IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.6039 of 2013 (O&M)
DATE OF DECISION: 17.02.2020

New India Assurance Company Ltd. .....Appellant

Versus

Smt. Ruksina and others .....Respondents

CORAM:- HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Ashwani Talwar, Advocate for the appellant

Mr. Ashish Gupta, Advocate for respondent Nos.1 to 4
Mr. Shiva Khurmi, Advocate for respondent Nos.5 and 6

..

ALKA SARIN, J.:

The present appeal has been preferred by the Insurance Company against the award dated 26.07.2013 passed by the Motor Accident Claims Tribunal, Nuh.

In brief, the facts germane to the present case are that on 09.10.2012 Hasan (deceased) was coming from Village Rajaka to his Village Bhadas on a motorcycle bearing registration No.HR28C-7791. When the deceased reached near Rajaka turning towards Badhas side, a car bearing registration No.HR-26AJ-0263, which was being driven in a rash and negligent manner, came from the front side and hit the motorcycle head-on, as a result of which Hasan sustained grievous injuries on his entire body and died on the spot. FIR No.190 dated 09.10.2012 was registered under sections 279, 304A, 427 IPC at Police Station Nagina. The claimants who are the wife, daughter and parents of deceased Hasan filed the claim petition averring therein that the deceased used to earn Rs.6,000/- per month and further that the claimants-respondents had spent an amount of Rs.20,000/- on his last rites.

On notice, the driver and owner, respondent Nos.5 and 6 herein filed a joint written statement wherein they denied the factum of the accident. It was denied that the accident took place due to the rash and negligent driving of respondent No.5. It was further stated that the respondents had been falsely implicated in the case. The appellant herein *i.e.* the Insurance Company filed its written statement raising various preliminary objections. The main objection was that respondent No.5 was not holding a valid and effective driving licence at the time of the accident. On merits, the factum of the accident was denied.

On the basis of the pleadings and the evidence led, the Tribunal assessed the notional income of the deceased as Rs.5,000/-per month treating the deceased to be an unskilled worker. The Tribunal further held that the father could not be considered as a dependant. Relying upon the case of ***Smt. Sarla Verma and others*** *vs.* ***Delhi Transport Corporation and another, 2009(6) Supreme Court Cases 121*** and ***Rajesh and Ors. vs. Rajbir Singh and Ors., 2013 ACJ 1403***, the Tribunal assessed the future prospects at the rate of 50%. The multiplier applied was 18 in view of the law laid down in ***Smt. Sarla Verma*** *(supra)*. The Tribunal further granted compensation of Rs.1 lakh towards loss of consortium to the wife and a further amount of Rs.1 lakh was granted towards compensation for loss of love and care to respondent Nos.1, 2 and 4. The Tribunal also granted compensation of Rs.25,000/- towards funeral expenses. The total compensation thus awarded by the Tribunal was Rs.13,05,000/- which was to carry interest at the rate of 7.5% per annum from the date of filing of the petition till its realisation.

I have heard the learned counsel for the parties.

It has been contended by the learned counsel for the appellant that the Tribunal has erred in law in assessing future prospects at the rate of 50%. He would further submit that even the amounts under the conventional heads are on the higher side. In support of his argument, he relied upon the judgments in ***Smt. Sarla Verma*** *(supra)*, ***National Insurance Company Ltd.*** *vs.* ***Pranay Sethi and others, 2017(4) R.C.R. (Civil) 1009*** and ***Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and others***, (***2018) 18 Supreme Court Cases 130***.

Per contra, learned counsel for respondent Nos.1 to 4 has submitted that the amount awarded is just and proper. He has further stated that FAO No.4689 of 2015 (*Ruksina and others vs. Daud and others*) filed by respondent Nos.1 to 4 stood dismissed vide order dated 05.03.2019.

A perusal of the award passed by the Tribunal clearly reveals that the Tribunal has erred in law in assessing the future prospects at the rate of 50%. The Constitution bench of the Supreme Court in the case of ***Pranay Sethi*** *(supra)* considering the judgment in ***Rajesh & Ors.*** *(supra)* held as under:-

"61. In view of the aforesaid analysis, we proceed to record our conclusions:-

(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

Further, I find that the amounts awarded under the conventional heads are also not as per the dictum laid down by the Supreme Court in ***Pranay Sethi*** *(Supra)* and ***Magma General Insurance Company Limited*** *(Supra).* In view of the law laid down by the Supreme Court the amount of compensation will need to be re-worked. The father, respondent No 3 has not been held to be a dependent by the Tribunal. The appeal filed by the Claimants was dismissed by this court vide order dated 05.03.2019. However, while reworking the compensation, an amount of

Rs 40,000/- would be added towards Filial consortium payable to the father.

In view of the above, the amount awarded would need to be reworked keeping in view the law laid down by the Supreme Court as under:-

Sr. No.	**Head**		**Compensation Awarded**
1.	Notional Monthly income	—	Rs.5,000/-
2.	Annual income	—	Rs.60,000/-
3.	Annual dependency of claimants after deducting 1/3rd towards personal expenses	—	Rs.40,000/-
4.	Claimants' dependency after adding future prospects at the rate of 40%	—	Rs.56,000/-
5.	Multiplier of 18 (Age 24 years)	—	Rs.10,08,000/-
6.	Loss of Estate	—	Rs.15,000/-
7.	Funeral Expenses	—	Rs.15,000/-
8.	Spousal consortium	—	Rs.40,000/-
9.	Parental consortium	—	Rs.40,000/-
10.	Filial consortium to mother	—	Rs.40,000/-
11.	Filial consortium to father	—	Rs.40,000/-
	Total compensation	—	**Rs.11,98,000/-**
	Difference	—	**Rs.1,07,000/-**

In view thereof, the present appeal is allowed to the extent mentioned above.

(ALKA SARIN)
JUDGE

17.02.2020
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NOTE:
Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO