Sr. No. 241

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO No. 7902 of 2016(O&M)
Decided on: 17.08.2017**

Bharti AXA General Insurance Company Ltd.
..........Appellant

versus

Jugni Devi and others
..........Respondents

FAO No. 7906 of 2016(O&M)

Bharti AXA General Insurance Company Ltd.
...........Appellant

versus

Raj Kumari and others
............Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Rajbir Singh, Advocate
for the appellant.

Mr. Abhijat Gaur, Advocate
for respondents No. 1 and 2.

Mr. Vikram Sharma, Advocate
for respondent No. 6.

Rajbir Sehrawat, J.(Oral)

These are two appeals filed by the Insurance Company, against the Award passed by the learned Motor Accidents Claim Tribunal; dated 28-04-2016 whereby an amount of ₹ 10,12,800/- has been awarded to the claimants Jugni Devi and others on account of death of the deceased Kilanand and has awarded an amount of ₹ 35,000/- to the injured claimant Rajkumari.

Since both the appeals are arising from the same accident and the same award of Motor Accidents Claim Tribunal, therefore, both these appeals are being decided together.

Shorn off the intricate details the brief facts of this case, as pleaded by the claimants; are that on 13-12-2014 at about 2:30 PM the deceased Killanand, after completing his work, was coming back from Kharkhoda to village Saidpur alongwith one Parmod Kumar, Rekha Devi and her child Madan in a Three-Wheeler bearing Registration No. HR-69B-9001. When they reached at some distance from village Saidpur, it was found that the driver of the offending vehicle, TATA-407 Tempo, bearing Registration No. HR-63C-2151 had parked his vehicle in the middle-of-the-road without following the traffic Rules. In the meantime another vehicle came from front-side of this Three-Wheeler. The Driver of the Three-Wheeler applied brakes to avoid collision. Despite best effort of the driver of the Three-Wheeler, it struck against the vehicle, which was parked in the middle-of-the-road. This resulted into the accident in question; in which the abovesaid Kilanand expired and his autopsy was conducted in Civil Hospital Sonepat and the above Raj Kumari sustained multiple injuries. For this accident, an FIR No. 555 dated 13-12-2014 was also registered against the driver of the offending vehicle at Police Station Kharkhoda on the statement of Parmod Kumar.

On account of death of aforesaid Kilanand; Jugni Devi, that is, widow and the minor sons and daughter of the deceased Kilanand filed the claim petition claiming ₹ 50 Lacs as compensation on the ground that the above said Kilanand was working as a Mason and was earning ₹ 15,000/- per month. It was further pleaded that he was 40 years of age.

On account of injuries sustained by Raj Kumari she filed another claim petition claiming compensation to the tune of ₹ 10 Lacs on the ground that she sustained multiple injuries, she had to remain admitted in hospital for one week and therefore, she spent money on medicines, special diet, attendant and transportation etc.

The driver and the owner of the offending vehicle filed written statement claiming that the offending vehicle was not parked in the middle-of-the-road. It was also denied altogether that any accident took place with the vehicle bearing Reg. No. HR-63C-2151. It was still further pleaded that since the vehicle in question was insured with respondent No. 3 Insurance Company, therefore, if any liability arises out of the alleged accident then the liability to make the payment of the entire amount of compensation would be of respondent No. 3, the insurance company.

Insurance company filed their separate statement and pleaded that the accident in question did not happen with the alleged offending vehicle. It was further pleaded that the driver of the offending vehicle was not having valid driving license, route permit and fitness certificate for the vehicle in question, therefore, denied its liability.

Both the claim petitions were clubbed together for the purpose of evidence and the decision.

Jugni Devi appeared as PW1 and also examined Parmod Kumar, the eye witness of the accident, as PW2 to prove their case. Raj Kumari appeared as PW3 to prove the accident and her injuries and the claim.

