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

FAO No.724 of 2013 and
XOBJC No.102-CII of 2013
Date of Decision: 14.01.2019

The New India Assurance Company Ltd.

...Appellant

Versus

Rajvinder Kaur and others

....Respondents

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

Present: Mr. Sukhdarshan Singh, Advocate for the appellant.

Mr. Vivek Suri, Advocate for respondent Nos.1 and 2.

Mr. Vinod K. Kanwal, Advocate for respondent Nos.3 and 4.

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**B.S.WALIA, J (Oral).**

1. This order shall decide FAO No.724 of 2013, filed by the appellant/Insurance Company for reduction of compensation as also cross-objections No.102-CII of 2013 filed by respondent Nos.1 to 4/ claimants/cross-objectors for enhancement of compensation.

2. Appeal has been filed by the Insurance Company challenging compensation of ₹13,57,200/- awarded to the widow, minor son and parents of Satnam Singh, who died in a motor vehicular accident on 13.09.2011.

3. Learned counsel for the appellant contended that although the deceased was claimed to have been working as a property dealer yet in the

absence of evidence with regard to his earnings, the learned Motor Accidents Claims Tribunal, Kurukshetra (hereinafter referred to as ‘the Tribunal’) took into account the monthly wages of ₹5400/- payable to an unskilled labourer, whereas as per notification issued by the Govt. of Haryana for the relevant period, minimum wages payable to an unskilled labourer were ₹4644/- besides as against taking 40% of the established income into account for award of future prospects, 50% of the income of the deceased had been taken into account while computing the compensation. Learned counsel further contended that no amount was payable on account of transportation charges, therefore, ₹5,000/- awarded on said count was liable to be set-aside. Learned counsel contends that in the circumstances the appeal is liable to be accepted, award modified and compensation payable reduced.

4. On the other hand, learned counsel for the respondents/ claimants/cross-objectors contended that income of the deceased was not properly assessed besides compensation awarded on account of loss of consortium, funeral expenses and loss of estate had not been correctly awarded. Learned counsel further contended that admittedly the deceased had been treated to be a property dealer besides was a graduate, therefore, his income could not be assessed as that of an unskilled labourer and even if rough guess work was to be made it had to be more than the minimum wages fixed for an unskilled labourer. Learned counsel contends that in the circumstances the wages payable to an unskilled or skilled worker could not be made the basis for award of compensation since admittedly the deceased had been treated to be working as a property dealer besides was a

graduate. Learned counsel further contends that in the circumstances by no stretch of imagination a graduate property dealer could be treated at par to an unskilled labourer. Learned counsel contends that in the circumstances the income of the deceased assessed at ₹5400/- per month was correctly assessed. Lastly learned counsel contended that interest awarded @ 6% per annum was on the lower side and ought to have been awarded @ 9% per annum.

5. I have considered the submissions of learned counsel for the parties.

6. Admittedly the deceased was a graduate and was working as a property dealer, therefore, he could not have been treated as earning the same wages as were payable to an unskilled labourer. Even as per the notification, minimum wages payable to a skilled worker were ₹5163.89/- per month. The deceased in the circumstances ought to have been treated at least at par with a skilled worker. Accordingly, income of the deceased is taken as ₹5163.89/- rounded off to Rs.5164/- per month.

7. As per paragraph No.61 (iv) of the decision in National Insurance Company Ltd. versus Pranay Sethi and others, 2017(4) RCR (Civil) 1009, where the deceased was below 40 years of age, 40% of the established income of the deceased less tax component is to be added on account of future prospects while computing compensation.

Since in the instant case deceased was self employed and was 25 years of age, therefore, 40% of the established income of the deceased minus tax component is liable to be added on account of future prospects while computing compensation and not 50% as ordered by the Tribunal.

