

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

Cross-Objections No.82-CII of 2016 in/and
FAO No.3741 of 2013 (O&M)
Date of decision: 18.05.2018

Oriental Insurance Company Ltd.

.... Appellant

Versus

Randhir Kaur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.R.K.Bashamboo, Advocate
for the appellant.

Mr.Pankaj Katia, Advocate
for the respondents.

Avneesh Jhingan, J.

The present appeal has been filed against the award dated 11.03.2013 passed by Motor Accidents Claims Tribunal, SAS Nagar, Mohali (hereinafter referred to as 'the Tribunal').

The claimants and the insurer of the offending vehicle being aggrieved of the quantum of compensation awarded by the Tribunal filed the appeal and cross-objections.

The bare facts necessary for adjudication of the case are that on 28.02.2012, Sukhwinder Singh, aged 53 years, was coming back home on his scooter bearing registration No.PB-23L-8635. On reaching near village Sawara, the scooter was struck by rashly and negligently driven car

bearing registration No.PB-12K-4977. As a result of the impact, Sukhwinder Singh fell down on the road and suffered injuries and died at the spot.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed by legal heirs of the deceased.

The Tribunal held that the accident occurred due to rash and negligent driving of the offending vehicle. The deceased was working as a driver in Maintenance Department of PWD. His monthly salary was assessed as Rs.34,145/- and after deducting income tax @ Rs.1222/- per month, the net salary was taken as Rs.32,923/-. 1/3rd deduction for self expenses was made and multiplier of 11 was applied. The Tribunal awarded a sum of Rs.29,17,000/- along with interest @ 8% per annum. The amount awarded included Rs.20,000/- under the conventional heads.

Learned counsel for the Insurance Company has argued that the deceased was survived by widow and two major sons, in such circumstances, 1/3rd deduction should not be made. He further argued that since the deceased was to retire at the age of 60, a split multiplier should have been adopted by the Tribunal.

Learned counsel for the claimants argued that no future prospects have been added and the amounts awarded under the conventional heads are on the lower side.

The contention raised by learned counsel for the insurer cannot be accepted. There is nothing on record to rebut that the major sons were dependant upon the deceased. 1/3rd deduction has been made by the

Tribunal in consonance with the decision of **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(6) SCC 121.**

There was no discussion by the Tribunal, with regard to the issue of split multiplier. It appears that this issue was not raised before the Tribunal. Be that as it may in the enhancement appeal it is not appropriate to adopt the split multiplier. The reliance is placed upon the decision of the Hon'ble Apex Court, in **Sri K.R. Madhusudhan and Others Vs. Administrative Officer and Another 2011 (4) SCC 689**, and it was held as under:-

“In view of this evidence the Tribunal should have considered the prospect of future income while computing compensation but the Tribunal has not done that. In the appeal, which was filed by the appellants before the High Court, the High Court instead of maintaining the amount of compensation, granted by the Tribunal reduced the same. In doing so, the High Court not given any reason. The High Court introduced the concept of split multiplier and departed from the multiplier used by the Tribunal without disclosing any reason therefore.

The High Court has also not considered the clear and corroborative evidence about the prospect of future increment of the deceased. When the age of

the deceased is between 51 and 55 years the multiplier is 11, which is specified in the II Column in the II Schedule in the Motor Vehicles Act, and the Tribunal has not committed any error by accepting the said multiplier. This Court also fails to appreciate why the High Court chose to apply the multiplier of 6.”

(emphasis supplied)

In the above mentioned decision the Apex Court specifically stated that the High Court erred in introducing split multiplier and departing from the multiplier used by the Tribunal without disclosing any reason. In the present case also I have no occasion at this stage to substitute my own reasoning for departing from well settled law of applying multiplier as has been held by the Hon'ble Apex Court in **Smt.Sarla Verma's case (supra)**.

Further, this Court in **FAO No. 4615 of 2013 'Giano Devi and Others Vs. Hariom and Others', decided on 18.10.2016** following the decision of the Hon'ble Apex Court in **Sri, K.R. Madhusudhan's case (supra)** has held as under:-

“The learned Tribunal has applied the split multiplier. The learned Tribunal has mentioned that since the deceased was going to retire beyond the age of 58 years i.e. the age of superannuation, so the actual loss of dependency

has only been multiplied for a period of six years.

This approach of the learned Tribunal is erroneous in view of the ratio of law laid down by Hon'ble Apex court in case Sri, K.R. Madhusudhan and Others Vs. Administrative Officer and Another (supra). So, the multiplier of 9 shall be applicable. Thus, the total loss of dependency comes to `15,83,550/-”.