After appreciating the evidence and the pleadings of the parties the learned Motor Accidents Claim Tribunal held that the accident had occurred due to the negligence of driver of the offending vehicle. It was further held that the claimants, filed the claim petition on account of death of the said Kilanand, have failed to prove any income and the age of the deceased. Therefore his earning was taken by the learned Motor Accidents Claim Tribunal at ₹ 6000/- per month on the basis of the prescribed minimum wages at the time of accident and the age was taken to be 45 years on the basis of the Postmortem Report. Further as per the law laid down by the Hon'ble Supreme Court in ***Rajesh v/s Rajbir etc., 2013, ACJ, 1403***, the Tribunal added 30% of the income of the deceased towards the future prospects as the deceased was held to be of 45 years of age at the time of the accident. Therefore, the income of the deceased was presumed to be ₹ 7800/- per month and the Annual Income was assessed to be ₹ 93,600/-. Still further in view of the judgment of the Hon'ble Supreme Court in ***Sarla Verma and others v/s Delhi Transport Corporation and others, 2009(3) RCR (Civil)*** *77*, deduction of 1/4th was made towards his personal expenses and therefore, the annual dependency of the claimants was assessed to be ₹ 70,200/-. Still further as per the age of the deceased and in view of the judgment of the Hon'ble Supreme Court in ***Sarla Verma*** case (Supra), multiplier of 14 was applied. Accordingly ₹9,82,800/- was assessed to be the total loss of dependency. In addition to this an amount of ₹25,000/- was also awarded on account of loss of consortium and love and affection. On account of expenses on last rites ₹5000/- was awarded. Therefore, a total compensation of ₹ 10,12,800/- was awarded by the Motor Accident Claim Tribunal in death case.

In the claim petition of Raj Kumari, the injured claimant, the learned Tribunal held that the claimant has not led any evidence regarding the expenses incurred by her. However relying upon the discharge slip of PGIMS, Rohtak and the follow-up treatment, the Tribunal awarded a sum of ₹15,000/- for medicines, a sum of ₹5000/- as attendant charges and ₹5000/- for special diet and also ₹5000/- on account of transportation charges. Besides this ₹5000/- were awarded for pain and suffering. In view of the above, a total amount of ₹35,000/- was awarded to the injured claimant in her claim petition.

Aggrieved against the order passed by the Motor Accident Claims Tribunal, the insurance company-respondent No. 3; has filed the present appeal challenging the award passed by the Tribunal. It deserves to be mentioned here that before the Tribunal, the Insurance Company had given up its challenge as to the license of the driver as well as to the vehicle being driven in violation of the terms of policy. Therefore, that point need not to be gone into in the present appeal.

In the present appeal, the learned Counsel for the insurance company has restricted his argument only on two grounds. Firstly, that the learned Tribunal should not have awarded the compensation on account of loss of future prospects. Secondly, there was contributory negligence of the driver of the Three-Wheeler in which the deceased and the injured were travelling.

To buttress his argument that no compensation for future prospects could be granted; in case the deceased was a self-employed person; the counsel relies upon judgment of the Hon'ble Supreme Court passed in ***Civil Appeal No. 3409 of 2017 titled as Chikkamma and another V/s Parvathamma and another***.

However, this judgment is of no help to the case of the respondent Insurance Company. A bare perusal of this judgment shows that in this case Hon'ble the Supreme Court has simply not gone into claim of the claimants for future prospects, *in the facts and circumstances of that case.* Although in this judgment, the Hon'ble Bench has also made the mention of the reference pending before the larger bench, however, the Court has stopped short of expressing any views on this point. This judgment by no means can be interpreted to lay down a law, as a matter of fresh precedent, that no amount on account of future prospects could be awarded to the claimants for the death of the deceased, who was self-employed. It is the settled law that the judgments of the courts are not to be read like the provisions of the statute so as to assign meaning to each and every sentence or the word used in a judgment. Hence a judgment has to be taken as a precedent only if it qualifies the test of being a legal precedent. As stated above, in this judgment, the Hon'ble Supreme Court has neither considered the point of the grant of compensation on account of future prospects to the dependents of a self employed deceased, rather has declined to go into this aspect in that case, nor has decided the same. Unlike in case of interpretation of a statute, an attempt cannot be made to find out or to assign the intention of the court in case of reading of a judgment. A judgment is a precedent only to the extent it expressly lays down law on a point, after the same having been pleaded and argued by the parties to the lis and considered and expressly decided by the court. No such specific consideration and specific decision on the point of grant of compensation is discernible in this judgment. Hence this judgment of the two Hon'ble Judges cannot be interpreted to have over-ruled the existing precedent on the point of grant of future prospects, as contained in the three Judges' Bench judgment of the Hon'ble Supreme Court in case of ***Rajesh and another v/s Rajbir and another*** (Supra).

The next limb of the argument of the learned Counsel for the respondent insurance company is that since the matter has been referred to the larger bench by the Hon'ble Supreme Court of India, therefore, the compensation on account of future prospects cannot be granted till the same is finally decided by the Hon'ble Supreme Court. To support his argument the counsel relies upon judgment of the Hon'ble Supreme Court in the case of ***Chikkamma*** (Supra) and a judgment of this court rendered in ***FAO No. 2455 of 2015 decided on 02-02-2017 titled as Usha and another V/s Krishan and others***.

