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

**FAO No. 3884 of 2015 (O&M)
Date of decision: 30.11.2017**

**ICICI Lombard General Insurance
Company Ltd. Chandigarh**

.....Appellant

versus

Parminder Kaur and others

.....Respondents

Coram: Hon'ble Mr. Justice Rajbir Sehrawat

Present: Mr. Girish Agnihotri, Senior Advocate with
Mr. Vijay Pal & Mr. Ishaan Bhardwaj, Advocates
for the appellant.

Mr. Ashwani Arora, Advocate
for respondent No. 1.

Mr. A.S.Cheema, Advocate
for respondents No. 2 and 3.

Mr. Jitender Singh Dadwal, Advocate
for respondent No. 5.

Rajbir Sehrawat, J.(Oral)

CM No.12032-CII of 2015

This is an application for seeking permission to place on record the additional documents as Annexures A-1 to A-7.

For the reasons mentioned in the application, the same is allowed.
The additional documents as Annexures A-1 to A-7 are ordered to be taken on record.

C.M. is disposed of.

CM No. 22859-CII of 2015

This is an application for placing on record the documents,
Annexures R-2/1 to R-2/3.

For the reasons mentioned in the application, the same is allowed.

The documents as Annexures R-2/1 to R-2/3 are ordered to be taken on record.

C.M. is disposed of.

CM No. 22860-CII of 2015

This is an application for vacating the ex-parte stay order dated 03.06.2015.

Since the appeal is taken for final disposal, no orders are called for in the application and the same is dismissed.

FAO No. 3884 of 2015 (O&M)

1. The present appeal has been filed by the Insurance Company, respondent No. 3 in the claim petition, challenging the Award passed by the Motor Accident Claims Tribunal, SAS Nagar (Mohali) on quantum of compensation only.
2. The brief facts of the case, as mentioned in the claim petition, are that on 16.10.2009 at about 8.00 AM, Mandeep Singh started his journey in “Indo Canadian” Mini Bus, bearing registration No. PB-01-6022, from Delhi Airport to Punjab. In the bus, four persons; along with driver and conductor; were travelling. At about 2.30 PM, when the bus reached on Shambu Rajpura Road; near Surindra Pipe Factory, the driver of the bus did not properly control the bus. Since the bus was going to cross the SYL Canal at that point of time, therefore, due to rash and negligent driving of the driver, the bus fell into the canal. The passengers travelling in the bus got grievous injuries. Mandeep Singh also got serious injuries to which he succumbed. On being injured, Mandeep Singh was first taken to A.P.Jain Civil Hospital, Rajpura, where his postmortem was conducted. Therefore, one claim petition was filed by the wife and minor son of the deceased and the second claim petition was filed by the parents of the deceased Mandeep Singh, claiming compensation on account of

death of Mandeep Singh. It was pleaded in the claim petition that Mandeep

Singh was 48 years of the age at the time of accident. He was Chartered Accountant and was having his own office in United States of America (USA). He was earning \$ 1,41,036/- per annum; calculated in terms of Rupees at the prevalent exchange rate; it was claimed that the income of the deceased was Rs. 66,42,104/- per annum. It was claimed that due to untimely death of Mandeep Singh, claimants suffered a huge loss. It was claimed that all the claimants are legal representatives of the deceased Mandeep Singh. So, the compensation of Rs. 15.00 Crore was claimed.

3. Respondent No 1 and 2 in the claim petition contested the claim petition by filing separate written statement, wherein the happening of the accident itself was denied. It was pleaded that the deceased never boarded the bus in question. It was further pleaded that a false FIR was got registered. All the other averments made in the claim petition were also denied. Therefore, the dismissal of the claim petition was prayed for.
4. Respondent No. 3, in the claim petition the Insurance Company, also filed separate written statement taking the routine preliminary objections that respondent No. 1 was not holding a valid and effective driving license at the time of accident. It was further claimed that bus in question was used without valid permit and was not having certificate of fitness. On merits, all other averments taken in the claim petition were denied.
5. Parties led their respective evidence.
6. After hearing the parties and appreciating the evidence, the learned Tribunal held the bus in question to be the offending bus, causing accident due to the negligence of its driver. The driving license of its driver was also held to be valid. Since, no violation of terms and conditions of policy was proved, therefore, the Insurance Company was held liable to make the payment of the compensation in this accident.

