(202) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.3952 of 2016 (O&M) and
CM No.5993-CII of 2017 in
XOBJC No.39-CII of 2017

Date of decision:16.01.2019

New India Assurance Company Ltd. ….. Appellant

Versus

Shanti and others. ….. Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Vinod Gupta, Advocate for the appellant.

Mr. Anil Kumar Gahlawat, Advocate for respondent Nos.1 to 5/ cross-objectors/claimants.

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B.S. WALIA, J. (ORAL)

CM No.5993-CII of 2017 in
XOBJC No.39-CII of 2017

For the reasons as are mentioned in the application, the same is allowed. Delay of 78 days in filing of cross-objections is condoned.

FAO No.3952 of 2016 and XOBJC No.39-CII of 2017

[1] Appeal has been filed by the Insurance Company against award of compensation of ₹ 21,69,000/- to the widow, three minor children and mother of Ashok Kumar who died in a motor vehicular accident on 16.06.2015.

[2] Cross-Objections have been filed by respondent Nos.1 to 5/cross-objectors/claimants on the ground that income of the deceased taken

as ₹ 9000/- per month was on the lower side as it was not possible to maintain five dependents (i.e. widow, three minor children and mother of the deceased) in the said income.

[3] Learned counsel for the appellant contended that while treating the deceased to be a daily-wage labourer, the learned Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as 'the Tribunal') assessed the income of the deceased at ₹ 9,000/- per month, whereas as per the notification for minimum wages issued by the Government of Haryana for the relevant period, the minimum wages for a daily-wage labourer was ₹ 5812/- per month. Copy of the notification under the Minimum Wages Act issued by the Government of Haryana for the relevant period, duly signed by learned counsel for the appellant, has been produced in Court today and the same is taken on record and copy thereof handed over to learned counsel for respondent Nos.1 to 5/cross-objectors/claimants.

[4] Learned counsel for respondent Nos.1 to 5/cross-objectors/claimants has not been able to refer to any evidence whatsoever in support of the plea that income of the deceased assessed @ ₹ 9000/- per month or for that matter enhancement of the income prayed for was sustainable in the face of notification under the Minimum Wages Act.

In the circumstances, income of the deceased is ordered to be treated as **₹ 5812/-** per month instead of ₹ 9000/- per month as taken into account by the learned Tribunal.

[5] Learned counsel for the appellant further contended that future prospects had been awarded @ 50%, whereas as per paragraph No. 61 (iv) of the decision of Hon'ble the Supreme Court in **National Insurance Company Limited vs Pranay Sethi and others, 2017 (4) RCR (Civil)**

1009, 40% of the established income of the deceased minus the tax component was to be taken into account in view of the deceased being self-employed and 32 years of age.

[6] Learned counsel for respondent Nos.1 to 5/cross-objectors/ claimants has not been able to controvert the aforementioned legal position. In the circumstances, 40% of the established income of the deceased minus the tax component shall be taken into account towards future prospects while computing the compensation payable.

[7] Learned counsel for the appellant further contended that a sum of ₹ 1,00,000/- awarded on account of loss of love and affection is not payable, besides, ₹ 1,00,000/- awarded on account of loss of consortium was on the higher side as the widow was only entitled to ₹ 40,000/- on account of loss of spousal consortium in view of the decision of Hon'ble the Supreme Court in Pranay Sethi's case (Supra).

[8] Per contra, learned counsel for respondent Nos.1 to 5/cross-objectors/claimants contended that no doubt as per the decision in Pranay Sethi's case, ₹ 40,000/- only is payable on account of loss of spousal consortium, however, as per subsequent decision of Hon'ble Supreme Court in **Magma General Insurance Co. Ltd. vs Nanu Ram Alias Chuhru Ram and others, 2018 (4) RCR (Civil) 333** ₹ 40,000/- is payable to each child on account of loss of parental consortium and since, the deceased left behind three minor children, therefore, apart from sum of ₹ 40,000/- payable to the widow of the deceased on account of loss of spousal consortium, ₹ 1,20,000/- is payable to the three minor children on account of loss of parental consortium.