However, as stated above, the judgment of the Hon'ble Supreme Court rendered in the case of ***Chikkama*** (Supra), was a decision on a *lis* only in the facts and circumstances of that case. It does not lay down; as a precedent; the law that the compensation for future prospects cannot be granted on account of death of a self-employed person. Nor does it lay down a law that once the matter is referred to the larger Bench of the Supreme Court then the existing precedent contained in the judgment of the Supreme Court will not be followed. Hence this judgment of the Hon'ble Supreme Court is not of any help to the counsel for the respondent insurance company.

So far as the judgment of this Court rendered in case of ***Usha***

and another V/s Krishan and others (Supra) is concerned, it also does not lay down the law that the compensation for future prospects cannot be granted on account of death of a self employed person. Rather in this judgment the Court declined the compensation on account of future prospects on the ground that there were 'no exceptional or extraordinary circumstances in the case'. This implies that the Bench followed the judgment of the Hon'ble Supreme Court rendered in ***Sarla Verma's*** case (supra) instead of the later precedent contained in the judgment of the Hon'ble Supreme Court in case of ***Rajesh and another V/s Rajbir and another*** (supra). At the same time the Bench also observed that since the matter had been referred to the larger Bench and it would not be possible for the insurance company to make recoveries if the reference is decided laying down the law that no compensation could be granted in case of death of a self employed person. However, I beg to differ with my sister Judge on both these aspects for the reason in following para.

Although the point of future prospects has been referred to the larger bench of the Hon'ble Supreme Court, however, till the larger Bench takes a different view; the judgment of the Supreme Court which holds the field as of today; is the binding precedent for this Court. The point as decided by the larger bench of the Supreme Court; shall hold the field only after and as and when it is pronounced by the Hon'ble Supreme Court. The otherwise available right of the party before the Court cannot be denied by this Court only for the reason that Hon'ble Supreme Court has kept the point qua that right for reconsideration. Keeping a point for reconsideration does not, by implication, over-rule the existing judgment/precedent on that point. Therefore the amount of compensation on account of future prospects cannot be denied to the claimants on the ground that the matter has been referred to the larger Bench.

In view of this Court, the observations in case of ***Usha and another V/s Krishan and others*** (Supra), that since the matter had been referred to the larger Bench and it would not be possible for the insurance company to make recoveries; if the reference is decided laying down the law that no compensation could be granted in case of death of a self employed person, does not appear to have any jurisprudential basis. There are several and too many assumptions underlying this observation. This observation assumes that if that appeal was decided by that Bench by granting compensation for future prospects then the insurance company would have gone into appeal before the Hon'ble Supreme Court and in the appeal the Hon'ble Supreme Court would have decided the matter in the favour of the Insurance Company, presumably, on the basis of the answer to the reference by the larger Bench in favour of the Insurance Company; and in that eventuality, it would not be possible for Insurance Company to recover the amount granted and paid to the claimants on account of future prospects. It is not legally appropriate for a Court of law to assume so many things and to assume in favour of one party to the *lis* before it when there is no legal sanction for such presumptions. The Court cannot supposed to be seen to be lenient towards a party to the *lis* except by putting to question the very justification on which the very existence of the Court is based, that is, the need of an impartial adjudication based on the rule of law. Perceived hardship to one party to the *lis* before the Court cannot be a ground not to follow the law or to keep the implementation of law in abeyance. In case of any adjudication by a court of law; one party to the *lis* shall, invariably, be put to hardship. This would render the very process of the Court as nugatory.

Learned Counsel for the appellant has argued that the deceased had claimed to be a self employed and there is no evidence led by the claimants regarding the future prospects of the deceased. Therefore, no compensation could have been granted to the claimants on this count.

