
(2014) 08 AHC CK 0322

In the Allahabad High Court

Case No : First Appeal From Order No. 2105 of 2014

ICICI Lombard General Insurance Co. Ltd.

APPELLANT

Vs

Beena Devi

RESPONDENT

Date of Decision : 08-08-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173, 180, 5
Penal Code, 1860 (IPC) — Section 279, 304A, 337, 338

Citation : (2014) 7 ADJ 238 : (2014) 6 ALJ 351 : (2015) 108 ALR 44 : (2015) 1 AWC 170

Hon'ble Judges : Rajesh Kumar Agrawal, J;Om Prakash, J

Bench : Division Bench

Advocate : Rahul Sahai, Learned Counsel, Advocate for the Appellant; Sandeep Dixit, Learned Counsel, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

Rajes Kumar, J.—Heard Sri Rahul Sahai, learned counsel for the appellant and Sri Sandeep Dixit, learned counsel appearing on behalf of the respondents/claimants.

2. With the consent of both the parties, the present appeal is being disposed of at this stage.

3. This is an appeal u/s 173 of the Motor Vehicles Act, 1988 against the order of Tribunal dated 17.04.2014, by which the Tribunal has awarded Rs. 18,24,900/- towards compensation.

4. Brief facts of the case stated in the impugned order dated on 02.02.2010, are that when Hari Narayan Singh Teotia, deceased was going on motor-cycle, bearing registration no. UP-30-D-3721 at 3.20 p.m. At in front of Government College, Palia Road, Barabanki, he has been hit by another motor-cycle, bearing registration no. UP-41-L-7754, as a result of the accident, Hari Narayan Singh Teotia received grievous injuries and succumbed to injuries. The appellant is the insurer of motor-cycle, bearing registration no. UP-41-L-7754. Hari Narayan

Singh Teotia was Sub-Inspector in police department. PW-2 was also sitting on motor-cycle as a pillion rider, has also suffered injuries in the accident. Tribunal having regard to the age of the deceased, income etc. has estimated the compensation.

5. Learned counsel for the appellant submitted that PW-2, Rajendra Singh has lodged the first information report on 02.02.2010 itself in respect of the accident, who has not informed the registration number of the motor-cycle. He stated that he could not see the registration number of the motor-cycle, inasmuch as the driver of the motor-cycle ran away. He stated that in case driver of the motor-cycle comes before him, he can recognise him. In the investigation, it was found that the accident took place by the rash and negligent driving of the driver of motor-cycle, bearing registration no. UP-41-L-7754. The owner of the said vehicle has also admitted that the accident was caused by the said motor-cycle. First charge-sheet was submitted against Mohit Kanojia, son of Ram Karan Kanojia, under Sections 279, 337, 338, 304A of I.P.C. However, on the same day, another charge-sheet has been submitted against Ram Karan Kanojia, the owner of the vehicle, under Sections 304A of I.P.C. and 5/180 of Motor Vehicles Act. He submitted that the case against Mohit Kanojia is pending before the criminal court, Juvenile Justice Board, as Mohit Kanojia being minor. Since Mohit Kanojia could not possess driving licence, therefore, a case has been made out that the vehicle was being driven by Ram Karan Kanojia, the owner of the vehicle, and the driving licence of Ram Karan Kanojia was filed. He further submitted that the entire case has been manipulated and camouflaged. He further submitted that on 02.02.2010, Ram Karan Kanojia possess two driving licences, which are contrary to the provisions of Motor Vehicles Act. He further submitted that the Tribunal has erred in awarding 20% towards future prospect. Rule 220-A of Motor Vehicles Rule comes into effect on 26.09.2011 and it applies prospectively, therefore, it does not apply to the present case as in the present case, the accident took place on 02.02.2010. He submitted that at the time of the accident, the deceased was 56 years old and therefore, the compensation towards future prospect could not be awarded in view of decision of the Apex Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,

6. We partly find substance in the argument of learned counsel for the appellant.

7. Rajendra was sitting on the motor-cycle, bearing registration no. UP-30-D-3721 along with deceased, who was the only eye-witness of the accident. He has also lodged the first information report. In the first information report, he categorically stated that the accident took place between two motor-cycles. He further stated that he could not see the registration number of the motor-cycle as the driver of the motor-cycle ran away. He also stated that in the accident he was also got injured. However, he stated that in case driver of the motor-cycle comes before him, he can recognise him. In the investigation, the involvement of motorcycle, bearing registration no. UP-41-L-7754 was found. The owner of

motor-cycle, Ram Karan Kanojia, categorically admitted the involvement of the said motor-cycle in the accident. It is true that the first charge-sheet was filed against Mohit Kanojia, but on the same day, in the investigation when it was found that the vehicle was being driven by Ram Karan Kanojia, another charge-sheet was filed under Sections 304A of I.P.C. and 5/180 of Motor Vehicles Act for the rash and negligent driving of the motor-cycle. On the consideration of entire facts and circumstances, Tribunal has arrived to the conclusion that motor-cycle, bearing registration no. UP-41-L-7754 being driven by Ram Karan Kanojia, the owner of the vehicle was involved in the accident. Such view taken by the Tribunal, can not be said to be erroneous and based on no material. The findings of the Tribunal are finding of fact, which do not require interference by this Court.

