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

**FAO No. 4863 of 2017**
**Decided on 24.08.2017**

**National Insurance Company Ltd.**
**... Appellant**

**VERSUS**

**Manjeet Kaur & Others.**
**........ Respondents.**

**CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT.**

**PRESENT : Mr. Harjinder Sintgh Advocate for the appellant.**
**Mr. Sajan Aggarwal, Advocate for the respondents.**

**RAJBIR SEHRAWAT, J.**

This is an appeal filed by the Insurance Company challenging the Award passed by Motor Accident Claims Tribunal, Kaithal whereby the claimants, who are the parents and sister of deceased Daman Pal, were granted an amount of Rs.19,69,000/- as compensation on account of death of above said Daman Pal in a motor vehicular accident.

The facts, as stated in brief and as involved in the case, are that on 11.04.2016 claimant Aminder Singh had gone to Kaithal for his personal work on a motor cycle. His son Daman Pal had also separately gone to Kaithal to attend the Court proceedings in an accident case ; being the complainant. It is pleaded that when Aminder Singh was returning from Kaithal to Cheeka and reached Siswan by-pass, Kaithal, he saw that his son Daman Pal was standing there with his motorcycle bearing registration No.HR-09C-8981. On meeting his son Aminder Singh talk to his son and enquired about Court proceedings on that day. Thereafter both of them started for Cheeka on their respective motorcycles. At about 10.30AM, when they reached the area of village Polar near Bhagwan Devi petrol pump, then a car bearing registration No.HR-21K-4557 came from behind. This car was being driven by respondent No.1, Bhupesh, in a rash and negligent manner. The car hit motorcycle of Daman Pal from behind. As a result of this hitting Daman Pal fell down on the road along with motorcycle and the car crushed his head and later hit a tractor-trolley which was going ahead of motorcycle of Daman Pal. It was pleaded that after accident the driver of the offending vehicle ran away from the spot. Daman Pal had died at the spot due to accidental injuries.

Respondent No.1, driver-cum-owner of the offending vehicle filed written statement. Besides taking routine preliminary objections, he asserted that no accident had taken place with his car. It was further pleaded that even if the accident had occurred, the offending vehicle was duly insured with the respondent-Insurance Company and the driver was having valid driving licence. So, in any case, it would be the liability of the Insurance Company to pay the compensation.

Respondent No.2 Insurance Company has also filed separate written statement and claimed that no accident had occurred due to fault of the offending car in question. It was further pleaded that, if at all any accident happened, it was due to rash and negligent driving of the motorcycle by the deceased. Besides this, the other routine pleadings regarding violations of terms and conditions of the insurance policy, lack of fitness certificate and the invalidity of driving licence etc. were also taken by the Insurance Company.

The claimants led their evidence to prove the negligence of the offending vehicle and to prove their claim regarding the age and income of the deceased. The respondent No.1 brought on record the copy of the driving licence of the respondent No.1 and the copy of the insurance policy and also the registration certificate of the offending vehicle. But, no witness was examined by the respondents. After hearing the learned counsel for the parties and appreciating the evidence on file, the Tribunal held that the accident took place due to rash and negligent driving of the respondent No.1. Therefore, the offending vehicle was held liable for causing the accident. Since the Insurance Company had given up its plea regarding validity of the driving licence and the Insurance policy, therefore, the liability of paying the compensation was held to be upon the respondent-Insurance Company.

While assessing the income, the Tribunal assessed the income of the deceased on notional basis. Considering the age, qualification and the merit of the deceased, who was a student of Pharmacy and had excelled in field of sports etc., the income was taken to be Rs12,000/- per month. To this income 50% was added as income for future prospectus. Therefore, the annual income of the deceased was assessed to be Rs.2,16,000/- (Rs.18,000x12). However, keeping in view the judgment of Hon'ble Supreme Court in ***Sarla Verma and others v/s Delhi Transport Corporation and others, 2009(3) RCR (Civil) 77***, a deduction of 50% was made by the Tribunal on account of personal and living expenses of the deceased. Hence the annual dependency of the claimant was assessed by the Tribunal to be Rs.1,08,000/-. Still further, in view of the judgment of the Hon'ble Supreme Court in ***Sarla Verma and others' case (Supra),*** keeping the age of the deceased in view the multiplier of 18 was applied and therefore, total compensation of Rs.19,44,000/-(1,08,000x18) was assessed on account of loss of dependency. Besides this, an amount of Rs.25,000/- was awarded on account of funeral expenses in view of judgment of Hon'ble Supreme Court in case ***Rajesh and others v/s Rajbir Singh and others , 2013, 9 Supreme Court Cases page 54*****.** Therefore, a total compensation of Rs.19,69,000/- was awarded to the claimanants on account of death of Dhaman Pal.

Assailing the Award, the Insurance Company has filed the prsesent appeal.

