IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.9051 of 2014 (O&M)
Date of Decision: August 23, 2017

United India Insurance Company Limited ...Appellant

Versus

Smt.Nirmla Devi and others ...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Ram Avtar, Advocate
for the appellant – Insurance Company.

Mr.Ashwani Arora, Advocate
for respondent Nos.1 to 4 – claimants.

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HARINDER SINGH SIDHU, J.

This is an appeal by the United India Insurance Company Limited against the Award passed in MACT Case No.46 of 2012 by the Motor Accident Claims Tribunal, Sahibzada Ajit Singh Nagar (Mohali) (for short `the Tribunal'), whereby, a sum of Rs.28,42,000/- along with interest was ordered to be paid as compensation for the death of Kamal Singh in a vehicular accident.

Brief facts of the case are that on 13.2.2012 at about 7.00 pm, the deceased was going on the road leading from Dera Bassi to Mabarakpur, while sitting on pillion seat of motorcycle being driven by Nihal Singh at a slow speed and left side of the road. When they reached in front of Batra Wine Factory, Dera Bassi, a car bearing No.HR-41B-3037 came from opposite side being driven rashly and negligently at a fast speed by Chander

Mohan – respondent No.5, which, while coming on the wrong side of the road struck against the motorcycle. As a result of this collision, the deceased and Nihal Singh suffered serious injuries and they were shifted to Civil Hospital, Dera Bassi, where Kamal Singh was declared 'brought dead', while Nihal Singh was referred to Government Medical College and Hospital, Sector-32, Chandigarh, where he also succumbed to the injuries on 20.2.2012. FIR No.25 dated 14.2.2012 under Sections 279, 304-A IPC was registered in Police Station Dera Bassi.

The legal representatives of the deceased (Kamal Singh) filed claim petition under Section 166 of the Motor Vehicles Act, 1988 pleading that the deceased was aged about 29 years and was owner and driver of a truck No.HR-01GA-1507. It was also stated that he was earning Rs.30,000/- per month and was paying loan instalment of Rs.13,000/- to the Finance Company.

Upon notice, respondent Nos.5 and 6, driver and owner of the offending car, filed separate written statements controverting the case of the claimants. Respondent No.5 stated that no accident was caused by the offending car, while respondent No.6 took the stand that he had already sold the offending vehicle to respondent No.5. Appellant – insurer, in its separate written reply, took objection that the driver of offending car was not holding a valid and effective driving licence at the time of alleged accident and that the vehicle was being plied without valid documents in violation of the terms and conditions of the Insurance Policy.

Pleadings of the parties led to the framing of following issues:-

"*1. Whether Kamal Singh died in a motor vehicular accident occurring on account of rash and negligent driving of* *vehicle No.HR-41D-3037 by respondent No.1? OPC*

2. Whether the claimants are entitled to compensation for death of Kamal Singh, if so, to what extent and from whom? OPC.

3. Whether respondent No.1 was not holding legal and valid driving licence at the time of accident, if so, its effect? OPR-3

4. Whether the respondent No.2 had committed breach of terms and conditions of the insurance policy, if so, its effect? OPR

5. Relief."

Issue No.1 was decided in favour of the claimants and it was held that the accident had taken place due to rash and negligent driving of the offending car by respondent Chander Mohan. The Tribunal assessed the income of the deceased at Rs.12,000/- per month and granted 50% enhancement towards future prospects. 1/4th of the income was deducted towards personal and living expenses of the deceased, and monthly dependency was assessed at Rs.13,500/-. It applied the multiplier of 16 and the total loss of dependency was assessed at Rs.25,92,000/-. That apart, Rs.1,00,000/-, each, for 'loss of consortium' and 'loss of care and guidance', and Rs.25,000/-, each, for 'loss of estate' and 'funeral expenses', respectively, were also awarded. In all, compensation of Rs.28,42,000/- along with interest was awarded.

Arguments have been heard and paper-book perused with the assistance of Ld. Counsel for the parties.

The cause of the accident and the liability to pay the compensation is not in dispute.

Learned counsel for the appellant-insurer has challenged the award on two grounds – (i) That in the absence of any documentary proof regarding the income of deceased Kamal Singh, the assessment of his income at Rs.12,000/- per month is on higher side, and (ii) that since the deceased did not have any permanent income, therefore, increase of 50% in his income on account of future prospects could not be granted in view of reference of this question to the larger Bench by Hon'ble the Supreme Court in **National Insurance Company Limited vs. Pushpa, 2015(9) SCC 166.**

Dealing with the first contention regarding the income of the deceased, the claimants in the petition have claimed that the deceased was owning a truck and driving the same. He was plying it under permit and also paying loan instalments. Ex.P4, permit of the truck No.HR-01-GA-1507 issued in the name of the deceased and Ex.P5 to P11, receipts for the period from May, 2011 to January, 2012, whereby, loan instalments of Rs.6000/- to Rs.10,600/- were paid by him to M/s Shri Ram Transport Finance Company, were also produced on record. This evidence was the basis of the finding of the Tribunal that considering that the deceased was paying monthly loan instalments varying between Rs.6000/- to Rs.10,600/- for the truck, being plied by the deceased himself, that the income of the deceased was assessed at Rs.12,000/- per month. There appears no ground to interfere in the said finding.

The second argument regarding grant of increase in the income of the deceased towards future prospects is also without merit.

In **Rajesh and others vs. Rajbir Singh and others**, **2013 ACJ 1403**, the Hon'ble Supreme Court has held that in case of self-employed or persons with fixed wages, below 40 years, there must be an addition of 50% to the actual income of the deceased.

This Court in various first appeals including **FAO No.1207 of 2014 titled "Reliance General Insurance Company Ltd. vs. Sayera Khatoon and others**" decided on 3.3.2014, **FAO No.1502 of 2015 titled "National Insurance Company Limited vs. Pushpa Singh Chauhan and others**" decided on 20.3.2015 and **FAO No.4299 of 2015 titled "Oriental Insurance Company Limited vs. Swarna Devi and others"** decided on 1.9.2015 has upheld the addition to the income towards future prospects, where, the deceased were either self-employed or working in un-organised sectors.

The view taken in **Rajesh's case** (supra) has been followed by the Hon'ble Apex Court in **Munna Lal Jain and another vs. Vipin Kumar Sharma and others, 2015(6) SCC 347**, as also by this Court in various decisions (referred to above), SLPs against which have been dismissed after the reference in **Pushpa's** case (supra). Thus, the Tribunal has committed no error while allowing 50% addition in the income towards future prospects and granting compensation to the claimants accordingly.

No other point was raised.

Appeal dismissed.

August 23, 2017 **(HARINDER SINGH SIDHU)**
JUDGE

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Whether Speaking / Reasoned	Yes / No
Whether Reportable	Yes / No