

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

**FAO-7226-2015(O&M) and
XOBJC-24-CII-2015**

Reserved on: 12.10.2022

Pronounced on: October 19, 2022

The Oriental Insurance Company Ltd. ...Appellant

Versus

Smt. Suman and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. D.P Gupta, Advocate and
Mr. Shubham Gupta, for the appellant.

Mr. Sudhir Aggarwal, Advocate for
respondents No.1 to 3/ cross-objectors.

HARKESH MANUJA, J

This order of mine shall dispose of an appeal filed at the instance of Insurance Company impugning the award dated 04.07.2015 passed by learned Motor Vehicle Accident Claims Tribunal, Gurugram (hereinafter referred to as "the Tribunal"), on the issue of quantum of compensation. Further, this order shall also dispose of cross-objections filed at the instance of Respondent No. 1 to 3-claimants seeking enhancement of compensation.

For convenience, the facts are taken from FAO No. 7226 of 2015, filed at the instance of appellant-Insurance Company.

The facts, in brief, are that on 21.04.2014 at about 04:15 PM deceased-Jai Parkash was coming from Manesar to Gurugram on his Honda motorcycle bearing registration no. HR-26-CD-2673. When he

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reached ahead of Kadipur Industrial Area, Pataudi road, Gurugram, a tanker bearing registration no HR-55-E-3752 being driven by respondent No. 4 herein hit the motorcycle from behind due to which deceased fell down on the road and the rear tyre of tanker ran over right side of his body resulting multiple fatal injuries and he expired on the same day.

On account of the death of Jai Prakash, respondents No. 1 to 3 herein being dependents filed a claim petition before learned Tribunal at Gurugram. Learned Tribunal held that respondent No. 4 herein was rash and negligent while driving the offending vehicle and therefore, awarded compensation in the following manner:-

Sr.No.	Particulars	Amount(Rs.)
1.	Income	Rs. 9,500/-
2.	Add 30% of income	Rs. 2,850/-
3.	Deduction 1/3 rd	Rs. 4,116/-
4.	Multiplicand (annualised)	Rs. 98,808/-
5.	Multiplier	14
6.	Loss of dependency	Rs. 13,83,312/-
7.	Loss of consortium	Rs. 1,00,000/-
8.	Loss of Love and Affection for minor sons	Rs.1,00,000/-
9.	Funeral Expenses	Rs. 25,000/-
	TOTAL COMPENSATION:	Rs.16,08,312/-

In the present appeal, the appellant Insurance Company has challenged the award dated 04.07.2015 seeking reduction of amount of compensation. On the other hand, claimants/ respondents no. 1 to 3 have filed cross objections praying for enhancement of the same.

Learned counsel for the appellant/Insurance Company submits that on the date of accident the age of deceased was little more than 40 years and therefore future prospects should have been awarded @ 25%.

He further submits that under conventional heads as well the compensation granted is extremely on higher side and should be reduced.

On the other hand, learned counsel for respondents No. 1 to 3/ claimants submits that the multiplier taken by the learned tribunal should have been 15 which is applicable for the age band 36 – 40, while multiplier of 14 has been taken. He further contends that salary of the deceased was Rs. 12,206 /- and multiplicand should have been calculated according to this salary and learned Tribunal wrongly deducted the conveyance allowance of Rs. 2,658 /-. He further submits that under conventional heads as well the compensation granted is extremely on lower side and should be adequately enhanced.

Having heard the arguments advanced by learned counsel for the parties and gone through the paper-book as well as the cross-objections filed at the instance of respondents No.1 to 3/ claimants herein, my discussion on merits is as below.

