

(2013) 03 P&H CK 0142

High Court Of Punjab And Haryana At Chandigarh

Case No: F.A.O. No. 6897 of 2010 (O and M)

Renu Devi

APPELLANT

Vs

Mohammad Yunis

RESPONDENT

Date of Decision: March 11, 2013**Citation:** (2013) 2 PLR 743**Hon'ble Judges:** M. Jeyapaul, J**Bench:** Single Bench**Advocate:** Vibha, for the Appellant; Surinder Dagar, Advocate for the Respondent No. 2, M. Nitin Mittal and Mr. Subhash Goyal, Advocates for the Respondent No. 3, for the Respondent**Final Decision:** Allowed

Judgement

M. Jeyapaul, J.

The widow and parents of the deceased Mukesh Kumar have preferred the present appeal, aggrieved by the dismissal of the claim petition by the Tribunal. The claimants have contended in the claim petition that on 4.7.2009 at about 9.00 P.M. when Mukesh Kumar (since deceased) proceeded along with one Santosh on a bicycle to his house situated in village Nawada, the bus bearing registration No. DL 1-PC 2555 driven by the 1st respondent in a rash and negligent manner came from behind and dashed the bicycle and as a result of which Mukesh Kumar fell down and sustained grievous injuries and succumbed to the same in Shree Krishan Hospital and Trauma Centre, Gurgaon on 5.7.2009. Alleging that the deceased Mukesh Kumar who was 20 years old at the time of accident was employed as a helper in M/s. Toll Brush Company, Manesar earning a monthly salary of Rs. 6000/-, the claimants have sought for compensation.

2. The 1st and 2nd respondents filed joint written statement denying the very involvement of the bus in the accident. They have also further pleaded that with the connivance of the local police an FIR was lodged against the driver. The 3rd respondent pleaded that the bus was not insured with the 3rd respondent. Even if

the bus was proved to have been insured with the 3rd respondent, the 3rd respondent was not liable to indemnify the injured as the 1st respondent was not holding a valid and effective license. It was also pleaded that the 2nd respondent violated the terms and conditions of the insurance policy.

3. The Tribunal having observed that neither the 1st informant nor the person who allegedly accompanied the deceased was examined before the Tribunal held that rashness and negligence cannot be attributed to the 1st respondent based on the testimony of the investigating officer. Ultimately, the Tribunal chose to dismiss the claim petition.

4. The learned counsel appearing for the appellants would submit that the widow who is in distress on account of the death of her husband and the old parents who lost their son in the accident, of course could not examine the 1st informant and the person who accompanied the deceased at the time of accident. That cannot be a ground to reject the other evidence available on record. It is her further submission that in a summary proceeding, the Tribunal should have given much weightage to the First Information report and the evidence of investigating officer and the Ahlmad of the Court. She would also submit that just compensation may be awarded in the light of the evidence adduced by the claimants.

5. It is submitted by the learned counsel appearing for the respondents that the Tribunal has rightly rejected the claim petition as the negligence was not established by examining the 1st informant or an eyewitness to the occurrence.

6. The 1st claimant Renu Devi had lost her husband at a very young age. The evidence on record would disclose that the deceased was just 20 years at the time when the accident took place. On account of the death of her husband, the future of the 1st claimant has become totally bleak. The 2nd and 3rd respondents were parents who should have been in agony on account of the loss of their son. The claim proceeding before the Motor Accident Tribunal is summary in nature. The strict principles of evidence under the scope of Evidence Act cannot be strictly applied to the summary proceedings before the Motor Accident Claims Tribunal.

7. Once the claimants could establish that in the accident that took place, there was rash and negligent driving on the part of the driver of the vehicle, the owner, driver and insurance company should necessarily lead evidence to rebut such evidence.

8. In the accident case, of course the claimants have not chosen to examine either Mahipal who lodged the First Information Report or Santosh who accompanied the deceased at the time of accident. But in my considered view, the claimants have established the rash and negligent driving attributed to the 1st respondent by exhibiting the First Information Report Ex. P8 and copy of the report Ex. P9 u/s 173 Cr.P.C. and also by examining PW 3 ASI Ghanshyam who investigated the case and PW 2 who was the Ahlmad of the criminal Court.

9. In the First Information Report Ex. P9 lodged by Mahipal, there is a specific reference as to the involvement of the offending vehicle. There is no delay in lodging the First Information Report. There was no reason for implicating the bus which was actually not involved in the accident by Mahipal who was also an eyewitness.

10. The investigating officer who was examined as PW 3 has come to a prima facie conclusion after examining all the relevant witnesses and collecting sufficient materials that the accident took place on account of the rash and negligent driving of the 1st respondent. Ex. P9, copy of the final report u/s 173 Cr.P.C. was also produced by the claimants. PW 2 the Ahlmad of the criminal Court has spoken to the fact that the 1st respondent is facing a charge of rash and negligent driving, before the criminal court based on the charge sheet laid by PW 3.

11. The Tribunal having referred to the site plan Ex. P10 made an observation that the accident had occurred due to the negligence of Santosh who drove the bicycle carrying Mukesh Kumar (since deceased). In my considered view, there is no basis for such observation made by the Tribunal based on Ex. P10. Ex. P10 does not give any indication that the accident took place during the course of crossing the road by the cyclist Santosh.

12. Even in the absence of eyewitness to the occurrence or the first informant who lodged the First Information Report, the Tribunal which conduct the summary proceeding should weigh the other materials produced to determine the issue as to whether there was negligence on the part of the driver of the offending vehicle. The Tribunal cannot simply throw over board the telling evidence available on record just applying strictly the hard principles of evidence under the scope of the evidence Act.