7. While assessing the amount of compensation, the Tribunal assessed the income of the deceased to be \$ 94985/- per annum. This income was assessed by the Tribunal, by taking the average of previous three years' income, as per the income of the deceased proved on record by the claimants, by placing on record the relevant certificate of income issued by the last employer of the deceased. It deserves to be mentioned here that at one point of time, during the proceedings of the claim petition, the Insurance company had filed an application for permitting it to verify the income of the deceased by visiting the United State of America (USA). That application was dismissed by the Tribunal. The Insurance Company filed a revision petition before this Court. Allowing the revision petition filed by the Insurance Company, this Court permitted the Insurance Company to verify the income of the deceased by visiting USA. As a result, the appellant herein/ respondent-Insurance Company in the case; verified the income of the deceased by sending its own person to USA. As per their own verification, the income of the deceased in his last employment was admittedly, verified to be at the same level as was proved by the claimants by leading the certificates of income in evidence.
8. However, since it has come on record that the just before visiting India, the deceased had left job to start his own business and therefore, on the date of accident he was not employed with his last employer-Company, therefore, the Tribunal assessed the income of the deceased by taking average of previous three years salary. On this assessed salary, the Tribunal applied the deduction of $\frac{1}{4}^{\text{th}}$. Therefore, the annual loss of dependency qua the claimants was assessed to be \$92, 610. Keeping in view the age of the deceased, the multiplier of 13 was applied by the Tribunal. Hence, the total loss of dependency assessed by the Tribunal was \$ 12,03,930 (\$ 92610 X 13). The Tribunal further multiplied this income; arrived at in Dollars, by 46, to arrive at the figure in terms of

rupees. Therefore, an amount of Rs. 5,53,80,780/- was assessed by the Tribunal on account of loss of dependency. Besides, the Tribunal awarded Rs. 1,00,000/- on account of loss of consortium to the widow/claimant. Still further, an amount of Rs. 1,50,000/- was awarded by the Tribunal on account of loss of love and affection. Funeral expenses were granted by the Tribunal as Rs. 25,000/-. Hence, a total amount of Rs. 5,56,55,780/- was awarded by the Tribunal; as compensation to the claimants. This amount was apportioned by the Tribunal by granting Rs.56,55,780/- to the parents of the deceased-Parminster Kaur and Daljit Singh. Remaining amount of Rs. 5,00,00,000/- was apportioned in favour of the widow and the son of the deceased. Aggrieved against this award of the Tribunal, the Insurance Company has filed the present appeal; claiming that the assessment has been made by the Tribunal on exaggerated basis.

9. While arguing the case, learned Senior counsel for the appellant-Insurance Company submitted that it has been proved on record that the deceased was not in the employment at the time of accident. Therefore, his income from previous employment cannot be taken into consideration; because the compensation is to be awarded by assessing the income of the deceased as on the date of accident. Next, learned Senior counsel for the appellant submitted that while awarding the compensation, the Indian standards have to be applied. Since the deceased was not in employment at the relevant time in USA, therefore, the income of the deceased should be taken at the level of what a person pursuing the same profession in India would be earning at the relevant time. Accordingly, it is submitted by the learned Senior counsel that at the relevant time, the tax consultant in India would earn Rs. 50,000/- per month, therefore, the income of the deceased should be assessed only Rs. 50,000/- per month. To buttress his claim, learned Senior counsel relies upon the judgment of Hon'ble Supreme