The counsel for the appellant, while arguing his case has submitted that the Tribunal has erred in adding the income on account of future prospectus while assessing loss of dependency since the deceased was not an employed person. To support this argument he has relied upon judgment of Hon'ble Supreme court rendered in **Civil Appeal No.(S).3409 of 2017 decided on 28.02.2017 Chikkamma and anr. Vs Parvathamma and Anr .** He has further relied upon the decision of this Court in the case of **FAO No.2445 of 2015 deided on 02.02.2017 titled as Usha and another vs Krishan and others**. His further argument is that the Tribunal has wrongly assessed the income of the deceaed at Rs.12,000/- pm whereas the claimants had not led any evidence to support their claim that the deceased was earning Rs.15,000/- per month. He has further argued that the Tribunal has wrongly applied the multiplier as per the age of the deceased. In fact, according to the counsel for the appellant, the multiplier should have been applied as per age of the claimants. To support his argument, the counsel has relied upon the judgment of the Hon'ble Apex Court rendered in ***2007(10) Supreme Court Cases page 01 titled as NYC VS. SHANTI PATIL.*** To support his argument he has also relied upon the judgment of Hon'ble Supreme Court reported in **2011 ACJ page 15 titled as Shanti Devi vs. New India Assurance Company Ltd**.

In the last, he submited that since the matter regarding grant of future prospectus has been referred to the larger Bench by the Hon'ble Supreme Court, therefore, the Tribunal should not have awarded the benefit of future prospectus since the deceased was treated as a student and not as an employed person.

On the other hand, the counsel for the respondents/claimants relied upon the judgment of Hon'ble Supreme Court rendered in **2015 (3) SCC (Civil) page 315 Munna Lal Jain and another vs. Vipan Kumar Sharma and others** to contend that the Tribunal has rightly applied the multiplier as per the age of the deceased. He further relied upon the judgment to support the grant of future prospectus. Counsel for the appellant has further relied upon the judgment of the Hon'ble Supreme Court reported in **Ashvinbhai Jayantilal Modi vs. Ramkaran Racmchandra Sharma and another ; 2014(4) RCR (Civil) page 543** and argued that the income of the deceaed has rightly been assessed because in this judgment, the Hon'ble Supreme Court had assessed the income of the medical student at Rs.25,000/- per month. His contention is that in the present case, the deceased was a student of Pharmacy, therefore, the Tribunal has not committed any illegalility in assessing notional income of the dceased at Rs.12,000/- per month.

After hearing the learned counsel for the parties and going through the records, this Court is of the considered opinion that there is no illegality infirmity or perversity in the findings recorded by the Tribunal.

So far as the argument of the learned counsel for the appellant qua the multiplier is concerned, the Tribunal has followed the judgment of Hon'ble the Supreme Court only, rendered in **Munna Lal Jain and another's case (supra)** and hence the multipier applied by the Tribunal is correct and is in accordance with the decision of Hon'ble the Supreme Court. Learned counsel for the appellant argued that the Hon'ble the Supreme Court, while rendering judgment in **Munna Lal Jain and another's case (supra)** has not considered the other decisions of Hon'ble the Supreme Court on this point. However, this Court is of the opinion that it was not for the Tribunal to re-assess the decision of Hon'ble the Supreme Court on the ground that in its judgment Supreme Court has not considered same earlier decisions of the Supreme Court. The precedent set by Hon'ble the Supreme Court in **Munna Lal Jain and another's case (supra)** is binding precedent for this Court as well. Hence there is no illegality in the Award so far as the applying of the multiplier is concerned.

The second argument raised by the lerned counsel for the appellant regarding the future prospectus is also to be noticed only to be rejected. While allowing the benefit of addition of income towards future prospectus of the deceased, the Tribunal has relied upon the judgment of Hon'ble Supreme Court in **Munna Lal Jain and another's case (supra)** and the judgment of **Rajesh vs. Rajbir (supra)**. There is nothing wrong or illegal in the reliance so placed by the Tribunal on the judgment of Hon'ble the Supreme Court in awarding the benefit of future prospectus to the claimants. This Court has also already considered this matter in another **FAO No.7902 of 2016 decided on 17.08.2017 titled as Bharti AXA General Insurance Company Ltd vs. Jugni Devi and others**. The relevant part of the judgment in that case is reproduced below :-

> "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, semi-skilled 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."

In view of the above, this Court does not find any illegality in the grant of benefit of future prospectus to the claimants on account of death of the deceased.

The next argument raised by the counsel for the appellant regarding assessment of income is also liable to be rejected and the argument raised by the counsel for the respondents that the notional income of the deceased has rightly been assessed by the Tribunal at Rs.12,000/- per month deserves to be accepted. Hon'ble the Supreme Court in the judgment of **Ashvinbhai Jayantilal Modi's**

**<u>case (supra)</u>** has taken the income of a medical student as Rs.25,000/- per month. Although, there is no parity between a medical student and student of pharmacy, yet the student of pharmacy also would have definitely earned more than unskilled or skilled labourer. Therefore, the Tribunal has rightly assessed the income of the deceased at Rs.12,000/- per month. Not only this, even Hon'ble the Supreme Court has assessed the income of even school going student to be Rs.10,000/- and above in some cases. Therefore, the assessment of Rs.12,000/- as notional income of the deceased was fully justified.

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

In view of the above discussion, the present appeal fails and the same is hereby dismissed being devoid of any merit.

**( RAJBIR SEHRAWAT )**
**JUDGE**

**August 24, 2017**
**sv**

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