Evidence for future events ! There can be none. The assessment of future prospects of a deceased is not an exercise for actual determination of his future income. It is an exercise by posteriority based entirely on presumptions and assumptions. Even in the case of an employed person, there cannot be any evidence regarding the future events qua his employment. May be, he would have missed his due promotion due to his default, he would have been dismissed from service on any given day or he would have expired on any other given day. Therefore, even in case of an employed person whatever evidence is led before the Tribunal; that is only to show some 'enabling' or 'legal provisions' which might permit certain possibilities in the service carrier of an employee and not his actual ***future*** competence, capacity, achievements or entitlements earned through those enabling or legal provision. Showing such enabling or legal provision to the Court may show some probability of future achievement of an employed person, like saying – may be – may not be. But this much frequency of 50 % probability is always present qua any uncertain future event. But showing such provisions, by no means, brings the case of such employee within the preponderance of probability of his future actual promotions and future actual increase in income. There cannot be any evidence of what an employee, even in Govt. employment, could have been in future. So what the Court considers even in case of an employed person, for assuming the future prospects, is only the possible situations in the course of service tenure of an employee in ***'normal course'*** if not hindered by any adverse events/circumstances. So, in case of an employed person, for assessing the future prospects, the Court assumes that nothing adverse would have happened to the deceased in future and he would have gained by his competence, experience gained due to the length of duration of his employment. Would it be legal to deny such assumption in case of a self employed person? Would not a self employed person be able to march forward in his life in terms of money in future in '***normal course'?*** In absence of any adverse events or circumstance in future; would not a self employed person have increased his competence, experience and entitlements due to his length of duration of his work /self-employment? These are the questions which are required to be answered by the Court before denying the benefit of future prospects on account of death of a self employed person; in the face of the fact that such benefit is granted by Courts in case of an employed person. This Court finds answers to the above questions in affirmative in favour of the self employed person.

The self employed person means a person who is generating his livelihood from means other than his formal employment for remuneration; payable at regular intervals; by other person or entity. Hence, the self employed would include all the private professional, skilled persons, semiskilled persons and unskilled workforce. In this backdrop, this matter has to be considered with the assumption of ***'normal course'*** of events; excluding any adverse or hindering circumstances and also further presuming, as in case of an employed person, that the self employed person worked with his full capacities and gained experience due to length of working duration.

Assuming the above-said framework, the Court has to take judicial notice of the achievements of the self employed persons of the relevant field to assess the future prospects of the deceased person. The social experience shows that a person working as an Advocate, Architect, or even as an Electrician or a Mason does not remain stagnated at the same earning at which they started their earning sojourn. Many of them end up earning huge amounts and actually employing many other persons to accomplish their private work. Even a Plumber or a Construction labourer turns to be Contractor or Labour Service Provider in long and due course. Although one can argue that they may not have the necessary legal permissions from the authorities for carrying out the work of Contractor or the Labour Service Provider. But at the same time, when assessing the future prospects of a deceased person the Court is not assessing his actual legal status but is assessing only the possible increase in his income in future. Otherwise also, denying the benefit of future prospects qua a deceased self employed person would be a distortion in deductive logic. Once the Court / Tribunal assumes that the deceased was having a will to earn, was capable of earning and was having some income on the basis of that will and capability at the time of his death then the Court cannot afford not to assume, without failing in human deductive logic, that such a person shall be having the will and capability to increase his income when the increased responsibilities of life would necessitate it. Tested on abovesaid paradigms the self-employed person stands on the same footing, if not higher, as the employed person. Hence, this court does not agree with the contention of the learned Counsel for the appellant that no compensation could be granted on account of the death of a self-employed person.

Learned counsel for the appellant has further made the prayer that since the matter is pending consideration of a larger bench before the Hon'ble Supreme Court, therefore, present appeal be adjourned sine die to await the decision of the Larger Bench and in the meantime, the payment of the compensation be kept in abeyance. For this purpose, he has relied upon certain interim orders passed by Coordinate Benches of this Court. However, this Court does not find any justification in this prayer. Just to await a possible judgment in favour of one of the parties to the *lis* in future; this Court cannot deny the other party a decision of its case as per the existing law. This Court finds that it would not be legally correct if it ignores the existing precedent binding on it just to keep alive the hope of the one party before it qua a possible precedent coming into being in its favour. Law is to be implemented in the present tense. Speculative positioning is not the policy of law. The Hon'ble Supreme Court, of course, may have the privilege of adjourning a case to await the decision of its Larger Bench, since it keeps re-visiting its earlier judgments / precedents. However this Court cannot, legally, keep in abeyance the implementation of the existing law just to keep alive the hope of one of the parties before it qua the possible law coming into being in its favour.

The next contention of the learned Counsel for the appellant is that in case, this Court grants the compensation on account of future prospects then it may be ordered that the amount be kept in a fixed deposit and that it shall not be paid till the reference is decided by the larger bench of the Supreme Court. Still further, in alternative, it is the submission of the learned counsel for the appellant Insurance Company that the payment of compensation qua the amount granted on account of future prospects be ordered to be paid subject to furnishing of the equivalent Bank Guarantee. One more submission made by the counsel for the appellant is that a direction may be included in the final decision of this case; to the effect that in case the reference is decided by the larger bench in favour of the Insurance Company, then Insurance Company shall be entitled to recover from the claimant the amount of compensation granted on account of future prospects without any further reference to any Court. To support these contentions, the learned Counsel has relied upon judgments of this Court reported as ***2016 (3) PLR 528 titled as Reeta Mahajan and others versus Hans Raj and another*** and the case reported as ***2017 (1) PLR 152 titled as Manjit Kaur and others versus Alla Dutta and others***.

