IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

FAO No.6002 of 2017 (O&M)
Date of Decision : 14.09.2017

National Insurance Co. Ltd. ....**Appellant**

versus

Sarita Devi and Ors. ....**Respondents**

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Sandeep Suri, Advocate
for the appellant.

RAJBIR SEHRAWAT, JUDGE (ORAL)

This is an appeal filed by the Insurance Company challenging the award dated 12.04.2017 passed by the Motor Accidents Claims Tribunal, Chandigarh (hereinafter referred to as the Tribunal), whereby the claimants, who are the widow, minor son, daughter and the mother of deceased-Rashpal Singh who had expired in a motor vehicle accident, were held entitled to compensation.

The facts of the case as stated in claim petition are that deceased-Rashpal Singh who was about 48 years of age at the time of accident, was working as a book binder with Nirmal Printers, SCF No.84, Sector 24-C, Chandigarh and getting Rs.12,000/- per month as a salary. Besides, he was also doing job of book binding at home from which he was also earning Rs.10,000/- per month. It was further pleaded in the claim petition that on 06.12.2015 at about 08.05 P.M. the deceased was on his way from Sector 41 and was going for personal work towards Sector 42, Chandigarh. The deceased was riding his cycle. When he reached near FCI Turn near Commerce College, the offending Tempo Traveller bearing Registration No. PB-01-A-1681 came from the backside and hit the cycle of Rashpal Singh, as a result of which he fell on the road and received head injury and other multiple injuries on his body. This accident was witnessed by Devinder Singh and other persons present near the place of accident. Devinder Singh-passerby, informed the Police Control Room. The police arrived at the spot and had taken the deceased to PGI, where he succumbed to the injuries. On account of this accident, claim petition was filed by the claimants for claiming the compensation.

Respondents No.1 to 3 filed the written statement and contested the claim of the claimants. Respondent No.1-driver claimed in the written statement that he was not driving the vehicle at the time of accident. However, he claimed that he was having a valid driving licence. Respondent No.2 took a stand that his vehicle has been wrongly involved in this accident and no accident took place with his vehicle. Respondent No.3-Insurance company, who is the present appellant, filed a separate written statement taking usual plea of limitation, mis-joinder, estoppel etc. On merits, it was pleaded that the Insurance Company is not liable to pay the compensation as the driver was not holding a valid driving licence. It has further pleaded that the vehicle was being driven without any valid registration certificate, fitness certificate and also without route permit. It was further pleaded that the owner of the vehicle, which was insured, has violated the terms and conditions of the policy. Still further it was claimed that the liability of the Insurance Company was limited to the extent as prescribed under the statutory provisions.

The parties led their evidence. After appreciating the evidence and hearing the parties, the Tribunal assessed the income of the deceased to be Rs.12000/- per month. His age was taken as 51 years of age as per the post-mortem report. Applying the multiplier of 11, the total compensation of Rs.15, 02,000/- was awarded by the Tribunal. The Insurance Company is in appeal against this award of compensation.

While arguing the case, counsel for the Insurance Company has submitted that the income of the deceased has been assessed on the higher side. It has been argued by the counsel that since the employer, who was examined by the claimants as witness, has not produced the income tax statement or any other record regarding payment of salary to the deceased, therefore, the income of the deceased could not have been taken at Rs.12,000/- per month. He further contends that the employment of the deceased was also not proved. It is his further contention that, in any case, the income of the deceased should have been taken as per the notification issued for the prescription of minimum wages and as per the minimum wages notification at the relevant time, the minimum wages was prescribed as Rs.8,200/- only. The next contention of the learned counsel for the appellant-Insurance Company is that the Tribunal has wrongly awarded the benefit of future prospects to the claimants since the deceased was a self-employed person. It is his further submission that as the matter regarding grant of compensation on account of future prospects is pending before the Larger Bench of the Supreme court, therefore, the compensation for future prospects cannot be granted to the claimants till the reference is answered by the Larger Bench.