8. Learned counsel for the appellant submitted that on 02.02.2010, Ram Karan Kanojia possessed two driving licence, which was contrary to the provisions of Motor Vehicles Act.

9. Submission may be correct but it will not affect the claim of the claimant. It is not the case of the insurance company that the driver of motor-cycle, bearing registration no. UP-41-L-7754 did not possess the valid driving licence and thus, it can not be said that it is a case of breach of policy. In case, if the driver of vehicle possessed two driving licence at a time, it may amount to violation of the provision of Motor Vehicles Act, but has no relevance so far as claim of compensation u/s 166 of the Act is concerned.

10. Now coming to the question of compensation towards future prospect, learned counsel for the appellant submitted that the Tribunal has erred in allowing the benefit of future prospect under Rule 220-A of Motor Vehicles Rules (hereinafter referred to as "Rules"), which came into force on 26.09.2011 while the accident took place on 02.02.2010. The Rule is prospective and apply in a case where the accident took place after 26.09.2011 and not in a case where accident took place before 26.09.2011. He submitted that in the case of Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, (Supra), the Apex Court held that where the deceased had a permanent job and was more than 50 years old, no benefit can be given towards future prospect. The decision of Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, (Supra) has not yet been over-ruled, rather has been subsequently followed by the Apex Court in various cases except, in the case of Santosh Devi Vs. National Insurance Company Ltd. and Others, , the benefit has been extended to the case of deceased person, who was self-employed or he was paid fixed wages, the Apex Court held that the benefit of 30% towards future prospect should be allowed.

11. Sri Sandeep Dixit, learned counsel appearing on behalf of the respondent submitted that in the case of Sri. K.R. Madhusudhan and Others Vs. The Administrative Officer and Another, though in that case the deceased was 62 years old, the benefit of future prospect was given. He further submitted that in the case of Rekha Jain and Another Vs. National Insurance Company Ltd., , the

deceased was 51 years old while the benefit of future prospect to the extent of 30% has been allowed.

12. We have considered the rival submissions.

13. In the case of Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another (Supra), the Apex Court held as follows:

In *Susamma Thomas*, this Court increased the income by nearly 100%, in *Sarla Dixit*, the income was increased only by 50% and in *Abati Bezbaruah* the income was increased by a mere 7%. In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. [Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"]. The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.

14. In the case of *K.R. Madhusudhan and others Vs. Administrative Officer and another (Supra)*, the Apex Court observed as follows:

7. The law regarding addition in income for future prospects has been clearly laid down in *Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another*, and the relevant portion reads as follows:

In *Susamma Thomas* this Court increased the income by nearly 100%, in *Sarla Dixit* the income was increased only by 50% and in *Abati Bezbaruah* the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. [Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"]. The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.

8. In the *Sarla Verma (supra)* judgment the Court has held that there should be no addition to income for future prospects where the age of the deceased is more than 50 years. The learned Bench called it a rule of thumb and it was developed so as to avoid uncertainties in the outcomes of litigation. However, the Bench held that a departure can be made in rare and exceptional cases involving special circumstances.

9. We are of the opinion that the rule of thumb evolved in *Sarla Verma (supra)* is to be applied to those cases where there was no concrete evidence on record of definite rise in income due to future prospects. Obviously, the said rule was based on assumption and to avoid uncertainties and inconsistencies in the interpretation of different courts, and to overcome the same.

10. The present case stands on different factual basis where there is clear and incontrovertible evidence on record that the deceased was entitled and in fact bound to get a rise in income in the future, a fact which was corroborated by evidence on record. Thus, we are of the view that the present case comes within the "exceptional circumstances" and not within the purview of rule of thumb laid down by the *Sarla Verma (supra)* judgment. Hence, even though the deceased was above 50 years of age, he shall be entitled to increase in income due to future prospects.

