

(2015) 03 AHC CK 0113

In the Allahabad High Court

Case No : First Appeal From Order No. 758 of 2015

Shriram General Insurance Co. Ltd.

APPELLANT

Vs

Alka and Others

RESPONDENT

Date of Decision : 24-03-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 304A, 427

Citation : (2015) 4 ADJ 176 : (2015) 4 ALJ 599 : (2015) 111 ALR 713 : (2015) 5 AWC 5089

Hon'ble Judges : Krishna Murari, J; Pratyush Kumar, J

Bench : Division Bench

Advocate : Rahul Sahai, for the Appellant

Final Decision : Dismissed

Judgement

1. This FAFO filed by the appellant-insurance company is directed against the judgment and award dated 5.12.2014 passed by Motor Accident Claims Tribunal/ Additional District Judge, Court No. 1, Etah in MACP No. 282 of 2013, awarding a sum of Rs. 43,07,168/- alongwith interest at the rate of 7% per annum from the date of making of the claim. Facts are that a petition claiming compensation to the tune of Rs. 2,28,67,000/- was preferred by the claimant-respondents with the allegation that on 6.7.2013, the deceased Sanjay Kumar Singh was returning from Jaswant Nagar alongwith one Devendra Singh Bhadauria on motorcycle No. UP77 H 8529 at about 8 p.m., when they reached near Bharat Cold Storage on G.T. road, a truck bearing No. HR38 K 5256, which was being driven rashly and negligently, hit the motorcycle from behind, which resulted in serious and grievous injury to both the persons and resulted in their death. A First Information Report of the incident was also lodged with P.S. Kotwali Dehat, Etah, which was registered as Case Crime No. 274/13 under Sections 279, 304A and 427 IPC. It was also pleaded that at the time of accident, deceased Sanjay Kumar Singh was aged 35 years and was working as Area Business Manager in Elchem Laboratories Ltd. drawing a salary of Rs. 62,710/- per month. It was also

pleaded that the offending truck was duly insured with the appellant-insurance company.

2. The claim was contested by the opposite party Nos. 6 and 7, the owner and driver of the offending truck by filing written statement denying that the accident was caused by rash and negligent driving. It is, however, stated that the driver had a valid driving licence and the truck was duly insured with the appellant-insurance company. The claim was also contested by the insurance company denying the accident. It was pleaded that since both the vehicles were involved in the accident, hence, it was a result of contributory negligence. The other allegation regarding valid driving licence and the salary earned by the deceased were denied.

3. We have heard Shri Rahul Sahai appearing for the appellant.

4. It is contended that the claimant-respondents failed to establish not only the involvement of the alleged offending vehicle in the accident, but also negligence on the part of its driver. It is further contended that the fact that the accident was a result of contributory negligence, was fully established, but the same has not been considered properly by the Tribunal. It has also been submitted that even though the claimant-respondents failed to prove, by cogent evidence, that the deceased was aged 35 years, yet the Tribunal has drawn conclusion with respect to the age of the deceased being 35 years at the time of accident. It is next submitted that while calculating the compensation, only basic salary ought to have been taken into consideration and the Tribunal committed a manifest error of law in adding other perks in the salary while calculating the quantum of compensation.

5. We have considered the argument advanced by the learned counsel for the appellant and perused the record.

6. On the basis of the pleadings, the Tribunal framed following issues, namely:

(1) Whether the accident caused on 6.7.2013 at about 6.30 p.m. on G.T. road near Bharat Cold Storage when the deceased Sanjay Kumar Singh was driving motorcycle No. UP77 H 8529 alongwith Devendra Singh Bhadauriya, on account of rash and negligent driving of truck No. HR38 K 5256, it hit the motorcycle from behind, which resulted in serious and grievous injuries to Sanjay Kumar Singh and Devendra Singh Bhadauriya and they died on spot;

(2) Whether there was contributory negligence of the Sanjay Kumar Singh, driver of the motorcycle No. UP77 H 8529;

(3) Whether the owner of the motorcycle No. UP77 H 8529 and its insurer are necessary parties and the claim petition is bad for non-joinder of necessary parties.

(4) Whether at the time of accident, the driver of truck No. HR38 K 5256 was having a valid driving licence;

(5) Whether on the date and time of accident, the truck No. HR38 K 5256 was validly insured by the insurance company and was being driven in terms of the insurance policy; and,

(6) Whether the claimants are entitled for any compensation and if yes, then how much and from whom.

7. The claimants in support of their claim filed various documentary evidence, which included First Information Report, post-mortem report, appointment letter of deceased Sanjay Kumar Singh, certificate of pay, salary slip for the month of April 2013 and June 2013, registration certificate of offending truck, renewal, permit, fitness certificate, insurance policy, driving licence of the driver of the offending truck, charge-sheet submitted in the criminal case against the driver of the offending truck, site plan and technical inspection report etc. The claimants also produced for oral evidence Smt. Alka as P.W. 1, one Vijay Singh as P.W. 2, who was an eye-witness and another eye-witness Shiv Kumar Singh as P.W. 3.

8. Respondent Nos. 6 and 7, the owner and driver of the offending truck filed the registration of the truck, the insurance policy, fitness certificate and the licence of the driver in evidence. They did not produce any oral evidence. The appellant-insurance company did not adduce either any oral or documentary evidence.

9. The Tribunal while considering issue No. 1 analysed the oral as well as documentary evidence on the record and after considering the site plan, held that the truck was being driven rashly and negligently and hit the motorcycle from behind. It has also made reference to the technical inspection report of the motorcycle and also the offending truck. Referring to the testimony of P.W. 1, the Tribunal has returned a finding that she was not an eye-witness. However, relying upon the oral testimony of P.W. 2 and P.W. 3, who were eye-witness and stated that the accident took place before them and the truck, which was being driven in a very rash and negligent manner, hit the motorcycle from behind.

