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

**FAO No.3194 of 2014 (O&M) and**
**XOBJC No.161-CII of 2014**
**Date of decision : May 12, 2022**

Reliance General Insurance Company Limited
....Appellant

Versus

Bhawna and others
...Respondents

**CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN**

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

Ms. Shveta Sanghi, Advocate
for respondents No.1 to 3/claimants-Cross objectors.

**PANKAJ JAIN, J.**

Insurance Company is in appeal against the Award passed by the Motor Accidents Claims Tribunal Narnaul (for short, the Tribunal) whereby compensation of Rs.18,78,000-/- has been awarded to the claimants on account of death of Satish Kumar in a motor vehicular accident dated 4th November, 2010.

2. The claimants have filed cross-objections seeking enhancement of the compensation.

3. As per the claim petition on 4th November, 2010, deceased Satish Kumar was coming from village Bardod to his village Dhani Kirarod, Tehsil Narnaul on his motorcycle No.HR-35E-1099. At around 5.00 PM when he reached near Balaji Brick Kiln, Bardod, the offending

vehicle came from Behror side driven by respondent-Banwari Lal at a fast speed in a rash and negligent manner on the wrong side of the road and hit the motorcycle of the deceased. Resultantly, Satish Kumar fell on the road and died at the spot.

4. On the basis of the pleadings of the parties, the Tribunal framed the following issues :-

> 1. *Whether Satish Kumar died in a vehicular accident which took place on 04.11.2010 at about 5:00 PM in the area Alwar-Bahror Road, Bardod due to rash and negligent driving of vehicle No. RJ-02-RA-4016 being driven by respondent no.1 ?OPP*
> 2. *To what amount of compensation, if any, the petitioner is entitled to and from whom? OPP*
> 3. *Whether the vehicle in question was being driven by respondent no.1 in violation of terms and conditions of insurance policy? OPR*
> 4. *Relief."*

5. The flashpoint among the parties is Issue No.2.

6. Ld. Counsel for the appellant/Insurer submits that the Tribunal erred in assessing the income of the deceased @ Rs.8,000/- per month without there being any cogent evidence on record. He asserts that at the most the income of the deceased ought to have been assessed equivalent to minimum wages notified for skilled labour. He further states that 50% of the income has been added on account of future prospects in terms of law laid down in **Rajesh vs. Rajbir, 2013 ACJ 1403**, which has been held to be

not binding precedent in **'National Insurance Company Limited vs. Pranay Sethi and others', (2017) 16 SCC 680**. Accordingly, he claims that the compensation amount needs to be modified and the income as well as future prospects awarded, need to be discounted.

7. Per contra, Counsel for the respondents-claimants/cross-objectors submits that the deceased was working as a Mason and was earning Rs.450/- per day. The same has been proved on record by leading cogent evidence. She has drawn attention of this Court to the statement suffered by PW-3 Rohash, who proved that the deceased was employed by him as Mason in the month of September, 2010 by paying him Rs.450/- per day. She further submits that thus salary of the deceased ought to have been assessed @ Rs.12,000/- per month instead of Rs.8,000/- per month as held by the Tribunal. Consequently, she seeks enhancement of the compensation.

8. I have heard Ld. Counsel for the parties and have perused records of the case carefully.

9. It has been proved on record that the deceased was working as a Mason and used to earn Rs.450/- daily. The Tribunal though admitted that the vocation of the deceased was proved yet assessed his income @ Rs.8,000/- per month without any basis. No reason has been recorded by the Tribunal as to why the income of the deceased has been assessed at a rate of Rs.8,000/- per month whereas it stood proved on record that he was earning Rs.450/- per day (Rs.450X30 = Rs.13,500/- per month). Thus, in

the considered opinion of this Court, the Tribunal ought to have assessed the income of the deceased in the light of the evidence on record and should not have discounted the same without there being any evidence to the contrary. The notified minimum wage which has been pressed into arguments by the Ld. Counsel for the appellant serves as a parameter only and that too in the case where cogent evidence *qua* income is missing. In a case where the claimants have led sufficient and cogent evidence to prove the income of the deceased and when no evidence to the contrary has been led, there can't be any reason to doubt the evidence brought-forth by the claimants. Ld. Counsel for the appellant is right in asserting that Tribunal erred in adding 50% of the income of the deceased as future prospects which ought to have been 40%. Similarly, even under the conventional heads the claimants have been awarded amounts at a rate higher than admissible as per the guidelines issued in **Pranay Sethi's** case (supra). Consequently, where on one hand the Tribunal erred in discounting the income of the deceased, on the other hand the claimants have been compensated by grant of enhanced amounts under the conventional heads. Thus, in the nutshell even if the income of the deceased is enhanced, the net effect shall almost remain the same. Consequently, I do not find any ground to interfere in the Award passed by the Tribunal.

10. As a sequel of the aforesaid discussion, both, the appeal as well as the cross-objections, are dismissed.

11. All the pending miscellaneous applications, if any, are also disposed off.

**May 12, 2022** **(PANKAJ JAIN)**
**Dpr** **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No