration before a Larger Bench of the Court and compensation was enhanced by allowing multiplier of 17 as per age of the deceased in place of multiplier of 9 adopted by the Tribunal and the High Court as per age of mother of the deceased. Hon'ble the Supreme Court has not laid down any ratio in law that benefit of future prospects should be denied in each case because of pendency of reference before a Larger Bench. Under the circumstances, I do not find merit in contention of the company that the claimants are not entitled to increase in income for future prospects. After extending benefit of future prospects to the extent of 50%, loss of dependency per annum comes to Rs. 1,35,000/-.

This brings the Court to deduction towards personal and living expenses of the deceased. Counsel for the company has argued that deduction should be $1/3^{rd}$ and not $1/4^{th}$. Application for compensation was filed by widow, two minor children, a brother and father of deceased Mehar Singh. One of the claimants Saroj Bala, widow of the deceased tendered into evidence her duly sworn affidavit Ex. PW1/A by way of examination in chief. A relevant extract form her testimony reads as follows:-

> "He left behind me as his widow. Claimant No. 1 Gurmeet @ Kajal aged about 12 years, Claimant No. 3 Satnal aged about 10 years as minor sons(sic). Claimant No. 4 Sukhdev Singh, aged about 32 as his handicapped younger brother and claimant No. 5, Fakir Chand, aged about 73 years as his old aged father as his only legal heirs, legal representatives & dependents. My husband was working as a supervisor with Harish Chawla/Bittu Chawla in his firm namely Chawla Sons, Wine Contractors, Preet Nagar, Barara, Ambala as his permanent employee since last 2-3 years and presently working at his wine shop situated at village Sabalpur, Thana Chappar, District Yamuna Nagar at a salary of Rs. 12,000/- per month. Younger brother of my husband namely Sukhdev Singh had suffered injuries in an accident 7-8 years back and due to this reason we all the

claimants including wife and three minor children of Sukhdev Singh were also solely dependent on the income of my deceased husband.

She has further deposed that:-

> "We all claimants were solely dependent on the income of the deceased and after his death there is no one in the family to earn, maintain and support the claimants. Deceased was the sole bread earning member of our family."

The witness was cross examined at length but nothing tangible and material has been brought forth in her cross examination that Sukhdev Singh and Fakir Chand, brother and father respectively of the deceased have any source of income. The claimants have also produced on record disability certificate Ex. P-9 in regard to Sukhdev Singh, issued by the Post Graduate Institute of Medical Education and Research, Chandigarh. As per the certificate, Sukhdev Singh is a case of Fracture D-7 with paraparesis with bladder involvement and physically impaired in relation to whole body.

The company did not lead any evidence to rebut testimony of Saroj Bala with regard to dependency of Sukhdev Singh and Fakir Chand upon income of the deceased. Taking into consideration testimony of Saroj Bala coupled with disability certificate of Sukhdev Singh, it is difficult to accept contention of the company that deduction of $1/4^{th}$ for personal and living expenses of the deceased can be faulted with. In view of the above, loss of dependency comes to Rs. 1,35,000 x15 = 20,25,000 – 5,06,250

(1/4th) =**Rs.15,18,750/-.**

The Tribunal has awarded an amount of **Rs. 1,00,000/-** for consortium to the widow, **Rs. 50,000/-** for loss of estate and **Rs. 25,000/-** for funeral expenses. Compensation awarded by the Tribunal under the aforesaid heads is affirmed. The deceased left behind two minor children aged 12 and 10 years. They shall be entitled to an amount of **Rs. 1,50,000/-** for loss of love and affection, care and guidance of their father. In this manner, total compensation comes to **Rs. 18,43,750/-** and the compensation assessed by the Tribunal is reduced to the extent of Rs.5,18,250/- (23,62,000 - 18,43,750). The company shall be entitled to recover excess amount, if already paid, by filing an application before the Tribunal.

For the foregoing reasons, the appeals are disposed of in the aforesaid terms.

(Rekha Mittal)
Judge

7.9.2017
paramjit/ashok

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No