Versus Jaspal Singh and others. The next argument of learned Senior counsel is that since the quantum of compensation is too high, therefore, the multiplier applicable in the case has to be reduced to 7 only. To buttress his claim, the learned Senior counsel relies upon the judgment of the Hon'ble Supreme Court rendered in the case of ***(2002) 6 Supreme Court Cases 281*** titled as ***United India Insurance Company Limited and others Versus Patricia Jean Mahajan and others.*** Next argument of learned Senior counsel is that since the parents have been proved to be not dependent upon the deceased and the lavish lifestyle of the deceased has come on record, therefore, the deduction on account of personal expenses should be applied at the rate of 2/3rd instead of the 1/4th, as applied by Tribunal. To support his argument learned Senior counsel has relied upon the statement of; none else than the widow of the deceased; who appeared as PW1 before the Tribunal. He has referred to the statement of PW1 and submitted that the deposition of this witness shows that there was no fix income. It further shows that this witness has admitted that no money was being sent by the deceased to his parents. Still further, it is his submission that this witness has admitted that the deceased was receiving some amount, on account of social security, from the Government Department. It is submitted by the learned Senior counsel that the wife of the deceased has admitted in cross examination that she does not have any document of the income of the deceased between May, 2009 to October, 2009; i.e. between date the deceased left his earlier employment and the date when the accident happened. Still further learned counsel submits that the income of the deceased for the purpose of award of compensation, has to be taken as after deducting the applicable taxes, as has been held by the Hon'ble Supreme Court in the judgment rendered in ***2017 ACJ 2700*** titled as ***National Insurance Company Limited versus Pranay***

Sethi and others. Still further learned counsel submits that since the deceased

was not in employment on the date of accident, therefore, his income has been assessed by the Tribunal only on notional basis as self employed. Accordingly, learned Senior counsel for the appellant submits that, the benefit of future prospects cannot be given to the claimants.

10. On the other hand learned counsel for the respondent/claimants has submitted that the income of the deceased has been duly proved by leading the positive evidence, through his income certificates. This income has been verified even by the Insurance Company after getting an order from this Court and the income has been found to be genuine, as at the level as claimed by the claimants. Still further, learned counsel for the respondents/ claimants submits that since the deceased was an American citizen and his salary has been proved in terms of his income in dollars, therefore, the Indian standard of income, at least, qua income cannot be applied. Learned counsel submits that the judgment cited by the learned counsel for the appellant in *Chanderi case (supra)* is distinguishable on the facts of that case; because in that case it was an Indian citizen who claimed to have gone to Germany to work. Still further in that case the income of the deceased in Germany had not been believed by the Tribunal. Hence, according to the learned counsel, the case cited by the learned counsel for the appellant is not helpful to his case. Learned counsel for the respondent relies upon the judgment of Hon'ble Supreme Court reported in *2013 ACJ (SC) 2141* titled as *Jiju Kuruvila and others Versus Kunjujamma Mohan and others* and another case of Hon'ble Supreme Court rendered in case *(2002) 6 Supreme Court Cases 281* titled as *United India Insurance Company Limited and others Versus Patricia Jean Mahajan and others*; to contend that, in case, the deceased was American citizen; then the income of the deceased as earned in USA and in dollars have to be taken into consideration for the purpose of

calculation of the compensation; payable to the dependents. Still further, learned counsel for the respondents submits that the income of the deceased has rightly been assessed by the Tribunal by taking the average of previous three years; in view of the fact that, at the relevant time, the deceased was engaged in his own practice; and there may not be exact documentary evidence available to show the exact income on the date of death, since, the gap between the leaving of the previous job and the date of death is not that much longer to assess the income of the deceased in terms of money. He supports this argument by citing a judgment of Hon'ble Supreme Court rendered in **2010 (12) JT 106** titled as ***Shakti Devi Versus New India Insurance Co. Ltd. And another***; wherein the Hon'ble Supreme Court held that although the deceased was not employed at the relevant time, however, he was about to get the employment. Therefore, his possible salary at the time of employment was taken as the income of the deceased. Still further, to buttress his argument, learned counsel relies upon the judgment of this Court rendered in **FAO No. 1799 of 2017** titled as ***Reliance General Insurance company Limited Versus Smt. Vinita and others***. In this case, the deceased was idle at the time of death. This Court had held that his income of the previous months would be the relevant criteria for determination of the income at the time of death. Still further, learned counsel for the respondents has relied upon the judgment of this Court rendered in **2009 ACJ 1226** titled as ***Kamlesh Kumari and others Versus Union of India and others***; to contend that if a person had left the job and the span of gap between the leaving the job and the date of accident is not much longer then the last pay certificate of the deceased would be the proper document to assess the income of the deceased.

