

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.8948 of 2014

Date of Decision:15.02.2017

Shri Ram General Insurance Co. Ltd.

...Appellant

Vs.

Parmila Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Tajender Joshi, Advocate,
for the appellant-insurance company.

Mr. Om Parkash Sharma, Advocate,
for the respondents.

Amol Rattan Singh, J.

By this appeal, the insurance company that had insured the vehicle (a TATA-1109 four-wheeler), that was stated to have been involved in an accident in which unfortunately one Gopal died, has challenged the Award of the learned Motor Accident Claims Tribunal, Gurgaon, dated 31.07.2014, awarding Rs.9,35,000/- to his parents, i.e. respondents no.1 and 2 herein.

Respondent no.3 was the driver of the aforesaid vehicle bearing registration No.HR-55-K-2326 and respondent no.4 was the owner of the said vehicle.

2. As per the claim petition filed by respondents no.1 and 2 herein (hereinafter to be referred to as the claimants), their son, Gopal, who was working as a labourer with a labour contractor by the name of Kailash

Mandal, had loaded cement slabs of the Shri Balaji Prefel Company, Jhajjar, in the aforesaid vehicle, with the slabs to be unloaded at the Water Treatment Plant at Chandu Budhera. When the vehicle, carrying the deceased Gopal and his colleagues, Laxman Sada, Ram Kumar and the aforesaid Kailash Mandal, reached at the Water Treatment Plant at about 8:00 am on 08.04.2012, respondent no.3 herein, i.e. the driver of the vehicle, namely Jad Nath, was in the process of parking it so as to unload it. The deceased, being a labourer, was standing behind the vehicle to unload it, when respondent no.1 suddenly, as alleged, in a rash and negligent manner, reversed the vehicle without giving any signal or indication, resulting in the deceased coming beneath the rear tyre of the vehicle. He unfortunately died on the spot.

The accident was stated to have been witnessed by the afore named persons, after which the respondent-driver is stated to have fled away from the spot.

Hence, it was contended in the petition before the MACT, that the accident had taken place due to the rash and negligent driving of respondent Jad Nath.

It was further stated that the police had recorded the statement of Kailash Mandal and had thereupon lodged FIR No.33 dated 08.04.2012, in respect of an offence having been committed, punishable under Sections 279 and 304-A of the Indian Penal Code.

3. It was further contended that the said driver was driving the vehicle in the course of his employment, in the supervision and control of the owner thereof and with the vehicle having been insured by the present appellant company, i.e. respondent no.3 before the Tribunal, the respondents in the claim petition, were all jointly and severally liable to pay a

compensation of Rs.20,00,000/- to the claimants, alongwith interest @ 18% per annum upon the aforesaid amount.

4. Upon notice having been issued to the respondents in the claim petition, the driver and owner filed a joint written statement taking preliminary objections with regard to non-maintainability, lack of cause of action and the claim being highly exaggerated.

On merits, it was denied that the accident had taken place with the offending vehicle, which, it was alleged, had been falsely implicated by the police.

5. The appellant insurance company filed a separate written statement as respondent no.3, taking the same preliminary objections and further contending that the driver of the vehicle was not carrying a valid and effective driving licence and that the company was not liable to pay any compensation, as it was not informed about the accident by the driver and owner of the vehicle, as is mandatorily required under Section 134(c) of the Motor Vehicles Act, 1988.

It was also contended that the petition (filed under Section 166 of the Motor Vehicles Act) was also not maintainable because the claimants were not “a third party” under that Act.

6. Upon the aforesaid pleadings, the learned Tribunal framed the following issues:-

- “1. Whether the accident has taken place on 8.4.2012 at about 8:00 am due to rash and negligent driving of vehicle bearing no.HR-55K-2326 driven by respondent no.1 and caused death of Gopal son of Shivjee, as alleged? OPP
2. If issue no.1 is proved, then what amount of compensation, the petitioners are entitled to and from whom? OPP
3. Whether the respondent no.1 was not holding a valid and

effective driving licence at the time of accident? OPR3

4. Whether the respondents have violated the terms and conditions of the Insurance Policy? OPR3
5. Whether the insurer is not liable to indemnify the insured? OPR3
6. Relief.”

7. The claimants examined one Dr. Pawan Chaudhary, as also petitioner no.2 himself and one of the persons stated to be an eye witness to the accident, i.e. Laxman Sada, a co-employee of the deceased.

They also tendered the certified copy of the report submitted under Section 173 Cr.P.C. to the competent Court, the certified copy of the driving licence of respondent no.3 herein, as also certified copies of the insurance certificate, the registration certificate of the vehicle and the charge-sheet pertaining to the charges framed against respondent no.3.

8. The driver and owner of the vehicle tendered copies of the route permit and fitness certificate of the vehicle and closed their evidence.

The present appellant led no evidence.

