

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

**XOBJC No. 238-CII of 2017 in/and
FAO No. 7303 of 2017
Date of Decision: 20.12.2017**

National Insurance Company Ltd.

.....Appellant

v.

Mahindro Devi and others

.....Respondents

CORAM HON'BLE MR. JUSTICE B.S. WALIA

Present:- Mr. S.S. Sidhu, Advocate, for the appellant

Mr. Sagar Aggarwal, Advocate for respondent Nos. 1 and 2/
Cross Objectors

B.S. WALIA, J. (Oral)

XOBJC No. 238-CII of 2017 :

Notice of motion.

Mr. S.S. Sidhu, Advocate, counsel for the appellant accepts
notice.

FAO No. 7303 of 2017 :

1. Mr. Tejinder Pal Singh, Advocate, puts in appearance on behalf of
respondent Nos. 3 and 4 and filed Memorandum of Appearance. The same
is taken on record. With the consent of counsel for the parties, the appeal as
well as cross-objection are taken up for final disposal.

2. Appeal has been filed by the Insurance Company to challenge award

of compensation of Rs.15,82,000/- (inadvertently recorded as Rs. 15,72,000/- in the award as well as appeal) to the respondents-claimants cross objectors, on account of death of their 19 years old son Lakhwinder Singh, in an accident on 20.7.2016, by treating the income of the deceased-a student, at Rs.10,000/- per month, applying multiplier of 18, working out dependency of Rs.15,12,000/-, after deducting 50% of the income of the deceased on account of his personal expenditure, and by adding future prospects @ 40% of the total income and Rs.50,000/- on account of loss of love and affection, Rs.10,000/- on account of funeral expenses and Rs.10,000/- towards last rites.

3. Learned counsel for the appellant-Insurance company made a three fold submission for seeking reduction in the compensation awarded, firstly, that there was no evidence on record that the deceased was a student, secondly, that the age of the deceased had been wrongly treated as 19 years instead of 17 years, thirdly, the notional income of the deceased had been wrongly assessed/established at Rs.10,000/- per annum.

4. Additionally, learned counsel for the appellant contended that Rs.50,000/- awarded on account of loss of love and affection and Rs.10,000/-on account of funeral expenses and Rs.10,000/- on account of last rites was in derogation of the law laid down by the Constitution Bench of the Hon'ble Supreme Court in '**SLP (Civil) 25590 of 2014, National Insurance Company Ltd. v. Pranay Sethi**' decided on 31.10.2017. Learned counsel contended that compensation on the aforementioned heads was liable to be reduced by deleting award of compensation on account of loss of love and affection and awarding lump sum of Rs.15,000/- towards

funeral expenses instead of Rs.10,000/-each on account of funeral expenses and last rites respectively.

5. Learned counsel for the respondents-cross objectors, on the other hand, while disputing the submissions of learned counsel for the appellant-Insurance Company sought enhancement of the compensation on the ground that the income of the deceased was assessed less at Rs.10,000/- whereas the same ought to have been much more.

6. Learned counsel further contended that a perusal of Ex. P-6 i.e. online admission application form filed by the deceased for the year 2016-17 dated 03.07.2017 revealed that the deceased had successfully passed his Class 10 examination with 64.60 percent marks and had thereafter applied for admission to the ITI Course in the State of Haryana. By referring to Ex. P-13 i.e. Aadhar Card, learned counsel highlighted that the date of birth of the deceased therein was recorded as 08.09.1997. In other words, as on the date of accident, the deceased was 19 years of age. On the basis of the same, learned counsel contended that the findings of the learned MACT, Karnal with regard to the deceased being a student and of 19 years of age, were correctly recorded.

7. Learned counsel for the appellant has not been able to refer to any material to the contrary.

8. Learned counsel for the respondents-claimants-cross objectors further contended that the deceased had passed Class 10 Examination with 64.60 percent marks, therefore, it was apparent that he was a meritorious student. Learned Counsel further contended that the deceased had applied for admission in the ITI and after doing the said 2 years Course, he would have

got a minimum salary of Rs.20,000/- per month.

9. On the basis of the same, learned counsel contended that although income of the deceased ought to have been taken at Rs.20,000/- per month, yet, the income was taken at Rs.10,000/- per month only.

10. Learned counsel contended that in the case of death of a 19 year old student of Medicine, the Hon'ble Supreme Court in 'Ashvinbhai Jayantilal Modi v. Ramkaran Ramchandra Sharma and another', 2015 (1) SCC (Civil) 792, took the income of the deceased at Rs.25,000/- per month, therefore, in the circumstances of the case, the assessment of Rs. 10,000/- per month as income of the deceased was perfectly justified and not open to any modification.

11. I have considered the submissions of learned counsel for the parties and am of the view that the question of the deceased being a student or of being 19 years of age is not in dispute in view of the categorical evidence i.e. Ex. P-6 and Ex. P-13 available on record as produced by the respondents-claimants i.e. cross objectors, and no evidence to the contrary having been led by the Insurance Company. As noted above, income of the deceased was assessed at Rs.10,000/- per month. I find that in view of the decision of the Hon'ble Supreme Court as referred to above, wherein, income of 19 years old student of Medicine was taken at Rs.25,000/- per month, income of the deceased in the instant case, who had passed his 10th Class examination securing 64.60% marks and who had applied for admission to ITI Course, was correctly taken at Rs.10,000/- per month. However, plea of learned counsel for the appellant with regard to payment

of compensation on account of conventional heads merits acceptance as in

view of the decision of the Hon'ble Supreme Court in **Pranay Sethi's case** (supra), no amount has been paid on account of loss of love and affection, besides, compensation on account of funeral expenses has been restricted to Rs.15,000/-.

12. Learned counsel for the respondents-claimants cross objectors has very fairly conceded that the amount awarded on account of loss of love and affection is liable to be reduced in view of no amount on said head having been awarded by the Hon'ble Supreme Court in **Pranay Sethi's case** (supra).

13. Accordingly, it is held that amount of Rs.10,000/- plus Rs.10,000/- (total Rs.20,000/-) awarded on account of funeral expenses and last rites, shall be reduced to Rs.15,000/- in lump sum on account of compensation towards funeral expenses. No amount shall be payable on account of loss of love and affection.

14. Learned counsel for the respondents-claimants contended that the respondents claimants were entitled to Rs.15,000/- on account of loss of estate in view of the decision of the Hon'ble Supreme Court (Supra). Relevant extract of the decision of the Hon'ble Supreme Court in **Pranay Sethi's case** (Supra) is reproduced as under :

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

In the light of the decision of the Hon'ble Supreme Court as referred

to above, claim of the Claimants-Respondents for award of compensation of Rs. 15,000/- on account of loss of estate is justified.

15. Accordingly, as against the compensation of Rs.15,82,000/-, the respondents-claimants cross objectors are held entitled to Rs.15,42,000/- along with interest @ 6% per annum w.e.f. the date of claim petition till date of payment less amount, if any, already paid.

16. Appeal and cross objection's stand disposed of in the manner indicated above.

(B.S. WALIA)
JUDGE

20.12.2017
Ashwani

Speaking/Reasoned	Yes/No
Reportable	Yes/No