11.To counter another argument of learned Senior counsel for the appellant that

wife was earning-hand and, therefore, she is not entitled to any compensation; the learned counsel for the respondents submits that, merely, because the wife happened to be an earning hand does not dis-entitle her from claiming compensation on account of death of her spouse. For this purpose he relied upon the judgment of this Court rendered in ***FAO No. 1276 of 2009*** titled as ***United India Insurance Company Limited Versus Manjit Singh and others***; wherein it was held that even if the wife is working; she would be entitled to get the compensation and that mere fact that she is working-hand, does not exclude her from the definition of the legal representatives of the deceased, as required under the Act to maintain a claim petition. Still further, to buttress his argument that even the parents would be entitled to the compensation; learned counsel for the respondents relied upon the judgment of the Hon'ble Supreme Court in case ***1987 AIR (SC) 1690*** titled as ***Gujarat State Road Transport Corporation, Ahmedabad Versus Ramanbhai Prabhatbhai***. It is his contention that holding the brother to be the legal representative of the deceased, the Hon'ble Supreme Court held the brother of the deceased to be entitled to the compensation. To show the extreme example of a legal representative entitled to the compensation on account of death of the deceased; learned counsel for the respondent relies upon the judgment of the Hon'ble Supreme Court rendered in ***2014(1) ACC (SC) 461*** titled as ***Montford Brothers of St. Gabriel and another Versus United India Insurance and Another***. It is his contention that in this judgment even the Church was held to be legal representative of the deceased who was working as 'Brother' in the Church. Hence, it is submitted by learned counsel for the respondents that, by any means, the working wife of the deceased and his parents cannot be excluded from entitlement of the compensation on account of death of the deceased.

the claimants are not entitled to take the benefit of increase of compensation on account of future prospects of the deceased; learned counsel submits that in the latest judgment of the Hon'ble Supreme Court rendered in the case of ***National Insurance Company Limited Versus Pranay Sethi and others(supra)***; this point has been clarified and it has been held that even the legal representatives of the self-employed person would be entitled to compensation on account of future prospects of the deceased. Still further, it is his submission that in the present case, the income of the deceased has been proved to be progressively increasing every year; and he had left the job only for the betterment of the life, therefore, it cannot be said that his income was not ascertained or was not increasing. His submission is that future prospects have to be granted on the basis of the income as assessed by the Tribunal as per the evidence led by the claimants.

13. Having heard learned counsel for the parties and perused the record with their able assistance, this Court finds that the arguments of the learned Senior counsel for the appellant deserve to be partly sustained and partly rejected. So far as the assessment of the income of the deceased is concerned, this Court does not find any perversity in the method adopted by the Tribunal. Since the Motor Vehicles Act provides for “just compensation” and not “just the compensation” so claimants are entitled to be compensated for their actual loss, as far as possible. So the income of the deceased have to be taken at the same level as proved on record, even if it happens to be in foreign currency. Even the judgments relied upon by the learned counsel for the respondents clarify the point, that it is the last income proved on record, which has to be taken into consideration for the purpose of the assessment of the income for the purpose of grant of compensation, in case, the deceased had left the job and the gap between the leaving of job and the date of death is not extraordinary long.

Hence, the Tribunal has rightly taken the income of the deceased by applying the formula of average of previous three years' income; as proved on record. However, learned Senior counsel for the appellant is right in submitting that the income assessed by the Tribunal for grant of compensation has to be the income as proved on record minus the income tax, as per the judgment of Hon'ble Supreme Court in ***National Insurance Company Limited's case (supra)***. However, the Tribunal has not deducted the applicable taxes in this case. Therefore, this Court finds that the appeal of the Insurance Company deserves to be succeeded qua this point. To show the applicable taxes, the appellant has placed on record the tax deductions, made in previous three years; out of the salary of the deceased. Since the income of the deceased has been assessed by the Tribunal by taking average of three years, therefore, even the applicable tax would have to be calculated by taking the average rate of tax of previous three years. Accordingly, as per the documents of the Insurance Company itself the average applicable tax per annum, in the present case comes to 8.02%. Accordingly, this has to be deducted from the income assessed by the Tribunal, to arrive at the established income; in terms of the judgment of the Hon'ble Supreme Court rendered in ***National Insurance Company Limited's case (supra)***. Accordingly, the income of the deceased is assessed at dollars $94,985 - 7618 = 87,367/-$ per annum.

