

231 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Decided on : 27.04.2022

FAO-4922-2015 (O&M)

The Oriental Insurance Company Limited . . . Appellant

Versus

Fula Devi and others . . . Respondents

FAO-4994-2015 (O&M) and
XOBJC-241-CII-2016

The Oriental Insurance Company Limited . . . Appellant

Versus

Geeta Devi and others . . . Respondents

FAO-5801-2015

Sandeep and another Appellants

Versus

Oriental Insurance Co. Ltd. and others Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Sanjeev Pabbi, Advocate
for the appellant-Insurance Company in
FAO Nos.4922 and 4994 of 2015.

Mr. Ashish Gupta, Advocate
for respondents No.1 and 2 in FAO No.4922 and 4994 of 2015
and for cross-objector.

None for the appellants in FAO No.5801 of 2015 and
for respondents No.3 and 4 in
FAO Nos.4922 and 4994 of 2015.

MANJARI NEHRU KAUL , J. (Oral)

This order shall dispose of FAO Nos.4922, 4994 and 5801 of
2015 as well as Cross-Objections No.241-CII-2016, as they have arisen

from the same award.

There is no representation on behalf of the appellants in FAO No.5801 of 2015. Similar was the position on the last three dates of hearing.

Vide order dated 19.12.2017, this Court had directed the appellants to deposit the requisite statutory amount of Rs.25,000/-. However, till today, the said amount has also not been deposited by the appellants.

Accordingly, *FAO No.5801 of 2015* titled as *Sandeep and another versus Oriental Insurance Co. Ltd. and others* stands dismissed for non-compliance of order dated 19.12.2017.

CM-19051-CII-2016 in XOBJC-241-CII-2016

Application is allowed as prayed for and the delay of 92 days in refiling the cross-objections is condoned.

CM-19052-CII-2016 in XOBJC-241-CII-2016

Application is allowed as prayed for and the delay of 85 days in filing the cross-objections is condoned.

FAO No.4922 and 4994 of 2015 and XOBJC No.241-CII-2016

The instant appeals have been preferred by the Insurance Company against the award dated 17.03.2015, passed by the learned Motor Accident Claims Tribunal, Gurgaon (hereinafter referred to as 'the Tribunal') in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988, whereby, compensation in the sum of Rs.9,35,000/-, was awarded to the claimants/respondents No.1 and 2 i.e. mother and father of

the deceased Kamal and Monu, who were stated to be 19 years of age at the time of the accident in question.

The claimants/respondents No.1 and 2 in FAO No.4994 of 2015 have filed cross-objections for enhancement of the compensation awarded by the Tribunal only qua deceased Monu on the ground that the Tribunal had wrongly assessed the income of deceased Monu as Rs.5000/- p.m. by treating him as an unskilled worker even though the deceased was a student and had he been alive, he would have earned at least Rs.6,000/- per month.

A few facts as pleaded in the claim petition by the claimants/respondents No.1 and 2 may be noticed. On 03.06.2014, Kamal and Monu (since deceased) were going on their motorcycle bearing registration No.HR-76-4475 from Gurgaon to Jhajjar. At about 8.00 pm, when they reached near the crossing Phatak at Sultanpur village, a canter bearing registration No.HR-55-5713 (hereinafter referred to as 'the offending vehicle') was parked on the road without parking lights. There were also no reflectors on the offending vehicle. The deceased tried to stop his motorcycle on seeing the offending vehicle parked in the middle of the road, however, he was unable to do so. Resultantly, the motorcycle collided with the offending vehicle. Both the deceased i.e. Kamal and Monu sustained injuries in the accident in question, which was witnessed by one Yashpal, who was running a tea stall at the place of occurrence. The injured were removed to the hospital, however, they succumbed to the injuries. It was claimed that the accident in question took place due to the negligence and carelessness of respondent No.3 - driver of the offending vehicle.

On being put to notice, the respondents put in appearance and filed their respective written statements. Respondents No.1 and 2 denied that the accident had occurred on account of the negligence of respondent No.1 -driver of the offending vehicle. It was submitted that the offending vehicle was not parked in the middle of the road as alleged but was on the kachha berm with the parking lights on at the time of accident.

Respondent No.3-insurance company in its written statement contended that the driver of the offending vehicle did not have a valid and effective driving licence at the time of alleged accident.

The Tribunal on the basis of evidence led by the parties, assessed and awarded the following compensation in the sum of Rs.9,35,000/- to the claimants-respondents No.1 and 2 in both the appeals:-

<i>Sr. No.</i>	<i>Head</i>	<i>Amount</i>
1	Monthly income	Rs.5,000/-
2	Annual income 12 x 5000	Rs.60,000/-
3	Future prospects (50%)	Rs.30,000/-
4	Total annual income	Rs.90,000/-
5	Deduction 1/2 towards personal expenses	Rs.45,000/-
6	Multiplier	18
7	Total dependency (Rs.45,000 x 18)	Rs.8,10,000/-
8	Funeral expenses	Rs.25,000/-
9	Loss of love and affection	Rs.1,00,000/-
10	Total compensation	Rs.9,35,000/-

The Tribunal directed the appellant-Insurance Company to pay the amount of compensation along with interest @ 7.5% per annum to the claimant-respondent No.3 i.e. mother of the deceased, with recovery rights of the same from respondents No.3 and 4, from the date of the claim petition till the date of realization.