13. There is no rebuttal evidence on the side of the respondents to mitigate the effect of evidence let in by the claimant. Therefore, I hold without any hesitation that the accident had taken place only on account of the rash and negligent driving of the bus by the 1st respondent.

14. Coming to the quantum of compensation, I find that there is no evidence to support the claim made by the claimants that the deceased Mukesh Kumar was serving as a helper in M/s. Toll Brush Company, Manesar earning a monthly income of Rs. 6000/-. In the absence of any convincing evidence, the minimum wages fixed by the government during 2009 will have to be taken note of to fix the monthly income of the deceased. The deceased would have earned Rs. 3750/- per month as on 5.7.2009. As the deceased was just 20 years at the time when the accident took place the multiplier of 18 will have to be applied in the light of the ratio laid down by the Hon'ble Supreme Court in [Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,](#)

15. The learned counsel appearing for the Insurance Company would submit that at the maximum 30% of income will have to be added towards the future prospects of the deceased who was treated as a labourer for the purpose of ascertaining his income, as per the decision of Hon"ble Supreme Court in [Santosh Devi Vs. National Insurance Company Ltd. and Others,](#)

16. Per contra, the learned counsel appearing for the appellants would submit that there shall not be any discrimination in quantifying the loss of future prospects of the deceased who was treated as a labourer.

17. In Sarla Verma's case at paragraph 24 of the judgment the Hon"ble Supreme Court has 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 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 the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise 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.

18. Future prospects of the deceased who was a salaried person with the entitlement increment alone was taken into consideration by the Hon"ble Supreme Court in the above judgment.

19. A mild departure from the aforesaid ratio was made by the Hon"ble Supreme Court in Santosh Devi. Having critically analysed the rationale behind the above observation made in Sarla Verma's case, the Hon"ble Supreme Court in Santosh Devi held 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 naive 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. 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 extra efforts to generate additional income necessary for sustaining their families. 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 lac. 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 clothes. 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. 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.

20. Even a self-employed person or a person with fixed wages would also earn 30% of the income over and above the total income in future, it has been held in Santosh Devi. The Hon'ble Supreme Court has also categorically made an observation therein that if a person with self employment or working on fixed wages becomes a victim of accident, the same formula adopted in Sarla Verma will have to be applied for arriving at the loss of dependency.

21. The Division Bench of this Court in [Poonam, etc. Vs. Rajbir Rawal, etc.](#), held as follows:-

Insofar as this Court is concerned, we are of the opinion that addition in income @ 30% on account of future prospects will be made in those cases where the deceased was self-employed or was paid fixed wages. This can be denied only if some specific evidence is produced and circumstances shown by producing material on record that there was no chance of such an increase in a given case.

22. Of course, the deceased in the aforesaid case which came up for decision before the Bench of this Court was 37 years old at the time of the accident but it is to be seen that no arguments was advanced before the Bench of this Court that in case of death of a wage earner below 40 years, 50% of the income should be added on the income of the deceased towards future prospects in the face of the decisions of the Hon"ble Supreme Court in Sarla Verma and Santosh Devi. The Bench of this Court in the aforesaid case was simply called upon to resolve the contentious issue arising on account of the above observations made in Sarla Verma and subsequently in Santosh Devi by the Hon"ble Supreme Court. In Sarla Verma's case it has been categorically held that there shall be an addition of 50% of income on the income of the deceased towards future prospects, if the deceased was below 40 years and there shall be an addition of 30%. If the age of the deceased was 40-50 years. In Santosh Devi, considering the case of a labourer who died at the age of 47, the Supreme Court held that 30% of the income of the deceased should be added to the income of the deceased. I was also observed there in that the formula adopted in Sarla Verma will have to be applied in the case of death of labourers as well.

23. A labourer who received a daily wage of Rs. 50 about 7 years ago has started getting at least a sum of Rs. 150-200 per day. Though, there is no fixed increment for him on his daily wage, the minimum wage is periodically is increased by the State governments concerned taking into account the cost of living. In fact the cost of living affects one and all, irrespective of the class to which the victim belongs. A labourer who gets a sum of Rs. 3750/- per month would not be getting the same wage even after 17 long years. In view of the above, I find that applying the principle of 30% addition towards the future prospect of the deceased who was a labourer without considering the slab contemplated in the case of Sarla Verma would be unfair, inappropriate and discriminatory. In view of the above, I find that 50% of the income in case of a labourer or a wage earner or a person with a fixed salary without increment in case he was below 40 years and 30% income in case he was between 40-50 years will have to be added towards their future prospects while calculating loss of dependency.

24. In the instant case the deceased Mukesh Kumar was 20 years. 50% will have to be added to the income of the deceased to calculate the loss of dependency. As the deceased was 20 years old as per Sarla Verma's case, the multiplier of 18 is adopted. As the deceased has left behind three claimants, 1/3rd of income is deducted towards his personal expenses. The 1st claimant has lost her marital pleasure. The claimants would have spent amount towards transportation of dead

body and funeral expenses. They are also entitled to some amount towards loss of estate. Therefore a sum of Rs. 8,10,000/- (Rs. 3750/- + 50% thereof being Rs. 5625 minus 1/3rd thereof being Rs. 1875 = Rs. 3750 x 12 = Rs. 45,000 x 18 = Rs. 8,10,000/-) towards loss of dependency, Rs. 20,000/- towards loss of consortium of the 1st claimant, Rs. 5,000/- towards transportation expenses, Rs. 5,000/- towards funeral expenses and Rs. 10,000/- towards loss of estate, in aggregate a sum of Rs. 8,50,000/- with interest at the rate of 7.5% per annum on the enhanced amount of compensation from the date of petition till the date of realisation is awarded. 2/3rd of the claim amount shall go to the share of the 1st claimant and the remaining 1/3rd shall go to the parents in equal share. Accordingly, the appeal is allowed with cost.