

**XOBJC-38-CII-2019 in/and
FAO No. 4874 of 2018 (O&M)**

-1-

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

**XOBJC-38-CII-2019 in/and
FAO No. 4874 of 2018 (O&M)
Date of Decision: May 07, 2019**

The Oriental Insurance Co. Ltd.

..... Appellants(s)

Versus

Smt. Suman Devi and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Raj Kumar Bashamboo, Advocate
for the appellant.

Mr. J.P. Sharma, Advocate
for the cross objectors/respondents no.1 to 7.

Mr. J.S. Yadav, Advocate
for respondents no. 8 & 9.

LISA GILL, J. (oral)

This judgment shall dispose of FAO-4874-2018 as well as XOBJC-38-CII-2019 (The Oriental Insurance Co. Ltd. Vs. Smt. Suman Devi and ors.) arising out of award dated 11.5.2018, passed by the learned Motor Accident Claims Tribunal, Narnaul (hereinafter referred to as 'the Tribunal).

The respondents/claimants/cross-objectors, who are the widow, four children and parents of Sher Singh (deceased) filed a petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation on

**XOBJC-38-CII-2019 in/and
FAO No. 4874 of 2018 (O&M)**

-2-

account of death of Sher Singh, due to the injuries suffered by him in the motor vehicle accident, which took place on 14.08.2017. Learned Tribunal concluded that Sher Singh died due to injuries received by him in the above said motor vehicle accident, due to the rash and negligent driving of the offending Bolero Pick-up bearing registration No. HR-66-A-1510, by its driver Rajbir-respondent no.1. This finding has not been challenged by the insurance company as the challenge in the appeal is limited to the quantum of compensation. Therefore, needless to say, it has attained finality.

Learned Tribunal while assessing age of the deceased to be 35 years at the time of the accident concluded income of the deceased to be Rs.11,840/- per month and awarded a sum of Rs.20,02,288/- as compensation, which is detailed as under:-

Sr. No.	Heads	Calculations
1.	Gross income 11,840 x 12	1,42,080/- per annum
2.	Income after deducting 1/5 th as personal living expenses of the deceased	1,13,664/-
3.	Compensation after applying multiplier of 17	19,32,288/-
4.	Loss of consortium to appellant no.1	40,000/-
5.	Loss of estate to appellant no.1	15,000/-
6.	Last rites	15,000/-
	Total	20,02,288/-

**XOBJC-38-CII-2019 in/and
FAO No. 4874 of 2018 (O&M)**

-3-

Learned counsel for the appellant-insurance company argues that minimum wage of an un-skilled labourer in the State of Haryana was Rs. 8,280/- per month at the time of the accident. There is no evidence on record to prove that the deceased was running a grocery shop. Therefore, income of the deceased has been wrongly assessed as Rs.11,840/- per month. Moreover, multiplier of 17 has been wrongly applied. Deduction of 1/5th has also been wrongly effected by the learned Tribunal. Interest of 9% has been wrongly afforded to the claimants. Accordingly, it is prayed that compensation awarded to the claimants be reduced.

Per contra, learned counsel for the claimants/cross-objectors submits that compensation awarded to the claimants should be enhanced.

I have heard learned counsel for the parties.

There is no dispute that Sher Singh died due to the injuries received by him in the motor vehicle accident, which took place on 14.08.2017, due to the rash and negligent driving of the offending Bolero Pick-up, bearing registration No. HR-66-A-1510, by its driver Rajbir-respondent no.1. Deceased was admittedly 35 years old at the time of the accident. Learned counsel for the claimants/cross-objectors is unable to deny that there is no evidence on record to prove the deceased to be running a grocery shop at the time of the accident. Therefore, income of the deceased has to be assessed with reference to the minimum wages available to an un-skilled labourer at the time of accident. Income of the deceased is accordingly assessed as Rs.8,300/- per month. However, keeping in view the

**XOBJC-38-CII-2019 in/and
FAO No. 4874 of 2018 (O&M)**

-4-

judgment of the Hon'ble supreme Court in *National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680*, 40% increment has to be afforded on account of future prospects. Perusal of the record reveals that deduction of 1/5th has been correctly effected by the learned Tribunal. There is indeed no evidence on record to show that the aged parents of the deceased were not dependent upon him. Multiplier of 16 instead of 17 has to be applied keeping in view the guidelines of Hon'ble Supreme Court in *Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77*, as the deceased was 35 years old at the time of the accident/death. Rs.15,000/- each towards funeral expenses and loss of estate as awarded by the learned Tribunal is maintained and Rs.40,000/- awarded to claimant-widow by the learned Tribunal is also maintained. Additionally, all the four children on one hand and parents of the deceased on the other are also entitled to a sum of Rs.40,000/- towards loss of parental and filial consortium, respectively. Reference in this regard can gainfully be made to the judgment of the Hon'ble Supreme Court in *Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors. 2018(4) RCR Civil 333*, as well as decision dated 14.03.2019 of this Court in FAO-2011-2016, title *Shri Ram General Insurance Company Ltd. Vs. Beant Kaur and others*.

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

**XOBJC-38-CII-2019 in/and
FAO No. 4874 of 2018 (O&M)**

-5-

Sr. No.	Heads	Calculations
1.	Income	(8,300 x 12) 99,600/- per annum
2.	Income after deducting 1/5 th as personal living expenses of the deceased	99,600 – 19,920 = 79,680
3.	Total income after addition at the rate of 40% on account of future prospects	79,680+31,872 (79,680 x 40%) = 1,11,552/-
4.	Compensation after applying multiplier of 16	17,84,832/-
5.	Loss of estate	15,000/-
6.	Funeral expenses	15,000/-
7.	Loss of consortium to appellant no.1	40,000/-
8.	Loss of parental consortium to appellants no.2 to 4	40,000/-
9.	Loss of filial consortium to appellants no.5 & 6	40,000/-
	Total	19,34,832/-

Keeping in view the peculiar facts and circumstances of the case, I do not find any ground to vary the rate of interest as awarded by the learned Tribunal. Ratio of apportionment as well as manner of disbursement of compensation amongst the claimants as determined by the learned Tribunal shall remain the same.

Appeal as well as cross-objections are accordingly disposed of.

May 07, 2019.
Sunil

(LISA GILL)
JUDGE

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