Learned counsel for the appellant-Insurance Company submits that on the face of it, it was a case of contributory negligence as the motorcyclists had collided with a stationary vehicle, which was lying parked on one side of the road. He submits that it was the motorcyclists, who were not vigilant and cautious and hence, they had contributed to the accident. Learned counsel further submits that the compensation awarded was exorbitant and not in consonance with the settled law. The deceased should have been treated as labourer and his income assessed accordingly. Besides this, learned counsel submits that the Tribunal has wrongly granted 50% as future prospects instead of 40% as admittedly the deceased was not government employee or permanent salaried person. In support of his submissions, learned counsel has placed reliance upon *National Insurance Co. Vs. Pranay Sethi : 2017 SCC 270* and *Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram and others, 2018(4) RCR (Civil) 333*.

Learned counsel appearing for respondents No.1 and 2 in FAO No.4994 of 2015/cross-objectors, on the other hand, has vehemently opposed the prayer made by the learned counsel for the appellant and has submitted that the impugned award rather requires to be reassessed and enhanced as it is against the settled law. He submits that the Tribunal has wrongly assessed the monthly income of the deceased in the sum of Rs. 5,000/- even though it had come in evidence that the deceased was undergoing a computer course. It is also submitted that had the deceased Monu not met his end, after completion of his computer training, he would have been earning at least Rs.15,000/- per month. It is, thus, submitted that

the Tribunal should have treated the deceased as a semi-skilled worker and assessed the monthly income of the deceased accordingly. Learned counsel has further submitted that the compensation awarded under the conventional heads like loss of estate, funeral expenses and loss of consortium is also inadequate and thus, requires to be enhanced accordingly.

I have heard learned counsel for the parties and perused the relevant material on record.

This Court is of the opinion that deceased Monu, who was admittedly undergoing a computer course, should have been treated as a semi-skilled worker. The minimum wages notified qua semi-skilled worker by the State of Haryana for the relevant period is Rs.5,807/- per month. In the circumstances, this Court unhesitatingly holds that the monthly income of the deceased Monu should be taken as Rs.5,807/- per month. Hence, the monthly income of the deceased stands enhanced from Rs.5,000/- p.m. to Rs.5,807/- p.m (rounded off to Rs.5,800/-). The Hon'ble Supreme Court in ***Pranay Sethi's case (supra)*** has quantified the amount in the sum of Rs. 15,000/- each for loss of estate and funeral expenses in addition to Rs. 40,000/- each for loss of filial consortium. Still further, it has been held by the Hon'ble Supreme Court that the aforesaid amounts would be subject to 10% enhancement after every three years. Therefore, the claimants would be entitled to 10% enhancement *qua* the above-mentioned conventional heads, as was also re-assessed by the Hon'ble Supreme Court in ***Rasmita Biswal and others Vs. Divisional Manager, National Insurance Co. Ltd. and another : 2022(1) RCR(Civil) 344*** as per the ratio laid down in ***Pranay Sethi's case (supra)***. Hence, the amount of compensation under the

convention heads stands modified to Rs. 16,500/- each for loss of estate & funeral expenses. Besides this, the claimants, who are parents, are entitled to Rs.44,000/- each, for loss of filial consortium respectively.

The compensation thus payable to the claimants would be as follows:-

<i>Sr. No.</i>	<i>Head</i>	<i>Amount</i>
1	Monthly income	Rs.5,800/-
2	Annual income 12 x 5800/-	Rs.69,600/-
3	Future prospects (40%)	Rs.27,840/-
4	Total income	Rs.97,440/-
5	Deduction 1/2 towards personal expenses	Rs.48,720/-
6	Multiplier	18
7	Total dependency	Rs.8,76,960/-
8	Funeral expenses	16,500/-
9	Loss of love and affection	16,500/-
10	Loss of consortium(filial) (Rs.44,000 x 2)	Rs.88,000/-
11	Total compensation	9,97,960/-

The claimants are, therefore, held entitled to a total sum of Rs.9,97,960/- (rounded off to Rs.9,98,000/-) as compensation along with interest @ 8% per annum from the date of filing of claim petition till its actual realization, in terms of the apportionment decided by the Tribunal.

With these modifications, the present appeal as well as cross-objections stand disposed of in the above terms.

(MANJARI NEHRU KAUL)
JUDGE

27.04.2022
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No