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

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**CM-10531-CII-2022 in/and
XOBJC-61-2022 (O&M) in/and
FAO-7301-2017 (O&M)
Date of decision: 29.10.2022**

New India Assurance Company Ltd. .....Appellant

Versus

Amarjeet Kaur and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Pradeep Kumar, Advocate
for the appellant.

Mr. Ravinder Arora, Advocate and
Mr. Neeraj Khanna, Advocate
for the cross-objectors/respondents No.1 and 2.

None for respondents No.3 and 4.

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MANJARI NEHRU KAUL, J. (ORAL)

CM-10531-CII-2022 in XOBJC-61-2022

Prayer in the application is for condonation of delay of 1312 days in filing the cross-objections.

For the reasons mentioned in the application, the same is allowed and delay of 1312 days in filing the cross-objections is condoned.

However, it is clarified that the cross-objectors/respondents/claimants will not be entitled to the interest for the delayed period.

XOBJC-61-2022 (O&M) in/and FAO-7301-2017 (O&M)

This order shall dispose of FAO-7301-2017 filed by the insurance company to impugn the award dated 07.07.2017 passed by the learned Motor Accidents Claims Tribunal, SAS Nagar (Mohali) (hereinafter referred to as 'the Tribunal') and XOBJC-61-2022 filed by the respondents/claimants for enhancement of the following compensation awrded to them by the Tribunal on account of death of Balwinder Singh (hereinafter referred to as 'the deceased') in a Motor Vehicular Accident which took place on 11.10.2016:-

Sr. No.	Head	Amount
1.	Monthly Income	Rs.9,000/-
2.	Future prospects (50%)	Rs.4,500/-
3.	Income after adding future prospects (50%)	Rs.13,500/-
4.	Deduction towards personal expenses (½)	Rs.6,750/-
5.	Loss of income to the claimants	Rs.6,750/-
6.	Annual dependency of the claimants	Rs.81,000/-
7.	Compensation after applying multiplier of '17'	Rs.13,77,000/-
8.	Funeral expenses	Rs.25,000/-
	Total Compensation	Rs.14,02,000/-

As per the pleaded case of the claimants who are parents of the deceased on 11.10.2016 when the deceased was riding his motorcycle bearing registration No.PB-65-AG-6023 at about 02:40 P.M., tipper bearing registration No.PB-32L-2751 (hereinafter referred to as 'the offending vehicle') came from behind, driven in a rash and negligent manner by Sukhbir Singh and collided with the motorcycle of the deceased. The deceased sustained serious injuries on his person. He was referred to the PGI, Chandigarh, however, he succumbed to his injuries on 12.10.2016. The claimants claimed that their son was 27 years of age on the date of accident in question and was working as a JCB Operator (Driver) with Unitech Award City, SAS Nagar where he was drawing a salary of Rs.25,000/- per month.

Learned counsel for the appellant/insurance company submits that the Tribunal erred in granting future prospects to the extent of 50% which was not in consonance with the settled law as there was no evidence led about the deceased being in any permanent employment. Learned counsel also submitted that on the date of accident in question, the driver of the offending vehicle was not holding a valid and effective driving licence which fact was erroneously ignored by the Tribunal while passing the impugned award. He submitted that in the circumstances, the liability could not have been fastened upon the insurance company to indemnify the insured.

Learned counsel appearing for the cross-objectors/respondents No.1 and 2/claimants has opposed the submissions made by the counsel opposite by urging that it was a matter of record and it stood duly proved that the deceased was a skilled driver and was working as a JCB Machine Operator. He submits that the evidence too was led in support of the employment of the deceased as JCB Operator (Driver) with Unitech Award City, SAS Nagar. He further submits that PW1 Nirmal Singh and PW3 Santosh Kumar, Accounts Executive, Shiva Buildtech Pvt. Ltd. by way of their respective affidavits proved the employment certificate as well as the salary drawn by the deceased as Ex.PW3/A. Not only this, the attendance register (Ex.PW3/B) further proved that the deceased was working as a JCB Operator in the said company. He submits that as per the salary certificate (Ex.PW3/A), the salary of the deceased was mentioned as Rs.15,200/- and hence the monthly income which had been assessed at only Rs.9,000/- was inadequate and deserved to be enhanced. Learned counsel, however, was not able to controvert the submissions made by the counsel opposite that the claimants were not entitled to 50% addition towards future prospects as the age of the deceased was 27 years.