So far as the contention raised on behalf of the claimants regarding wrong deduction of conveyance allowance is considered, I find merit in the same. In **“National Insurance Company Ltd versus Indira Srivastava and others”** reported as 2008(2) SCC 763, Hon’ble Supreme Court observed that :-

“9. Section 168 of the Act uses the word 'just compensation' which, in our opinion, should be assigned a broad meaning. We cannot, in determining the issue involved in the matter, lose sight of the fact that the private sector companies in place of introducing a pension scheme takes recourse to payment of contributory Provident Fund, Gratuity and other perks to attract the people who

are efficient and hard working. Different offers made to an officer by the employer, same may be either for the benefit of the employee himself or for the benefit of the entire family. If some facilities are being provided whereby the entire family stands to benefit, the same, in our opinion, must be held to be relevant for the purpose of computation of total income on the basis whereof the amount of compensation payable for the death of the kith and kin of the applicants is required to be determined.”

Learned counsel for the appellant has stressed upon the fact that the above mentioned judgment was interpreted by Division Bench of Bombay High Court in **National Insurance Co. Ltd. Vs. Vaishali Harish Devare and others**, reported as 2012 (35) RCR (Civil) 545 and Delhi High Court in **Lalitesh Chauhan and others Vs. Harvinder Singh and others**, 2011 (31) RCR (Civil) 853 to the effect that various allowances including conveyance allowance should not be included in the monthly income while calculating the compensation. However, in my considered opinion, this interpretation purported by the counsel for appellant-Insurance Company shall be negated as this categoric legal point whether conveyance allowance can be included to the net salary of the deceased for computation of compensation has been recently discussed by Andhra Pradesh High Court in M.A.C.M.A. No. 116 of 2022 titled as **M/s United India Insurance Company Ltd. Rep. by its Manager Vs. Mrs. Martha Bala Naga Lakshmi**, decided on 24.06.2022, wherein **Indira Srivastava's** case (supra) has been interpreted to conclude that conveyance allowance cannot be excluded from the salary for computation of compensation by observing as under:-

“6. Though apparently this argument looks sound, but will not stand to logical scrutiny. Since the attending duty is a must for every employee, he has to proceed to office or work place on all working days by incurring expenditure. If the employer do not provide allowance, naturally the employee has to spend from his pocket to meet the conveyance charges. However, if the employer provides conveyance allowance, to that extent the employee saves his salary and utilizes the same for his family. In that way, family of an employee is also being benefitted by the conveyance allowance. Therefore we are of the view that conveyance allowance cannot be excluded from the salary for computation of compensation.”

Further, even this High Court on many occasions including FAO No.4299-2019, titled as FAO No.9436-2014, **National Insurance Company Limited Vs. Anjali Sharma and others**, decided on 06.02.2019; and **New India Assurance Company Limited Vs. Surinder Kaur (now deceased) through Lrs and others**, decided on 09.01.2020, has dealt with the issue of conveyance allowance and held that the transport allowance cannot be said to be personal in nature or its benefit being not available to family of the deceased and as such the same cannot be deducted out of the total emoluments of deceased.

Therefore, in view of the above discussion learned Tribunal has committed an error while deducting Rs.2658/- per month from the salary of the deceased and the compensation should have been calculated by considering the salary of the deceased @ Rs.12206/- per month as already proved on record.

I find substance in the argument raised by the learned counsel for the claimants that the multiplier of 15 should be applicable as the age of the deceased has not touched the mark of 41 so age band of 41-45 cannot be made applicable. In my considered opinion for the running age of 40 i.e. when a person on the date of accident was above 40 but was below 41,

age band of 36-40 as specified in **Smt. Sarla Verma and Others Versus Delhi Transport Corporation and Another**, reported as 2009(3) R.C.R (Civil) 77, will be applicable. Though the learned counsel for the appellant/ Insurance Company have vehemently opposed this, however if his contention is taken into consideration there will be a vacuum when the age is between 40 - 41. This legal point has already been discussed by Hon'ble High Court of Kerala in "**P.O.Meera and another versus Ananda P.Naik and others**", in MACA Nos. 2476, 2481 & 2483 of 2008, decided on 19.01.2010, and I am completely aligned with the reasoning recorded by the said Court in this regard. Though for the sake of brevity the complete discussion is not reproduced however Para 37 of abovementioned judgment is reproduced herein below:-

