IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2573 of 2017 (O&M) &
Cross Objection No.183-CII of 2017
Date of decision:30.11.2018.

The Oriental Insurance Company Ltd. and another
...Appellants

Versus

Anita Devi and others
....Respondents

**CORAM: HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. S.S.Sidhu, Advocate for the appellants.

Mr. Ashwani Talwar, Advocate and
Ms. Amandeep Kaur, Advocate for respondents No.1 and 2/Cross Objectors.

**LISA GILL, J.**

This order shall dispose of FAO No.2573 of 2017 as well as Cross Objection No.183-CII of 2017 filed by respondents No.1 and 2.

Copy of the cross objections was supplied to learned counsel for the appellant on 01.02.2018.

Insurance Company has filed this appeal challenging award dated 23.01.2017 passed by Motor Accident Claimants Tribunal, SAS Nagar, Mohali (`Tribunal' for short) on the ground of compensation awarded to the claimants being excessive.

Cross Objections on the other hand have been filed by the claimants/cross objectors seeking enhancement of the compensation awarded to them by the learned Tribunal on account of death of their son Deepak Chand in a motor vehicle accident on 10.07.2015.

The claimants, who are parents of the deceased, filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of their son Deepak Chand due to injuries received in a motor vehicle accident which took place on 10.07.2015. The deceased Deepak Chand was involved in a motor vehicle accident on 10.07.2015 when he along with other pillion rider Surinder Pal were going from Village Saneta to Village Nagari on motorcycle bearing No.PB-65G-7968 at slow speed and on left side of the road. Brother of deceased namely Mukesh Kumar and uncle Ram Karan were following the above motorcycle. At about 8.30 am, when the deceased riding his motorcycle, reached near Kirat Dhaba, Village Derri, one Bolero bearing registration No.PB-23M-7857 was proceeding rashly and negligently in front of the motorcycle of the deceased. Said Bolero went towards the wrong side of the road and in the meantime, a Toyota Innova bearing registration No.CH-02-0005 came from the opposite side i.e. from Banur to Landran at a very high speed driven in a rash and negligent manner and collided with Bolero. Due to high speed of Innova etc., its driver could not control it and the same struck against the motorcycle of the deceased. As a result thereof, deceased Deepak Chand along with Surinder Pal fell down on the road and received fatal injuries. Deepak Chand died on the spot, whereas Surinder Pal received serious injuries. The accident took place due to composite negligence on the part of drivers of both the offending vehicles. The deceased was not at fault. FIR No.161 dated 11.07.2015 was registered under Sections 279 and 304-A IPC against drivers of both the vehicles at Police Station Sohana. It was pleaded that the deceased at the time of his death was 26 years old. He was working in a sweet shop besides doing catering business, earning Rs.25,000/- per month from a Sweets Shop and Rs.10,000/- from catering business. Compensation was thus prayed for.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to the composite negligence of respondents No.3 and 6/ drivers of the offending vehicles. No serious challenge has been raised on behalf of the Insurance Company in this regard. Liability as fixed by the Tribunal is also not disputed.

Learned Tribunal concluded the deceased to be 26 years old at the time of his death and assessed his income as Rs.7000/- per month. 50% increase in income towards future prospects has been afforded. Deduction of 50% was effected towards personal expenses. Multiplier of 17 was applied keeping in view the age of the deceased. Thus, total dependency was assessed at Rs.10,71,000/- (5250x12x17). A sum of Rs.25,000/- was awarded towards last rites. Thus, the claimants were held entitled to total compensation of Rs.10,96,000/- along with interest @ 6% per annum from the date of filing of claim petition till realisation.

Learned counsel for the appellant/Insurance Company submits that the learned Tribunal has erred in affording increment at the rate of 50% on account of future prospects, whereas in view of the judgment of Hon'ble Supreme Court in National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009, it should be afforded at the rate of 40%.

Learned counsel for the claimants/cross objectors is unable to deny that future increments at the rate of 40% are to be afforded. He, however, submits that income of the deceased assessed by the learned Tribunal was on the lower side. Moreover, meagre compensation has been awarded under the conventional heads, which needs to be enhanced as per the judgment of the Hon'ble Supreme Court in Magma General Insurance Company Ltd. Vs. Nanu Ram alias Chuhru Ram and others, in Civil Appeal No.9581 of 2018 decided on 18.09.2018. He further submits that interest at the rate of 7.5% instead of 6% should be awarded. It is thus prayed that cross objections filed by the claimants be allowed and compensation awarded be enhanced.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Evidence on record proves that Deepak Chand died due to injuries received in a motor vehicle accident which took place on 10.07.2015 due to the composite negligence of respondents No.3 and 6/ drivers of the offending vehicles. Learned counsel for the claimants/cross objectors relies upon the statement of PW3 Gurmukh Singh to claim that the deceased was working in a sweet shop, earning Rs.25,000/- besides being engaged in the business of catering. However, there is no evidence on record to indicate the same except the bald statement of PW1 besides the oral statements of PW3 Gurmukh Singh and PW1 Mukesh Kumar, brother of the deceased and PW2 Anita Devi, mother of the deceased. Minimum wages of an unskilled labourer in the State of Punjab at the time of accident was Rs.6800/-. Therefore, income of the deceased has been correctly assessed as Rs.7000/-. The deceased was 26 years old at the time of accident. In view of the judgment of Hon'ble the Supreme Court in the case of Pranay Sethi and others (supra), 40% instead of 50% increase in income has to be afforded on account of future prospects. Multiplier of 17 has rightly been applied. Deduction of 50% has also rightly been effected. In view of the judgment of Hon'ble the Supreme Court in the case of Magma General Insurance Company Ltd. (supra), Rs.40,000/- each has to be afforded to the appellants towards filial consortium. However, the claimants are indeed entitled to a sum of Rs.15,000/- each for loss of estate and funeral expenses instead of Rs.25,000/- awarded towards last rites expenses.

Appellants are, thus, entitled to compensation, which is re-worked as under:-

| *Sr.No.* | *Heads of Claim* | *Rupees* |
|---|---|---|
| 1. | Income | 7000 p.m. i.e., 84,000/- per annum |
| 2. | Total income after addition at the rate of 40% on account of future prospects | 84,000+33,600 (84,000x40%) = 1,17,600/- |
| 3. | Income after deduction of 50% on account of personal expenses | 1,17,600–58,800 (1,17,600/2) = 58,800/- |
| 4. | Total dependency after applying a multiplier of 17 | (58,800 **x**17) =9,99,600/- |
| 5. | Loss of estate | 15,000/- |
| 6. | Funeral expenses | 15,000/- |
| 7. | Loss of consortium to appellants @ 40,000/- Rs.80,000/- (40,000x2) | 80,000/- |
| **Grand Total** | | 11,09,600/- |

There is merit in the argument of learned counsel for the claimants/cross objectors that interest at the rate of 7.5% should be awarded instead of 6%. Compensation in this case has admittedly been deposited by the Insurance Company within the prescribed period of two months. Amount of compensation already awarded to the appellants, needless to say, shall stand deducted from the amount calculated as above. Appellants shall be entitled to interest at the rate of 7.5% per annum on the entire amount from the date of filing of the petition till realization.

With the abovesaid modification in the award dated 23.01.2017, both the appeal as well as cross objections are disposed of.

**(LISA GILL)**
**JUDGE**

30.11.2018
Ishwar Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No