8. As regards plea of learned counsel for respondent Nos.1 to 4/ claimants/cross-objectors for appropriate compensation under conventional heads, it needs noticing that as per paragraph No.61 (viii) of the decision in Pranay Sethi's case (supra), compensation of ₹15,000/-, ₹40,000/- and ₹15,000/- respectively is payable on account of loss of estate, loss of consortium and funeral expenses respectively.

9. After taking into account the decision rendered in Pranay Sethi's case (supra), Hon'ble the Supreme Court in a subsequent decision in Magma General Insurance Co. Ltd vs. Nanu Ram Alias Chuhru Ram 2018 (4) RCR (Civil) 333, held that the children of the deceased are also entitled to ₹40,000/- each on account of loss of parental consortium.

10. Accordingly, respondent Nos.1 to 4/claimants/ cross-objectors are held entitled to award of ₹15,000/- on account of loss of estate, ₹15,000/- on account of funeral expenses besides ₹40,000/- each to the wife and minor son of the deceased on account of loss of spousal/parental consortium. However, no amount is payable under transportation head, therefore, plea of learned counsel for the appellants merits acceptance. Accordingly, award of ₹5,000/- for transportation charges is set aside.

11. As regards payment of interest, Hon'ble the Supreme Court in Neeta and others vs. Divisional Manager MSRTC Kolapur 2015 (1) JT 354, in the case of accident of 22.03.2011, awarded interest @ 9% per annum. Since, in this case accident took place on 13.09.2011, therefore, it

would be in the fitness of things if the interest payable is enhanced from 6% per annum to 9% per annum.

12. In the circumstances, respondent Nos.1 to 4/claimants/ cross-objectors are held entitled to the following compensation:-

| Sr. No. | Head | Amount assessed by the Tribunal | Amount assessed by this Court |
|---|---|---|---|
| 1 | Income | ₹5400/- | ₹5164/- |
| 2 | Future Prospects | ₹2700/- i.e. 50% of ₹5400/- | ₹2065/- i.e. 40% of ₹5164/- |
| 3. | Total Income | ₹8100/- | ₹7229/- |
| 4. | Multiplier applied | 18 | 18 |
| 5. | Deduction | 1/4$^{th}$ of ₹8100/- i.e. ₹2025/- | 1/4$^{th}$ of ₹7229/- i.e. ₹1807/- |
| 6. | Dependency | ₹6075x12x18=₹13,12,200/- | ₹5422x12x18=₹11,71,152/- |
| 7. | Funeral Expenses | ₹10,000/- | ₹15,000/- |
| 8. | Loss of Estate | ₹10,000/- | ₹15,000/- |
| 9. | Loss of consortium to widow | ₹20,000/- | ₹40,000/- |
| 10. | Loss of parental consortium | Nil | ₹40,000/- |
| 11. | Transportation Charges | ₹5,000/- | Nil. |
| 12. | Interest | 6% per annum | 9% per annum |
| | Total | ₹13,57,200/- | ₹12,81,152/- |

13. Accordingly, as against the compensation of ₹13,57,200/- awarded by the Tribunal, respondent Nos.1 to 4/claimants/ cross-objectors are held entitled to award of compensation of ₹12,81,152/- along with interest @ 9% per annum w.e.f. the date of filing of the claim petition till date of payment, less payment if any already made.

14. Needless to mention, respondent Nos.1 to 4/claimants/cross-objectors would be entitled to the award of compensation in proportion to their shares determined by the Tribunal after first making payment of

₹40,000/- each towards loss of spousal/parental consortium to the wife and minor son of the deceased i.e. respondent Nos.1 and 2. The Insurance Company shall make payment to the appellants after making deduction of the tax liability, if any, qua future prospects, in accordance with the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra).

15. Accordingly, appeal is allowed while cross-objections are partly accepted and award dated 22.11.2012, passed by the learned Tribunal is modified to the extent as noted above.

**(B.S.WALIA)**
**JUDGE**

**14.01.2019**
rajesh.k.khurana

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