9. Upon appraising the evidence, as regards the first issue pertaining to negligence in driving, the learned Tribunal found that PW3, Laxman Sada, had testified in terms of the contentions in the claim petition, including the fact that the driver of the vehicle, i.e. Jad Nath, had suddenly reversed the vehicle in a rash and negligent manner, without giving any signal or indication, resulting in the deceased coming beneath the tyre of the vehicle and unfortunately dying on the spot. The witness also reiterated that respondent no.3 herein had fled away from the spot thereafter and that the accident took place due to his rash and negligent driving.

The father of the deceased, i.e. the claimant Shivjee, also testified as PW2, reiterating what he had stated in his claim petition alongwith his wife.

The doctor who had conducted the post mortem examination on the body of the deceased Gopal, i.e. Dr. Pawan Chaudhary, testified as PW1 stating that the deceased was 19 years old and that his death had been caused due to haemorrhage and shock associated with an injury to a vital organ. He, thereby, proved the post mortem report, Ex.P1.

10. Upon appraising the aforesaid evidence, the learned Tribunal came to the conclusion that the deceased had died due to the rash and negligent driving of the 3rd respondent herein, Jad Nath.

11. Going on to the issue of the compensation payable to the claimants, it was found that there was no contradiction to the effect that the deceased was 19 years old, working as a labourer earning Rs.15,000/- per month, with labour contractor Kailash Mandal and that he was the sole bread earner of his family.

However, no documentary evidence having actually been produced by the petitioners to prove the aforesaid income of the deceased, it was held that he having died in the year 2012, admittedly working as an unskilled worker, he would have earned Rs.5000/- per month, which therefore was assessed as his monthly income.

Relying upon a judgment of the Supreme Court in Amrit Bhanu Shali and others v. National Insurance Co. Ltd. and others (2012)11 SCC 778, the Tribunal held that the multiplier to be applied to the income of the deceased would be as per the age of the deceased and not his parents, even though he was a bachelor. Judgments to the contrary cited by the insurance

company, i.e. the present appellant, were not held to be applicable by the Tribunal, in view of the fact that the aforesaid judgment in *Amrit Bhanu Shalis'* case was seen to be the latest law laid down, even after the judgment in New India Assurance Company Ltd. v. Shanti Pathak and others 2007 (3) RCR (Civil) 593.

12. Consequently, deducting 50% of the monthly income of Rs.5000/- towards the personal expenses of the deceased, the total loss of income to the claimants was calculated to be Rs.8,10,000/-. This amount was arrived at by adding 50% of the income of the deceased towards loss of future prospects of an increased income, thereby coming to a monthly income of Rs.7500/-, from which 50% was deducted, as already noticed, towards his personal expenses, thereby coming to a figure of Rs.3750/-, which was thereafter multiplied by 12 to come to a loss of annual income of Rs.45,000/-, to which a multiplier of 18 was further applied, to come to the sum of Rs.8,10,000/-.

The claimants were also held entitled to funeral and transportation expenses of Rs.25,000/- and further to a sum of Rs.1,00,000/- towards the loss of love and affection of their son.

Thus, a total compensation of Rs.9,35,000/- was awarded, but only to the first claimant, i.e. the mother of the deceased (respondent no.1 herein), there having been no evidence led that the second claimant, i.e. the father of the deceased, was dependent on the income of his son.

13. The issues of respondent no.3 herein possessing a valid driving licence and with regard to any violation of the insurance policy having been decided against the present appellant, it was held that the company would be liable to pay the compensation amount, alongwith interest @ 7.5% per annum

running thereupon, from the date of the filing of the claim petition till realisation thereof.

Costs of Rs.3300/- were also awarded to the claimants.

14. In this appeal, the appellant-insurance company has not challenged the finding of the Tribunal on the issue of negligence, but has restricted its challenge to the amount of compensation awarded.

Mr. Tajender Joshi, learned counsel for the appellant, submitted that as per the judgment of the Supreme Court in *Shanti Pathaks'* case (supra) and in **National Insurance Company Limited v. Shyam Singh and others** (2011) 7 SCC 65, it was held that the multiplier to be applied to the annual loss of income to the claimants, if they are the parents of the deceased, should be as per the age of the claimants and not the deceased.

Learned counsel next submitted that adding of 50% of the actual income of the deceased towards his income by way of loss of future prospects of an increased income, has been an error committed by the Tribunal, as the correctness of the judgment, to that effect, in **Rajesh and others vs. Rajbir Singh and others** (2013) 9 SCC 54, has been doubted by the Supreme Court in **National Insurance company v. Pushpa and others** (2015) 9 SCC 166, with the matter referred to a larger Bench, in view of the fact that in *Rajeshs'* case (supra), an earlier judgment in **Reshma Kumari v. Madan Mohan** (2013) 9 SCC 65 was not considered.