15. In a recent decision in the case of *Rajesh and Others Vs. Rajbir Singh and Others*, the Bench of three Judges has considered the issue relating to the future prospect having regard to the decision of the Apex Court in the case of *Santosh Devi Vs. National Insurance Company Limited and others (Supra)*, observed as follows:

9. In a recent decision, in *Santosh Devi Vs. National Insurance Company Ltd. and Others*, authored by one of us (G.S. Singhvi, J.), *Sarla Verma's* case (*supra*) has further been explained with regard to the settled norms. It has been held in Paragraph 11 as follows:

11. We have considered the respective arguments. Although, the legal jurisprudence developed in the country in last five decades is somewhat precedent-centric, the judgments which have bearing on socio economic conditions of the citizens and issues relating to compensation payable to the victims of motor accidents, those who are deprived of their land and similar matters needs to be frequently revisited keeping in view the fast-changing societal values, the effect of globalisation on the economy of the nation and their impact on the life of the people.

10. Consequently, it has been held at Paragraphs 14 to 18, as follows:

14. We find it extremely difficult to fathom any rationale for the observation made in paragraph 24 of the judgment in *Sarla Verma's* case that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of

death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be have to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life.

15. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put in extra efforts to generate additional income necessary for sustaining their families.

16. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lakh.

17. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but 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. We can take judicial notice of the fact that 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. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials 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.

18. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he/she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation.

11. 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 self-employed 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.

12. 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.

16. Having considered all the aforesaid decisions, we find that Apex Court in the case of Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another (Supra) has provided that an addition of 50% of the actual salary income of the deceased towards future prospect, where the deceased had a permanent job and was below 40 years. The addition should be only 30% if the age of the deceased was 40 to 50 years and there should be no addition, where the age of deceased is more than 50 years. Apex Court further held that where the deceased was self-employed or was on fixed salary (without provision for annual increments etc.), the Courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances. The view taken in the case of Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another (Supra) has not been overruled in any of the subsequent decision. However, on the consideration of later part of the decision in the case of Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another (Supra), the Apex Court, in the case of Santosh Devi Vs. National Insurance Company Limited and others (Supra) has provided that where the deceased was self-employed or on fixed salary, the benefit of future prospect to the extent of 30% should be given. Apex Court observed as follows:

We do not think that while making the observations in the last three lines of paragraph 24 of Smt. Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is Self-employed or is engaged on fixed wages will also get 30% increase in his total income over a period of time and if he/she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation.

17. In the case of Rajesh & Ors. Vs. Rajbir Singh & Ors. (Supra), Apex Court on a

consideration of the case of Santosh Devi Vs. National Insurance Company Limited and others (Supra) has held that in the case of self-employed or persons with fixed wages, where 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. Addition should be 30% in case deceased was in the age group of 40-50 years.

18. In the case of Rajesh & Ors. Vs. Rajbir Singh & Ors. (Supra), the Apex Court has taken a note of the decision in the case of Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another (Supra) and has held that in "Sarla Verma"s case it has been stated that in the case of those above 50 years, there shall be no addition. However, having regard to the fact that in 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."

19. Thus, after closely examining the decisions of the Apex Court, referred hereinabove, we are of the view that Apex Court held that in case where the deceased was in a permanent job, there shall be no addition towards future prospect in case, if the deceased age was more than 50 years and in a case where deceased was self-employed or on fixed wages, there shall be an addition of 15% where the age of the deceased was between 50-60 years and no addition in a case where the age of the deceased was more than 60 years.

20. In the present case, the deceased was Constable in police department. Tribunal has recorded the categorical finding that the deceased was aged about 56 years old and has service in his credit was for a limited period and there was no scope of any promotion. He was a permanent employee and the age of superannuation was 60 years and his age on the date of death was 56 years. Therefore, in view of the law laid down by the Apex Court as stated above, the benefit of addition towards future prospect can not be given.

21. We are further of the view that the Tribunal has allowed the benefit under Rule 220-A of the Rules, which came into effect on 26.09.2011. There is nothing in the amending Rules that the said Rule has been enforced retrospectively. Thus Rule is prospective in nature and is applicable to those cases where the accident took place on or after 26.09.2011 and not prior to that. Therefore, this Rule can not be applied in the present case, inasmuch as the accident took place on 02.02.2010.

22. The decision cited by learned counsel for the appellant in the case of Rekha Jain and another Vs. National Insurance Co. Ltd., (Supra) is of no help to the appellant. While allowing the future prospect, the age of deceased has not been considered at all. While referring the fact of the case, only at one stage it is observed that the age of the deceased was about 51 years but while allowing

compensation towards the future prospect, said age has not been taken into account.

23. In view of the above, we are of the view that the claimants are not entitled for the benefit of future prospect and the Tribunal has erred in allowing the benefit of future prospect.

24. In the result the appeal is allowed in part as stated above. Tribunal is directed to modify the order and re-calculate the amount of compensation within a period of three months from the date of presentation of the certified copy of this order.