14. So far as the deduction is concerned, the same has rightly been applied by the Tribunal at the rate of $1/4^{\text{th}}$ in terms of the judgment of Hon'ble Supreme Court rendered in ***2009 ACJ 1298 (SC)*** titled as ***Sarla Verma and others versus Delhi Transport Corporation and another***; keeping in view the number of the dependents. The argument of learned counsel for the appellant that the deduction has to be applied at the rate of $2/3^{\text{rd}}$ of the total income; does not find

any legal support; either from the statutory provisions or from the judgments of the Courts. To increase the deduction, learned counsel for the appellant had attempted to dis-entitle the parents from the compensation on the ground that they are not dependents. Therefore, the number of dependents have to be reduced so as to increase the deduction. However, the judgments rendered by Hon'ble Supreme Court have clearly laid down that it is not the dependents upon the deceased who are entitled to claim the compensation under the Motor Vehicles Act, rather, it is the status of a person as legal representative of the deceased which would be sufficient to maintain a petition under The Motor Vehicles Act. Accordingly, since the parents and the wife are rightly held to be the persons entitled to compensation, therefore, the deduction based upon number of claimants have rightly been applied by Tribunal at the rate of 1/4th.

15. The argument of the learned counsel for the appellant that the lavish lifestyle of the deceased should also be considered and hence, deduction applicable in this case be increased, is also liable to be rejected for the simple reason that the Courts in India has standardized the deductions on the basis of number of dependents. The standardization of the deduction has been upheld by the latest judgment of the Constitutional Bench of the Hon'ble Supreme Court rendered in ***National Insurance Company Limited's case (supra)***. Therefore, there is no justification for deviation in a particular case, even if, there is some kind of lavishness shown in the life style of the deceased. Otherwise also, lavishness of the life style is a subjective term. What may be lavish for one person may be necessity for the other person, in the particular facts and circumstances. Therefore, this factor is otherwise also irrelevant. Accordingly, after deducting 1/4th on account of personal expenses the loss of dependency to the dependents comes to dollars $87367 - 21842 = 65,525/-$ per annum.

established by the claimants by producing the cogent evidence and the Tribunal has arrived at particular figure of the income only on the basis of the evidence, and now, even the applicable taxes have been deducted by this Court, therefore, the claimants shall be entitled to the compensation on the basis of this income established on the record of the present case. The argument that the income has been taken on notional basis and therefore, the future prospects cannot be granted; is not acceptable. This Court has already held in ***FAO No. 4695 of 2013*** titled as ***Smt. Lalita Rani and others Versus Vishwajit Singh Minhas and another*** that even so called notional income, assessed by the Tribunal is only an income established as per the requirement of the Indian Evidence Act, therefore, the same shall also be taken to be an established income for the purpose of grant of future prospects. Hence, the claimants are entitled to the benefit of enhancement of compensation on account of the future prospects of the deceased. There is no perversity in the findings recorded by the Tribunal, so far as, the grant of benefit of future prospects, per se, is concerned.

17. However, learned Senior counsel for the appellant is right in arguing that as per the latest law laid down by Hon'ble Supreme Court in ***National Insurance Company Limited's case (supra)***, the benefit of future prospects in the present case, as per the age of the deceased, have to be reduced to 25% of the established income. Accordingly, the finding of the Tribunal regarding applicable rate of the benefit of future prospects is modified to the extent that the claimants shall be entitled to the benefit of the future prospects to the extent of 25% of the established income. Accordingly, after adding 25%, the annual loss of dependency of the claimants comes to \$ 81906. Accordingly, the claimants are held entitled to an amount of \$ 81906 per annum on account of loss of dependency.