15. *Per contra*, Mr. Om Parkash Sharma, learned counsel for the respondents-claimants, submitted that as regards the application of the multiplier, the Tribunal correctly followed the ratio of the law laid down in *Amrit Bhanu Shalis'* case (supra) which has been reiterated in **Munna Lal Jain and another v. Vipin Kumar Sharma and others** (2015) 3 SCC 315.

He submitted that the reference made in *Pushpas'* case (supra), not having reached finality as yet, this Court would follow the ratio of the judgment in *Rajesh v. Rajbir* (supra), as regards loss of future prospects of an increased income.

16. Having considered the aforesaid arguments, as regards the issue of the multiplier, I am in agreement with the learned counsel for the respondents-claimants, that it would be the age of the deceased and not the age of his parents (claimants) that would be the determining factor for the application of the multiplier. It needs to be noticed that in *Munna Lal Jains'* case (supra), their Lordships while quoting from *Reshma Kumaris'* case (supra), reproduced the following paragraph of that judgment (*Reshma Kumari*):-

“36. In *Sarla Verma*, this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section 166. It has been rightly stated in *Sarla Verma* that the claimants in case of death claim for the purposes of compensation must establish (a) age of the deceased; (b) income of the deceased; and (c) the number of dependants. To arrive at the loss of dependency, the Tribunal must consider (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in *Sarla Verma*.”

In *Munna Lal Jains'* case, their Lordships also observed that the said issue has been “hanging fire for sometime; but that has been given a

quietus by another three-Judge Bench decision in *Reshma Kumari* (supra)”.

It is to be further noticed here that in *Reshma Kumaris'* case, the entire law on what the multiplier should be, was revisited by their Lordships, to come to the final conclusion that what was held in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another** (2009) 6 SCC 121, need not be reviewed and the multiplier should be applied as per the age of the deceased. It is further to be noticed that the three-Judge Bench in *Reshma Kumaris'* case, took specific notice of the judgment in *Shanti Pathaks'* case (supra).

Hence, the contention of learned counsel for the appellant-insurance company, on that issue, is to be rejected.

It is, therefore, held that the multiplier applied by the Tribunal in the present case, as per the age of the deceased, was correctly applied by it.

17. Coming then to the next issue, of whether or not the respondents-claimants are entitled to loss of future prospects of an increased income also. In the opinion of this Court, there would be no reason for not awarding such loss of future prospects of an increased income, in view of the fact that even by simple inflation alone, the minimum wages of a labourer also are re-notified by the Government from time to time. Hence, if such normal and expected rise in income is factored in even to a 50% extent, as was held in *Rajeshs'* case (supra), it would not be entirely incorrect in the opinion of this Court. However, since the matter is sub-judice before their Lordships, this Court has been directing in all such cases where the deceased was not in permanent employment, that the calculated loss of future prospects of an increased income, be deposited by the insurance company with the Tribunal, which would then have the said amount deposited in a fixed deposit in a

nationalised bank, so as to carry maximum interest on it. Thereafter, upon pronouncement of the judgment of the larger Bench of the Supreme Court in *Pushpas'* case (supra), the amount so deposited would either be disbursed to the claimants, or refunded to the insurance company/owner as the case may be, dependent upon the ratio of the judgment (to come) in that case.

18. So accordingly it would need to be done in the present case also. Hence, it is directed that the amount which has been factored in by the learned Tribunal in the impugned Award, by way of loss of future prospects of an increased income to the respondents-claimants, be deposited by the appellant-insurance company with the Tribunal within a period of three months from the date of receipt of a certified copy of this judgment. The Tribunal would then immediately thereafter have the said amount deposited in a fixed deposit with a nationalized bank, so as to draw maximum interest on it. The amount would thereafter be disbursed to the claimants/refunded to the appellant-insurance company, alongwith the interest that would have gathered on the deposited amount, depending upon the ratio of the judgment to be delivered by the hon'ble Supreme Court in *Pushpas'* case (supra).

The amount to be deposited by the insurance company towards that head is calculated as follows:-

i)	Accepted monthly income of the deceased	Rs.5000/-
ii)	50% of the aforesaid amount	Rs.2500/-
iii)	Deduction @ 50% towards the personal expenses of the deceased	Rs.1250/-
iv)	Remaining amount of monthly income under the head of loss of future prospects of an increased income	Rs.1250/-
v)	Annual loss of the aforesaid component of income	Rs.15,000/-
Total loss of future prospects of an increased income to the respondents-claimants		Rs.2,70,000/- (Rs.15,000/-x18).

Thus, Rs.2,70,000/- would be deposited by the appellant-insurance company with the Tribunal within three months of the receipt of the certified copy of this order as already directed hereinabove, to be further deposited in a fixed deposit in a nationalised bank.

19. With the aforesaid modification ordered in the amount of compensation awarded by the learned Tribunal to respondent no.1 herein, this appeal is dismissed, but with no order as to costs.

February 15, 2017
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(AMOL RATTAN SINGH)
JUDGE

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |