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

**Cross Objections No. 257-CII of 2015 and
FAO No. 853 of 2015 (O&M)**
Date of decision : September 12, 2018

National Insurance Company Limited .....Appellant

Versus

Jagat Ram and others ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Brig. B.S. Taunque, Advocate
for the appellant.

Mr. Manoj Kumar Sood, Advocate
for the cross objectors/respondents No. 1 and 2.

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LISA GILL, J.

Notice of the cross objections.

Brig. B.S. Taunque, Advocate accepts notice on behalf of non-applicant/appellant.

There is a delay of 144 days in filing the cross objections.

For the reasons mentioned in the application and the arguments addressed, delay of 144 days in filing the cross objections is condoned.

CM-25555-CII-2015 is disposed of.

This judgment shall decide FAO No. 853 of 2015 as well as cross objections Nos. 257-CII of 2015 filed by claimant-respondents No. 1 and 2.

Present appeal has been filed by National Insurance Company claiming that the quantum of compensation awarded to the claimants No. 1 and 2 is excessive while the claimants pray for enhancement thereof.

Brief facts necessary for adjudication of the case are that on 09.07.2013, Deepak (since deceased) alongwith his friend Rajan was going to Palwal on a motorcycle bearing No. HR-51-AK-3510. When they reached at Alawapur Chowk, offending vehicle Alto car bearing registration No. HR-26-AW-1391 driven in a rash and negligent manner by respondent No. 5 hit the motorcycle from behind. Both Deepak and Rajan both fell on the road and sustained injuries. Deepak died at the spot.

Respondent Nos. 1 to 3 filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Deepak on 09.07.2013 in a motor vehicle accident caused due to driving of the offending vehicle bearing registration No. HR-26-AW-1391 by respondent No.5 in a rash and negligent manner.

Learned Tribunal held the age of the deceased to be 24½ years on the basis of the school certificate Mark A, which shows the date of birth of the deceased to be 01.02.1989. Income of the deceased was assessed as Rs.15,000/- per month in view of his academic qualification as well as documents Exs. P1 to P7. Multiplier of 18 was applied. 50% deduction was effected towards personal expenses. Total dependency was calculated at ₹90,000. Learned Tribunal awarded a sum of ₹16,20,000/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition till date of actual realisation of the award.

Liability of the appellant - insurance company is not disputed. Challenge is, however, raised in respect to the quantum of compensation. Learned counsel for the appellant – insurance company submits that the deceased was admittedly not employed at the time of accident on 09.07.2013. He is shown to have been employed with Shri Pitambra Build

Infra Pvt. Ltd. from 01.12.2012 till 12.06.2013 only i.e. before the occurrence of the accident on 09.07.2013. Moreover, as per the salary certificate (Ex.P2), a sum of Rs.3000/- was given as conveyance allowance and Rs.1000/- as special allowance, which in any case, cannot be included in the salary. In these circumstances, it is submitted that the leaned Tribunal has erred in assessing the income of the deceased to Rs.15,000/- merely by keeping in view the educational qualification of the deceased, despite the fact that at the time of the accident the deceased was not even employed. It is, thus, pleaded that present appeal be allowed.

Learned counsel for respondents No. 1 and 2/cross objectors while opposing the said arguments vehemently argues that there is nothing on record to rebut the evidence reflecting employment of the deceased – Deepak with Shri Pitambra Build Infra Pvt. Ltd. as Administrative Officer. PW3 Rohit Tyagi has duly proved the salary being paid to the deceased – Deepak as Administrative Officer with their establishment. Moreover, in terms of the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited versus Pranay Sethi and others 2017 (4) RCR (Civil) 1009**, increase in income on account of future prospects at the rate of 40% should be afforded. Furthermore, meagre compensation has been afforded under the conventional heads. It is this, prayed, that this appeal be dismissed and cross objections be allowed.

Heard learned counsel for the parties.

There is no dispute that the deceased was 25 years at the time of his death on 09.07.2013. It is further not disputed that he died due to injuries suffered by him in the accident caused due to rash and negligence driving of respondent No. 5. The claimants have successfully proved the educational qualification of the deceased. He was a bachelor. He had a degree of Bachelor in Mass Communication. There is nothing on record to refute or rebut the evidence reflecting the employment of the deceased as Administrative Officer with Shri Pitambra Build Infra Pvt. Ltd. The same was duly proved by PW3 Rohit Tyagi. It is specifically stated by PW3 that there is a reference of the salary in their income tax record as well. Undoubtedly, as per the salary slip Ex. P2, a sum of ₹4,000/- (₹3,000/- for conveyance allowance and ₹1,000/-as special allowance) is required to be deducted from the total salary of ₹16,000/- It is not disputed by the claimants that at the time of accident, deceased was between jobs and he was unemployed at that particular time. However, I do not find any merit in the argument of learned counsel for the appellant that in this situation income of the deceased should be assessed at the rate of minimum wages of a labourer/skilled worker. There is nothing on records to reflect that the deceased was thrown out of his employment or that he was disqualified in any manner from getting similar employment again. In view of the facts and circumstances of the case, it is considered appropriate to assess the income of the deceased as ₹11,000/- per month instead of ₹15,000/- per month as assessed by the learned Tribunal. As per the guidelines laid down by the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra), increase in income on account of future prospects at the rate of 40% (₹4400/-) is afforded in view of the age of the deceased being 25 years, which takes the income of the deceased to ₹15,400/- per month. 50% deduction is to be applied as the deceased was a bachelor, thereby rendering income of the deceased to be ₹7700/- per month (15400-7700). Multiplier of 18 is correctly applied. Annual dependancy of the claimants is, therefore, assessed as ₹16,63,200/- (₹7700x18x12). The claimants are entitled to

₹15,000/- for funeral expenses as well as ₹15,000/- for loss of estate. Accordingly, compensation awarded to the claimants – respondents No. 1 to 3 is re-worked as under:-

Loss of dependency (₹7700x18x12)	₹16,63,200/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹16,93,200/-

The claimant/respondents shall, however, be entitled to interest @ 7.5% per annum on the amount yet to be disbursed from the date of filing of the petition till realisation.

Apportionment of amount of compensation amongst claimants shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants shall enure.

With the abovesaid modification in the amount of compensation, the present appeal as well as the cross objections are disposed of.

(Lisa Gill)
Judge

September 12, 2018
rts

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No