10. It is to be taken note of that the truck was caught at the site of accident and the driver, respondent No. 7 had fled away. Analysing the oral as well as documentary evidence and finding the testimony of the eye-witnesses as intact even in the cross-examination, the Tribunal, accordingly, returned the finding that the accident was caused due to rash and negligent driving of the offending truck on account of which, Sanjay Kumar Singh died.

11. While considering issue No. 2, the Tribunal has again referred to the oral testimony of the two eye-witnesses and on the basis of the same had returned a finding that there was no contributory negligence on the part of the driver of the motorcycle and the accident resulted solely on account of the rash and negligent driving of the offending truck.

12. In respect of issue No. 3, the Tribunal has returned a finding that since the owner and driver of motorcycle, both died in the accident, there was no justification for their impleadment as parties and the claim petition cannot be

held to be bad on account of the same. Further referring to the findings referred on issue No. 1 that the accident was the result of rash and negligent driving of the offending truck and the deceased Sanjay Kumar Singh, who was driving the motorcycle, was having a valid driving licence, held that there was no effect for non-impleadment of the insurer of the motorcycle.

13. While considering issue Nos. 4 and 5, since there was oral and documentary evidence on record to establish regarding valid licence of the driver of the offending truck, on the basis of the same, the Tribunal held that the driver of the offending truck was having a valid licence and it was duly insured by the appellant-company and there was no violation of any terms of the policy.

14. Now coming to the issue No. 6 regarding quantum of compensation in support of the claim, the claimant-respondents produced appointment letter of the deceased Sanjay Kumar Singh, salary certificate and salary slip, which went to show that his basic salary was Rs. 14,348, HRA is Rs. 5250, Medical allowances is Rs. 250/- per month, thus, the Tribunal leaving aside other perks, determined his salary to be Rs. 19,848/- per month. On the basis of the post-mortem report and Voter I-Card, the Tribunal determined the age of the deceased at the time of accident to be 35 years.

15. In accordance with Rule 220A of the Motor Vehicles Rules, the Tribunal added 50% of the salary as future prospect and, accordingly, determined the monthly salary of Rs. 29,772/- per month. Since there were six dependants, the Tribunal deducted 1/4th as personal expenses and after applying a multiplier of 16, determined the quantum of compensation, accordingly.

16. In the case of Smt. Sarla Varma and others v. Delhi Transport Corporation and another, 2009 (2) TAC 677, the Hon"ble Apex Court has held as under.

"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."

17. In the case of Sri. K.R. Madhusudhan and Others Vs. The Administrative

Officer and Another, (2011) ACJ 743 : AIR 2011 SC 979 : (2011) 162 PLR 487 : (2011) 2 RCR(Civil) 207 : (2011) 2 SCALE 511 : (2011) 4 SCC 689 : (2011) 2 SCC(Cri) 706 : (2011) 2 SCR 1061 : (2011) 1 TAC 874 : (2011) AIRSCW 1390 : (2011) 2 Supreme 86 , 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, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 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."

18. In a recent decision in the case of Rajesh and Others Vs. Rajbir Singh and Others, (2013) 2 ACC 841 : (2013) ACJ 1403 : (2013) 3 CTC 883 : (2013) 8 JT 288 : (2014) 173 PLR 779 : (2013) 3 RCR(Civil) 170 : (2013) 6 SCALE 563 : (2013) 9 SCC 54 : (2014) 1 SCC(L&S) 149 , 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 Ltd. and Others, (2012) ACJ 1428 : AIR 2012 SC 2185 : (2012) 4 SCALE 559 : (2012) 6 SCC 421 : (2012) AIRSCW 2892 : (2012) 3 Supreme 197 , observed as follows:

"9. In a recent decision, in Santosh Devi Vs. National Insurance Company Ltd. and Others, (2012) ACJ 1428 : AIR 2012 SC 2185 : (2012) 4 SCALE 559 : (2012) 6 SCC 421 : (2012) AIRSCW 2892 : (2012) 3 Supreme 197 , 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."

19. Having considered all the aforesaid decisions, we find that Apex Court in the case of Smt. Sarla Verma and others v. Delhi Transport Corporation and another (Supra) has provided 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 v. 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 v. Delhi Transport Corporation and another (Supra), the Apex Court, in the case of Santosh Devi v. 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."

20. In the case of Rajesh and others v. Rajhir Singh and others (Supra), Apex Court on a consideration of the case of Santosh Devi v. 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 and 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.

21. 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 and less than 40 years of age, there shall be an addition of 50% of actual salary towards future prospect.

22. Though on the question of manner of addition of income for future prospects, the matter has been referred to a larger Bench in the case of National Insurance Company v. Pushpa in Petition for Special Leave to Appeal (C) No. 8058 of 2014 vide judgment dated 2.7.2014, but the case laws of the Hon''ble Apex Court referred to above, still hold the field.

23. The findings recorded by the Tribunal are not only based on the appraisal of the evidence on record, but there also appears to be no illegality and they are in accordance with the law laid down by the Hon''ble Apex Court in the judgments referred to above.

24. We do not find any illegality or fundamental error in the methodology of the Tribunal in computing the amount of compensation. In view of above facts and discussions, we do not find any illegality or infirmity in the award.

25. The appeal being devoid of any merit, stands dismissed. The Registry is directed to return the statutory deposit made before this Court to the Tribunal, which shall be liable to be adjusted towards the payment to be made by the appellant.