IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5248 of 2017 (O&M)
Date of Decision: 03.08.2017

National Insurance Company Ltd. ....Appellants

Vs.

Neeraj Devi and others ....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Suman Jain, Advocate,
for the appellants.

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<u>RITU BAHRI, J. (ORAL)</u>

<u>CM No.16273-CII of 2017</u>

For the reasons stated in the application, delay of 6 days in filing the appeal is condoned.

Application stands disposed of.

<u>Main Case</u>

Present appeal has been preferred by the appellant/Insurance Company (for short 'the appellants'), against award dated 12.04.2017, passed by the learned Motor Accident Claims Tribunal, Karnal (for short, 'the Tribunal') vide which compensation to the tune of Rs.29,71,200/- was awarded to the claimants on account of death of Sanjeev Kumar.

The brief facts of the case are that on 04.03.2016, the deceased Sanjeev Kumar was driving his motor cycle No.HR05AD-8068 at moderate speed and on left side of the road. He was coming from Dasora Majra. When he reached near Olympic Chowk No.2, Jharmari Baddi, then a truck No.HP12B-9657 allegedly driven by respondent No.1-Suresh Kumar rashly, negligently and at high speed and struck against the motor cycle of Sanjeev Kumar who fell down along with his motor cycle and suffered serious multiple and grievous injuries on the vital parts of his body as front tyre of the truck crossed over his body. He was shifted by respondent No.1 to the hospital but doctors declared him dead. An FIR No.34 dated 04.03.2016 for the offence under Sections 279, 337, 304-A IPC was registered against the respondent No.1.

The learned Tribunal has held that deceased Sanjeev Kumr was 25 years of age as per postmortem report Ex.P13. The learned tribunal after going through the evidence on record had assessed the compensation as under:-

Sr.No.	Heads of compensation	Amount
1	Salary per month (as per Ex.P7 certificate issued by Pal Engineers and Form 16)	Rs.13200/-
2.	50% Future prospect (As per judgment of Rajesh Rajbir)	Rs.13200/ + Rs.6600/-= Rs19,800/-
3.	Deduction 1/3rd.	Rs.19800/- --- Rs.6600/-= Rs.13200
4.	Annual loss of dependency after applying the multiplier	Rs.13200/- X 12 X 18= Rs.28,51,200/-
5.	Loss of consortium	Rs.1,00,000/-
6.	Conventional heads	Rs.20,000/-
	Total	Rs.29,71,200/-

However, now coming to the argument of learned counsel for the Insurance Company that since the issue with regard to the payment of future prospects in case of a daily wager has been referred to larger Bench by Hon'ble the Supreme Court in a case of National Insurance Co. v. Pushpa and others, 2015 (9) SCC 166, therefore, till the decision is pending, the daily wagers are not entitled to payment of future prospects.

This Court in **FAO No.3743 of 2016 titled Santosh Versus Kailash Chand & ors.** has considered the aspect for grant of future prospect where the deceased was even a daily wagers.

There are two divergent opinions with regard to giving of future prospects, have been expressed in the judgments of Hon'ble the Supreme Court of India in cases of Reshma Kumari and others vs. Madan Mohan and anr. 2013(9) SCC 65 and Rajesh and others vs. Rajbir Singh and others, 2013(9) SCC 54. There is a difference of 10 days in the above judgments, as the judgment in Reshma Kumari's case (supra) decided on 02.04.2013 and the judgment in Rajesh Kumar's case (supra) decided on 12.04.2013.

In Reshma Kumari's case (supra), Hon'ble the Supreme Court was dealing with a case of a deceased who was 15 years of age at the time of the accident. Hon'ble the Supreme Court while referring to a judgment of Sarla Verma's case (supra) held that where the deceased was self employed or was on fixed salary without provision for annual increments, the actual income at the time of death without any addition to income for future prospects will be appropriate. A departure from the above principle can only be justified in extraordinary circumstances and very exceptional cases. After this judgment, Hon'ble the Supreme Court in Rajesh's Kumar case (supra) while referring to the judgment of Hon'ble the Supreme Court of India in a case of Santosh Devi vs. Union of India and others, 2016(3) S.C.T 102 had explained in detail with regard to the self employed who get fixed income. It has been held that it cannot be denied that there has been incremental enhancement in the income of those who are self employed and even those engaged on daily basis, monthly basis or even seasonal basis. With a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. An example of tailor was given who earns his livelihood by stitching clothes. If the cost of living increases and the prices of essential go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour like barber, blacksmith, cobbler, mason etc.

In para 11 and 12, it has been observed as under:-

> " Since, the Court in Santosh Devi's case (supra) actually intended to follow the principle in the case of salaried persons as laid in Sarla Verma's case (supra) and to make it applicable also to the selfemployed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.
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> In Sarla Verma's case (supra), it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view

> that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter."

The Co-ordinate Bench of this Court has held in FAO No. 3209 of 2016 titled **New India Assurance Company Limited Versus Som Pal and others** 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 argument was raised. Appeal dismissed

(RITU BAHRI)
JUDGE

03.08.2017
anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No