Learned counsel for the appellant insurance company has vehemently opposed the submissions made by the counsel for the claimants for reassessing the monthly income of the deceased by urging that no document had been brought on record by the claimants regarding disbursement of the salary of the deceased in the sum of Rs.15,200/-. He submits that in fact the Tribunal had already assessed the monthly income of the deceased on the higher side in the sum of Rs.9,000/- by treating him to be a skilled worker.

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

This Court does not find any force in the submissions made by the learned counsel for the insurance company qua the driving licence of the driver of the offending vehicle being fake. The driving licence of the driver of the offending vehicle was duly proved as Ex.R1 before the Tribunal. Thus, the learned Tribunal rightly held that the driving licence of the driver of the offending vehicle (Ex.R1) was valid on the date of accident in question. The Tribunal, thus, rightly also fastened the liability on the insurance company to indemnify the insured. This Court, however, concurs with the submissions made by the counsel for the insurance company that the compensation awarded qua future prospects to the extent of 50% is not in consonance with the settled law and thus stands reassessed to the extent of 40%.

This Court finds force in the submissions made by the counsel for the claimants that the monthly income assessed by the Tribunal in the sum of Rs.9,000/- is required to be reassessed and enhanced as enough evidence was led in the form of salary certificate as well as the employment certificate of the deceased. It would not be out of context to observe that driving a JCB Machine requires expertise and thus the deceased should have been treated as a highly skilled person. No doubt, there was no evidence qua the disbursement of Rs.15,200/-, however, since it has not even been disputed by the insurance company that the deceased was a JCB Operator, this Court is of the considered opinion that the deceased after being treated as a highly skilled person his income should be Rs.12,000/- per month. The Hon'ble Supreme Court in ***National Insurance Co. Vs. Pranay Sethi : 2017 SCC 270*** 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 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 per the ratio laid down in ***Pranay Sethi's case*** *(supra)*. Hence, the amount of compensation under the conventional heads stands modified to Rs.16,500/- each for loss of estate and funeral expenses. Besides this, the claimants, who are parents of the deceased, are entitled to Rs.44,000/- each, for loss of filial consortium respectively.

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

Sr. No.	Head	Amount
1.	Monthly Income	Rs.12,000/-
2.	Annual Income	Rs.12,000/- x 12 = Rs.1,44,000/-
3.	Future prospects (40%)	Rs.1,44,000/- x 40% = Rs.57,600/-
4.	Total annual income	Rs.1,44,000/- + Rs.57,600/- = Rs.2,01,600/-
5.	Deductions towards personal expenses (½)	Rs.2,01,600/- (/) 2 = Rs.1,00,800/-
6.	Loss of annual future earnings	Rs.2,01,600/- (-) Rs.1,00,800/- = Rs.1,00,800/-
7.	Multiplier	17
8.	Loss of future earnings	Rs.1,00,800/- x 17 = Rs.17,13,600/-
9.	Loss of consortium	Rs.44,000/- x 2 = Rs.88,000/-
10.	Funeral expenses	Rs.16,500/-
11.	Loss of estate	Rs.16,500/-
	Total compensation	Rs.18,34,600/-

The claimants are, therefore, held entitled to a total sum of Rs.18,34,600/- as compensation along with interest @ 8% per annum, except for the delayed period, from the date of filing of claim petition till its actual realization and would be apportioned to the claimants in the same ratio as directed by learned Tribunal.

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

29.10.2022 **(MANJARI NEHRU KAUL)**
Vinay **JUDGE**

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