After hearing the learned counsel for the appellant and having perused the record, this Court is of the view that the contentions of the learned counsel for the appellant as noticed are liable to be rejected.

So far as the assessment of the income of the deceased is concerned, the claimants have produced the employer before the Tribunal to prove the employment and the salary being paid to the deceased. He has categorically deposed that the deceased was employed with the firm owned by him. He has further stated that the deceased was paid Rs.12,000/- per month as a salary. He has been cross-examined by the respondents. But nothing substantial could be extracted from this witness to impeach his assertion regarding employment of the deceased. The next contention of the learned counsel for the appellant is that this witness had also accepted that he is not having any record regarding the employment of the person at the time of deposition. However, this is only an attempt by the counsel to take out a single line from the cross-examination wherein otherwise this witness has stated several times that the deceased was working with the firm and he was being paid the said salary. Not only this, the witness has also deposed that besides the deceased-Rashpal Singh; other persons, which he specifically names in the deposition, were also working in the firm. He specifically names, at least, eight workers who were working with the firm at that point of time. Therefore, the employment of the deceased has been duly brought within the pre-ponderance of the probabilities by the deposition of this witness. If the Insurance Company wanted to discredit this witness then the Insurance Company could have very well produced any witnesses on its own behalf to show that either this firm does not exist or the deceased did not work in this firm. However, no such evidence was led by the appellant-Insurance Company.

Therefore, there is no perversity in the assessment of the income made by the Tribunal. Not only this, it has come on record and also so recorded by the Tribunal that the deceased was an experienced binder. He was a skilled person involved in a work which can be done even sitting at home and therefore, this factor has also been taken into consideration by the Tribunal. Besides this the Hon'ble Supreme Court of India in ***V.Mekala Vs. M. Malathi and Anr., Civil Appeal No.4880 of 2014, decided on 25.04.2014*** has taken the income of a student also to be Rs.10,000/- per month in case of an accident which happened in the year 2013. Therefore, there is absolutely no perversity in the assessment of the income of the deceased by the Tribunal.

To persist with his argument the counsel for the appellant has argued that the statement of accounts required to be attached with ITR, produced on record as Ex.R-2 and Ex.R-3, have not been produced before the Court by the firm which claimed to have employed the deceased. However, a perusal of even these ITR shows that these are not of the relevant time period and these are the documents exhibited on the part of the appellant-Insurance Company only. The Insurance Company, as a party to litigation, had every right to summon the ITR of the relevant period along with the accompanying statement of accounts. However, no such effort was made by the Insurance Company. So the Insurance Company can not take advantage of its own default. Otherwise also the ITR is the statutory record of only the income of assessee and not necessarily the record of the employment of the individual persons employed by him. So this document is otherwise also irrelevant.

Next contention of the learned counsel regarding the future prospects also is to be rejected. This Court has already dealt with this issue in the judgement in case of ***Bharti Axa General Insurance Co. Ltd. Vs. Jugni Devi and Ors, FAO No.7902 of 2016 decided on 17.08.2017.*** This Court has held that the compensation on account of future prospects cannot denied to the claimants on account of death of self employed person only on the basis that some reference is pending before the Larger Bench. It has been held by this court that the reference deciding the matter otherwise, if at all, shall have the impact only from the date of pronouncement of the judgement by the Hon'ble Supreme Court. Till then the valid and binding precedents laid down by the Hon'ble Supreme Court in ***Rajesh and Others vs. Rajbir Singh and Others, 2013 (9) SCC 54*** shall hold the field. The relevant portion of this judgement is reproduced herein below for ready reference:

> 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.***
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> 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 selfemployed . 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 ***(SIC)***.

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 ***(SIC)***.

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 ***(SIC)***.

In view of the above findings I do not find any illegality, perversity or irregularity in the findings recorded by the Tribunal. The same are affirmed.

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

14th September, 2017 **(RAJBIR SEHRAWAT)**
Manju **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No