IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

XOBJC No. 153-CII of 2018 in
FAO No. 913 of 2018 (O&M)
Date of Decision: November 22, 2019

United India Insurance Company Limited

...... Appellants(s)

Versus

Rakhi and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Ashwani Talwar, Advocate
for the appellant.

Mr. Mohit, Advocate for
Mr. Sushil Sheoran, Advocate
for respondents no.1 to 4/cross-objectors.

None for respondents no.5 & 6, despite service.

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LISA GILL, J. (oral)

This judgment shall dispose of FAO-913-2018, filed by the insurance company seeking reduction of compensation awarded to the claimants vide award dated 04.10.2017, passed by the learned Motor Accident Claims Tribunal, Charkhi Dadri (hereinafter referred to as 'the Tribunal) as well as Cross Objection-153-CII-2018, filed by the claimants seeking enhancement of the compensation awarded to them by the learned Tribunal.

Brief facts necessary for adjudication of the case are that the claimants/respondents no.1 to 4 filed a petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation to the tune of

Rs.80,00,000/- on account of death of Sunil Dutt. The claimants are the widow, two minor children and aged mother of the deceased. It is claimed that Sunil Dutt lost his life due to the injuries received by him in the motor vehicle accident, which took place on 07.01.2016, due to the rash and negligent driving of the offending tractor-trolley bearing registration No. HR-16-N-4337, by its driver Sanjay Kumar-respondent no.5. It is further pleaded that Sunil Dutt was 34 years old at the time of his death and was working in Lathe Workshop, Charkhi Dadri and was also owning 2 acres of agricultural land, thereby earning Rs.30,000/- per month.

Learned Tribunal on considering the evidence on record concluded that Sunil Dutt lost his life due to the injuries received by him in the motor vehicle accident, which took place on 07.01.2016, due to the rash and negligent driving of the offending tractor-trolley bearing registration No.HR-16-N-4337, by its driver Sanjay Kumar-respondent no.5. There is no challenge to this finding of the learned Tribunal. Learned Tribunal while accepting the deceased to be 34 years old, assessed income of the deceased to be Rs.1,93,800/- per annum on the basis of the income-tax return Ex.PW4/B, and awarded a sum of Rs.36,13,400/- to the claimants, which is detailed as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Income	1,93,800/- per annum
2.	Income after adding 50% on account of future prospects	1,93,800 x 1.5 = Rs.2,90,700/-
3.	Income after deducting 1/4th on account of personal expenses of the deceased	2,90,700 x 3/4 = Rs.2,18,025/-

4.	Compensation after applying multiplier of 16	2,18,025 x 16 = Rs.34,88,400/-
5.	Loss of consortium, love and affection, loss of estate, care and guidance for minor children etc.	1,00,000/-
6.	Funeral expenses	25,000/-
	Grand Total	**Rs.36,13,400/-**

Present appeal has been filed by the insurance company challenging the quantum of compensation awarded by the learned Tribunal. It is noticed on the very outset that there is no challenge to the liability of the insurance company. Cross-objections have been filed by the claimants seeking enhancement of the compensation.

Learned counsel for the appellant-insurance company while not addressing any argument regarding the income of the deceased, submits that increment towards future prospects at the rate of 50% has been wrongly awarded. The same should be at the rate of 40%. It is further submitted that excessive compensation under the conventional heads has been awarded, which should be reduced. It is, thus, prayed that this appeal be allowed and the compensation awarded to the claimants be reduced.

Learned counsel for respondents no.1 to 4/cross-objectors, while refuting the above said arguments submits that income of the deceased has been wrongly assessed merely on the basis of the income-tax return Ex.PW4/B, for the year 2014-2015. It is contended that the claimants had produced the income-tax returns for the years 2013-2014 as well as 2014-2015 Ex.PW4/A and Ex.PW4/B. As per the income-tax return for the year 2013-2014, the deceased was in receipt of Rs.1,67,000/- per annum and in the year 2014-2015 it had increased to Rs.1,93,800/-. Therefore, going by this analogy, income of the deceased should have been assessed at a higher rate as he would have been in receipt of Rs.26,800/- in excess of what he had earned in the last year. It is further submitted that loss of love and affection/loss of consortium should be afforded to each claimant individually. It is, thus, prayed that this appeal be dismissed and the cross-objections be allowed.

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

There is no dispute regarding death of Sunil Dutt in the motor vehicle accident, which took place on 07.01.2016, due to the rash and negligent driving of the offending tractor-trolley bearing registration No. HR-16-N-4337, by its driver Sanjay Kumar-respondent no.5. It is a matter of record that the deceased Sunil Dutt was 34 years old at the time of the accident. Learned Tribunal has assessed income of the deceased to be Rs.193,800/- per annum on the basis of the last income-tax return for the year 2014-2015. The accident in question took place on 07.01.2016. I do not find any merit in the argument raised on behalf of the claimants/respondents no.1 to 4/cross objectors to the effect that there has to be an automatic increase in the income of the deceased merely because such an increase is reflected in the last two income-tax returns. No such assumption or presumption can be raised in the absence of specific record in this regard. Therefore, learned Tribunal has rightly assessed the income of the deceased to be Rs.1,93,800/- per annum on the basis of the income-tax return for the year preceding the accident in question. In terms of the judgment of Hon'ble Supreme Court in

National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680, 40% increment (instead of 50%) towards future prospects has to be afforded in this case. As the deceased was admittedly 34 years old at the time of the accident, multiplier of 16 was correctly applied by learned Tribunal. Deduction of 1/4 was correctly effected by learned Tribunal. Claimants are entitled to a sum of Rs.15,000/- each on account of funeral expenses and loss of estate instead of Rs.25,000/- awarded by the learned Tribunal towards funeral expenses. Respondent no.1-widow is entitled to a sum of Rs.40,000/- towards loss of spousal consortium. Instead of the consolidated sum of Rs.1,00,000/- awarded by the learned Tribunal on account of loss of consortium, love and affection, estate, care and guidance, Respondents no.2 and 3-minor children are entitled to a sum of Rs.40,000/- towards loss of parental consortium and respondent no.4-mother of the deceased is entitled to Rs.40,000/- for loss of filial consortium in terms of the judgment of 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 No.2110 of 2016, titled ***Shri Ram General Insurance Co. Ltd. Vs. Beant Kaur and others***.

Respondents/cross-objectors/claimants are, thus, entitled to compensation which is re-worked as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Income	1,93,800/- per annum
2.	Income after addition @ 40% on account of future prospects	1,93,800 + (1,93,800 x 40%) = Rs.2,71,320/-

3.	Income after 1/4th deduction on account of personal expenses of the deceased	2,71,320 – (2,71,320 x 1/4) = Rs.2,03,490/-
4.	Compensation after applying multiplier of 16	2,03,490 x 16 = Rs.32,55,840/-
5.	Funeral expenses	15,000/-
6.	Loss of estate	15,000/-
7.	Loss of filial consortium to widow	40,000/-
8.	Loss of filial consortium to both the children	40,000/-
9.	Loss of filial consortium to mother	40,000/-
	Grand Total	**Rs.34,05,840/-**

Rate of interest, ratio of apportionment as well as manner of disbursement of compensation amongst the claimants as determined by the learned Tribunal shall remain the same.

With the modification in the amount of compensation, FAO-913-2015 and XOBJC-153-CII-2017 are disposed of.

November 22, 2019. **(LISA GILL)**
JUDGE

Sunil

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