Further, this Court in FAO No. 5452 of 2012, the New India Assurance Company Ltd. Versus Kuldeep Singh and Others, decided on 02.08.2013 following the case of Smt. Sarla Verma and Others (supra) and case of Sri K.R. Madhusudhan had held as under:-

“Taking the point of split multiplier, firstly it has to be seen that the deceased was to retire within a period of two years and definitely his salary would have been converted into a pension, which would have been about ½ of the same. However, the multiplier system does not call for taking of different annual dependencies of two different periods. The judgment in Smt. Sarla Verma's case (supra) makes no distinction in this regard.”

Further this Court in FAO No. 1837 of 2015 United India Insurance Company Ltd. Vs. Parveen and Others decided on 19.03.2015 following the decision of the Hon'ble Apex Court in “Reshma Kumari

and Others Vs. Madan Mohan and another”, 2013(9) SCC 65 and the decision of the Hon'ble Apex Court in **Smt. Sarla Verma's and Others case (supra)** had not applied the split multiplier.

Keeping in view the decisions of the Hon'ble Apex Court and the consistent view taken by this Court, I do not find any reason to apply split multiplier in the present case.

At this stage it would be fair to mention that the counsel for the Insurance Companies relied upon the decision of the Hon'ble Apex Court reported in **Puttamma and Others Vs. K.L. Narayana Reddy and Another 2013 (15) SCC 45.**

From a perusal of the said decision it would be clear that rather it is in support of the view taken by this Court that the split multiplier should not be applied in the present case.

A perusal of paras 32 and 34 of the said judgment are reproduced for the ready reference.

32 “For determination of compensation in motor accident claims under Section 166 this Court always followed multiplier method. As there were inconsistencies in selection of multiplier, this Court in Sarla Verma prepared a table for selection of multiplier based on age group of the deceased/ victim, The Motor Vehicle Act, 1988 does not envisage application of split multiplier.

34 We, therefore, hold that in absence of any

specific reason and evidence on record the Tribunal or the Court should not apply split multiplier in routine course and should apply multiplier as per decision of this Court in the case of Sarla Verma(supra) as affirmed in the case of Reshma Kumari (supra) ”.

A reading of above two paragraphs makes it clear that the Hon'ble Apex Court has specifically held that the Act does not envisage application of split multiplier. Further, it was held that the Tribunal or the Court in absence of any specific reason and evidence on record, should not apply split multiplier in routine course and should apply multiplier as per the decision of the Hon'ble Apex Court in case of Sarla Verma (supra).

The reasoning given by the counsel for the Insurance Company is that after his retirement the deceased would have been entitled to the pension, the compensation calculated should not be resulting in bonanza to the family. The said argument is not acceptable. Death of an individual cannot be calculated in monetary terms. Loss of head of a family cannot be compensated simply by awarding compensation calculated on the basis of pension. Act is a welfare legislature and the Courts have to arrive at a just and equitable compensation. Simply split multiplier should not be applied merely because the deceased was going to retire in a few years. His role as a head of family is bound to increase after retirement. Moreover, there are fair chances of his getting re-employed. Retirement does not mean that worth of the person has reduced. Rather, his experience

is there and he is able to contribute more towards his family. The matter cannot be viewed only commercially while dealing with such like cases, it also involves loss of human life.

The contention raised by learned counsel for the claimants deserves acceptance as per the decision of the Supreme Court in **National Insurance Company Ltd. vs. Pranay Sethi and Ors., 2017 AIR (SC) 5157.**

15% future prospects are to be added and the appellants are entitled to Rs.70,000/- under conventional heads i.e.Rs.15,000/- for funeral expenses, Rs.15,000/- for loss of estate and Rs.40,000/- for loss of consortium.

For the reasons mentioned above, the compensation is recalculated as under :-

Monthly income	Rs.32,923/-
15% future prospects	Rs.4939/-
Total income	Rs.37,862/-
1/3 rd deduction for self expenses	Rs.12,621/-
Dependency	Rs. 25,241/-
Applying multiplier of 11	Rs.33,31,812/-
Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-
Loss of consortium	Rs.40,000/-
Total	Rs.34,01,812/-

The award dated 11.03.2013 is modified to the extent that the amount awarded by the Tribunal of Rs.29,17,000/- is enhanced to Rs.34,01,812/-.

The claimants would be entitled to enhanced amount along with interest @ 6% per annum from the date of filing the claim petition till

the realisation of the amount.

The appeal is dismissed and cross-objections are partly
allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

18.05.2018
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1. Whether the order is speaking/reasoned: Yes
2. Whether the order is reportable : Yes