"37. A reading of the table in Sarla Verma leaves no room for any speculation that it is only when the deceased/injured completes the age of 51 years, the multiplier would shift from '13' to '11' and not when the deceased/injured attains the age of 50 years and runs the said age till the previous night of his 51st birthday. (Read the interpretation given by the Honourable Supreme Court in Prabhu Dayal Sesma vs. State of Rajasthan and others [(1986) 4 SCC 69 on the Indian Majority Act, 1875 and this Court in Jaison V.George vs. State of Kerala [2019 (5) KHC 115] on the Juvenile Justice (Care and Protection of Children) Act, 2005, while computing the age of a person). In other words, the sine qua non to select the multiplier is the attainment of the specified age mentioned in the table and not the running of the age into the next group. It is also apposite to note, in Pranay Sethi, the age for

awarding future prospects is segregated into three groups i.e., 16 – 39, 40 – 49 and 50 – 59. Therefore, if the argument of the learned Counsel for the Insurer is to be accepted, the same vacuum would also arise at the ages of 25, 30, 35, 40, 50, 55, 60 and 65 in selecting the multiplier and the ages of 39, 49 and 59 for awarding future prospects. This Court is bound to follow the law declared by the Honourable Supreme Court as enshrined under Article 141 of the Constitution of India and not to give a different interpretation or tinker with the well settled enunciation.”

Therefore, as the age of the deceased was a little more than 40 years, the multiplier of 15 should have been applied. However, while computing future prospects as per judgment of Hon’ble apex Court in **“National Insurance Company Limited Vs. Pranay Sethi and Others”** reported as 2017(4) R.C.R CIVIL 1009, age band of 40 – 50 years is given and as per age of deceased, addition of 25 % should be made instead of 30% towards his annual income as future prospects, as awarded by the Ld. Tribunal.

Further, besides it, award of compensation under the head of loss of love and affection is liable to be set aside in view of the law laid down by the Hon’ble Supreme Court in case of **“Satinder Kaur @ Satwinder Kaur & Others. Versus United India Insurance Co. Ltd.”** reported as 2020(3) R.C.R Civil 75. Relevant Para 8 of abovementioned judgement is reproduced hereinafter:-

“The Tribunals and High Courts are directed to award compensation for loss of consortium, which is a legitimate conventional head. There is no

justification to award compensation towards loss of love and affection as a separate head.”

Undisputedly, conventional heads are to be granted in view of law laid down by Hon’ble apex Court in “**Pranay Sethi (Supra) and Sarla Verma (Supra)**”.

No other argument has been raised.

Thus, in view of the discussions made hereinabove, the claimants/ respondents No.1 to 3 herein are entitled for following compensation, as detailed in the table given hereunder :-

Sr.No.	Particulars	Amount(Rs.)
1.	Annual income of deceased (Rs.12206 x 12)	Rs.1,46,472/-
2.	Add 25% of future prospects	Rs.36,618/-
3.	Total Income	Rs. 1,83,090/-
4`.	After deduction of 1/3 rd	Rs. 97,648/-
5.	Multiplier of 15 as per age of 40 years (Rs.97648 x 15)	Rs. 14,64,720/-
6.	Funeral Expenses	Rs. 16,500/-
7.	Loss of Consortium (Rs.44,000 x 3)	Rs. 1,32,000/-
8.	Loss of Estate	Rs. 16,500/-
	TOTAL COMPENSATION:	Rs.16,29,720/-
	Compensation already awarded	Rs.16,08,312/-
	Enhanced Compensation	Rs.21,408/-

The grant of interest @ 9% per annum is just in view of the observations made by the Hon’ble Supreme Court in **Smt. Supe Dei and others Vs. National Insurance Company Limited and other**, (2009) (4) SCC 513 approved in a subsequent judgment titled as **Puttamma and others Vs. K.L. Narayana Reddy and another**, 2014 (1) RCR (Civil) 443.

The present appeal as well as the X-objections are disposed of
in the manner indicated hereinabove.

Pending application(s), if any, shall also stand disposed of.

October 19, 2022
sanjay

(HARKESH MANUJA)
JUDGE

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