However, with due deference qua the abovesaid judgments, this Court finds that issuing a direction for keeping the amount in bank deposit or disbursal of the same against a bank guarantee is not supported by any established legal basis. Once the Court is deciding the rights and entitlements of the parties *finally*, and giving its final decision on the *lis* between the parties, then the Court is not supposed to pass contingent or conditional *final* judgment, by including certain stipulations which go against the extent of the right/entitlement of the party finally determined and granted by the main order / judgment. Otherwise, it would be a legal contradiction in terms. The Court may pass some directions regarding 'fix deposits' etc. to protect the money and interest of the party in whose favour it is deciding the *lis;* since that would only be in the line of the main decision of the Court. However no order regarding 'Fix Deposits' or furnishing 'Bank Guarantee' etc. can be passed in favour of the party against whom the liability has finally been determined by the main judgment. Such a stipulation eclipses the final judgment itself.

Otherwise also, since the final decision / judgment is subject to the appeal before the higher Court, so, passing such type of directions in a final judgment amounts to providing a basis to the party; in whose favour such contingent directions are passed; to obtain an interim order in its favour from the appellate court, in case of a possible appeal by it against the final judgment. Therefore, this kind of directions amounts to prejudicing the case of the succeeding party, in case of a possible appeal by the other party, even before the appeal is filed by the other party.

Recovery rights, to a party against whom the final judgment determines the liability to pay in absolute terms ! It would rather be a travesty of justice. Either the Court decides that it is granting a right or it decides that it does not grant a right. Once the court determines that it is granting a right then there is no question of granting recovery rights to a party against whom the liability arises from the grant of such right by final judgment.

As a last resort, learned counsel argues that the money of the

Insurance Company is a tax-payers / public money and it should be saved from being wasted or being put to risk. Raising this argument is questioning the very desirability or legality of the Insurance Business. The very basis of the contract of Insurance is the 'Risk Cover' qua the insured, which means putting the money of Insurance Company to 'Risk' by covering the risk of the insured in lieu of the consideration charged in the form of the premium. If the element of 'Risk Cover' is taken out of the Contract of Insurance, then the very contract becomes illegal, as per the provisions of the Indian Contract Act, having slipped in the realm of gambling. The money of the Insurance Company is not the tax-payers money or the public money. It is the money of a business entity which has come into being to earn profits from the business of insurance. It enjoys the privilege of 'premium' from the statutorily 'Compulsory Insurance'. Therefore, it has a liability of compulsory payments as well, which can be avoided by it only on the grounds statutorily available to it. So requirement of paying money arising out of its liability from a final decision of a Court, by no mean, can be termed as wastage of public money or putting the public money to risk. It is the legal purpose for which the business and the money of Insurance Company are meant.

So far as the argument of the learned counsel for the respondent Insurance Company regarding the contributory negligence is concerned, suffice it to say that the Insurance Company has not laid down any factual basis for raising this argument. Mere fact that there has been a collision between two vehicles does not, *ex-facie*, prove the fact that it was negligence of both the drivers and therefore, the contributory negligence.

The fact of contribution towards the accident by the driver of the vehicle other than the offending vehicle has to be specifically pleaded and proved by the party who claims it. The Insurance Company, although took the plea of contributory negligence of the driver of the Three-Wheeler, however, it did not lead any evidence whatsoever to substantiate its plea. The question of contributory negligence is not a question of presumption. It has to be proved by leading positive evidence. In the present case, the respondent Insurance Company would have produced the driver of the offending vehicle as its witness to show that offending vehicle was correctly parked or that there was some negligence on the part of the driver of the Three-Wheeler as well. However, the respondents have not examined any witness in the case. Hence the contributory negligence is not proved by the respondent Insurance Company. Therefore this argument of the learned counsel for the Insurance Company has also to be rejected.

No other argument was raised by the learned counsel for the appellant.

In view of the above, both the appeals fail and the same are hereby dismissed.

17th August, 2017 **[RAJBIR SEHRAWAT]**
Shivani Kaushik **JUDGE**

Whether speaking/reasoned *Yes*

Whether Reportable *Yes*