18. Argument of learned counsel for the appellant regarding decrease in multiplier; does not find support from any established legal proposition or the prevalent judgment of any Court. The latest judgment of the Hon'ble Supreme Court rendered in *National Insurance Company Limited's case (supra)* has held that the multiplier in the case of accident claim shall be applied at the same level as has been delineated in case of *Sarla Verma and others's case (supra)*. Accordingly, it is held that multiplier of the 13 has rightly been applied by the Tribunal as per the age of the deceased. The argument of the learned counsel for the appellant is that since the income has been taken in foreign currency and the amount of compensation is huge, therefore, the multiplier should be reduced. To support his argument learned counsel relies upon the judgment of this Court rendered in *2014 (37) RCR 14* titled as *Rajiv Parihar Versus Harjit Singh*; to contend that in this judgment this Court has interpreted the judgment of the Hon'ble Supreme Court rendered in the case of *Sarla Verma and others's case (supra)* and held that the multiplier would be lowered down in case of huge amount of compensation. However, this Court does not find any substance in this argument. The same judgment; rendered in *Sarla Verma and others's case (supra)*; has been interpreted by the Constitutional Bench of the Hon'ble Supreme Court itself, in the case of *National Insurance Company Limited's case (supra)* and it has been held that multiplier delineated in the judgment of *Sarla Verma and others's case (supra)* would be applicable as per the age of the deceased. Once, there is an interpretation of a judgment of the Hon'ble Supreme Court; by the Larger Bench of the Hon'ble Supreme Court itself, then the interpretation of the same judgment by this Court pales into insignificance. Therefore, the interpretation given by the Constitutional Bench of the Hon'ble Supreme Court shall prevail over any interpretation given by this

Court. Hence, this argument of the learned counsel for the appellant is also rejected .

19.Hence, it is held that multiplier of 13 would be applicable in the present case.

Accordingly, the total loss of dependency to the claimants comes to \$ 81906 X 13 = \$ 10,64,778/-. There is no dispute by either side that the applicable rate of exchange of Rupee per dollars, at the relevant time was 46, as has been applied by the Tribunal. Therefore, the application of exchange rate at the rate of Rs. 46/- per dollar is also upheld. Accordingly, converted in terms of rupees, the total amount of loss of dependency to the claimants comes to Rs. 4,89,79,788/-.

20.The argument of the learned counsel for the appellant that compensation on account of loss of consortium, loss of love and affection and funeral expenses have also been wrongly granted; also deserves to succeed. In terms of the latest judgment of Hon'ble Supreme Court rendered in case of *National Insurance Company Limited's case (supra)*; the claimants shall be entitled only to Rs. 40,000/- on account of loss of consortium. No amount is now awardable on account of loss of love and affection. However, as per the judgment of the Hon'ble Supreme Court, the claimants are entitled to Rs. 15,000/- on account of loss of estate. Accordingly, they are held entitled to this amount. Still further, the compensation awarded on account of funeral expenses is also reduced to Rs. 15,000/- in terms of the judgment of the Hon'ble Supreme Court.

21.In view of the above, the claimants are entitled to compensation as follows:-

- | | | |
|---|---|-------------------|
| 1 | Compensation on account of loss of dependency | Rs. 4,89,79,788/- |
| 2 | Compensation on account of loss of consortium | Rs. 40,000/- |
| 3 | Compensation on account of loss of Estate | Rs. 15,000/- |

4	Compensation on account of funeral expenses	Rs. 15,000/-
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Total:-	4,90,49,788/-
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22.The interest in the present case is retained at the same rate as was granted by the Tribunal.

23.So far as, the apportionment of the awarded amount is concerned, the amount granted by the Tribunal to the parents of the deceased by apportionment is retained at the same amount i.e. Rs. 56,55,780/-. If any amount is to be refunded to the Insurance Company on account of any adjustment; the same shall be reduced from the share of other claimants.

24.The amount to be deposited by the Insurance company with the Tribunal now shall be deposited as per the decision of the present appeal.

25.No other argument was raised by the learned counsel for the parties.

26.In view of the above the appeal is partly accepted. The award of the Motor Accident Claims Tribunal is modified in the above said terms.

30th November, 2017

shabha

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned	-	Yes
Whether reportable	-	Yes