[9] Faced with the aforementioned position, learned counsel for the appellant contended that in a subsequent decision, Hon'ble the Supreme Court in **Vimla Devi and others vs National Insurance Company Ltd. and others, 2019 (1) RCR (Civil) 86** restricted award of compensation on account of loss of spousal and parental consortium in the case of a widow and two minor children to ₹ 1,00,000/-.

Accordingly, in the light of position as noted above, the compensation on account of loss of spousal and parental consortium to the widow and three children of the deceased is restricted to ₹ 1,00,000/-.

[10] As per the award, a sum of ₹ 25,000/- was awarded on account of funeral expenses but no amount was paid on account of loss of estate, whereas as per paragraph No.61(viii) of the decision in Pranay Sethi's case, ₹ 15,000/- is payable on account of funeral expenses and ₹ 15,000/- on account of loss of estate.

Accordingly, respondent Nos.1 to 5/cross-objectors/claimants are held entitled to ₹ 15,000/- on account of funeral expenses and ₹ 15,000/- on account of loss of estate.

[11] Learned counsel for respondent Nos.1 to 5/cross-objectors/claimants further contended that interest awarded @ 6% per annum is on the lower side and that minimum of 9% per annum ought to have been awarded. Learned Counsel relied upon the decision of a coordinate bench in **The Oriental Insurance Company Ltd vs Smt. Ompati 2018(2) PLR 228** involving accident of 18.01.2015. Since accident in the instant case is of 16.06.2015, therefore following the decision in **Ompati**'s case (supra), rate of interest payable in the instant case is enhanced to 9% per annum.

[12] In view of the position as noted above, respondent Nos.1 to 5/claimants/cross-objectors are held entitled to the following compensation:-

Sr. No.	**Heads**	**Amount assessed by the Tribunal**	**Amount assessed by the Court**
1.	Income	₹ 9000/-	₹ 5812/-
2.	Future Prospects	50% of ₹ 9000/- = ₹ 4500/-	40% of ₹ 5812/- = ₹ 2324.8/- (rounded off ₹ 2325/-)
3.	Total Income assessed	(₹ 9000/- + ₹ 4500/-) = ₹ 13,500/-	(₹ 5812/- + ₹ 2325/-) = ₹ 8137/-
4.	Multiplier applied	16	16
5.	Deduction (towards personal expenses of deceased)	1/4th of ₹ 13,500/- = ₹ 3,375/-	1/4th of ₹ 8137/- = ₹ 2034/-
6.	Dependency (Annual)	(₹ 13,500/- - ₹ 3,375/-) = ₹ 10,125/- (per month) ₹ 10,125/- x 12 = ₹ 1,21,500/-	(₹ 8137/- - ₹ 2034/-) = ₹ 6,103/- (per month) ₹6,103/- x 12 = ₹ 73,236/-
7.	Compensation Awarded	₹ 1,21,500/- x 16 = ₹ 19,44,000/-	₹ 73,236/- x 16 = ₹ 11,71,776/-
8.	Funeral Expenses	₹ 25,000/-	₹ 15,000/-
9.	Loss of Estate	NIL	₹ 15,000/-
10.	Loss of Love and Affection	₹ 1,00,000/-	NIL
11.	Loss of Consortium	₹ 1,00,000/-	₹ 40,000/- (Widow) ₹ 40,000/-(To each of the three minor children of the deceased i.e. ₹ 1,20,000/-) Total = ₹ 1,60,000/-) restricted to **₹ 1,00,000/-** in view of decision of Hon'ble the Supreme Court in Vimla Devi's case.
11.	Interest	6%	9%
	TOTAL	₹ 21,69,000/-	**₹ 13,01,776/-**

[13] Accordingly, as against compensation of ₹ 21,69,000/- awarded by the Tribunal, respondent Nos.1 to 5/cross-objectors/claimants are held entitled to compensation of ₹ **13,01,776/-** along with interest @ 9 % per annum with effect from the date of claim petition till date of payment, less payment, if any, made earlier.

[14] Accordingly, appeal is allowed and the cross-objections disposed off. Award dated 30.03.2016 passed by the learned Tribunal, Rohtak is modified to the extent as noted above.

(B.S. Walia)
Judge

16.01.2019
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No