

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

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**FAO-3860-2014 (O&M) AND
XOBJC-28-CII-2016
Decided on : 05.04.2022**

Shri Ram General Insurance Co. Ltd.

... Appellant(s)

Versus

Khajani Devi and others

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. Tajender K. Joshi, Advocate
for the appellant-Insurance Company.

Mr. Arvind Seth, Advocate for
Mr. Kuldeep Tiwari, Advocate
for respondents No.1 to 5/cross-objectors/claimants.

Mr. Rajbir Singh, Advocate
for respondent No.9.

MANJARI NEHRU KAUL, J. (Oral)

CM-11797-CII-2014 IN FAO-3860-2014

This is an application filed under Section 5 of the Limitation Act, 1963, for condonation of delay of 145 days in filing the present appeal.

Notice of this application was issued.

After hearing learned counsel for the parties and perusing the averments made in the application, which is supported by an affidavit, the delay of 145 days in filing the appeal is hereby condoned.

CM stands disposed off.

CM-3404-CII-2016 IN XOBJC-28-CII-2016

This is an application filed under Section 5 of the Limitation Act, 1963, for condonation of delay of 502 days in filing the present cross-objections.

After hearing learned counsel for the parties and perusing the

averments made in the application, which is supported by an affidavit, the delay of 502 days in filing the cross-objections is hereby condoned.

CM stands disposed off.

**FAO-3860-2014 (O&M) AND
XOBJC-28-CII-2016**

This order shall dispose of FAO-3860-2014 and Cross-Objections No. 28-CII-2016, as they arise from the same award.

The instant appeal has been preferred by the Insurance Company against the award dated 26.08.2013, passed by the learned Motor Accident Claims Tribunal, Hisar (hereinafter referred to as 'the Tribunal') in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988, whereby, the compensation in the sum of Rs. 5,40,000/-, was awarded to the claimants/respondents No.1 to 5 i.e. wife and four sons of the deceased Richhpal, who was 62 years of age at the time of accident in question.

The claimants/respondents No.1 to 5 have also filed cross-objections claiming compensation in the sum of Rs. 28,00,000/-, since the compensation awarded by the Tribunal was meagre and against the settled law.

A few facts as pleaded in the claim petition by the claimants/respondents No.1 to 5 may be noticed. On 28.11.2011, at about 10:15 a.m., when Richhpal Singh (since deceased) was going in bus bearing registration No. RJ07-PA-4621, a truck bearing registration No. RJ07-GA-3432, came from the opposite side being driven rashly and negligently and struck against their bus from the wrong side. Five occupants of the bus including Ricchpal Singh and the driver died at the spot. FIR No. 269, dated 28.11.2021, under Sections 279, 337, 304-A IPC was got registered against the driver of offending truck i.e. respondent No.1. The Tribunal on

the basis of evidence led by the parties, assessed and awarded the following compensation in the sum of Rs.5,40,000/- to the claimants-respondents No.1 to 5 :-

Sr. No.	Head	Amount
1.	Monthly Income	Rs.5000/-
2.	Annual Income	12x5000=Rs.60,000/-
3.	Future Prospects	--
4.	Total Annual Income	Rs.60,000/-
5.	Deduction 1/4 th	Rs.15,000/-
6.	Annual Dependency	Rs.45,000/-
7.	Multiplier	7
8.	Total Dependency	Rs.45,000x7=Rs.3,15,000/-
9.	Loss of Consortium	Rs.1,00,000
10.	Loss of love and affection (wife)	1,00,000
11.	Funeral Expenses	Rs.25,000/-
12.	Total Compensation	Rs.5,40,000/-

Appellant-Insurance Company as well as respondents No.1 & 2 (driver and owner of the offending truck) were directed to pay the amount of compensation to the claimants-respondents No.1 to 5 (i.e. mother and four sons of the deceased), along with interest @ 9% per annum, from the date of the claim petition till the date of actual realization of the payment.

Learned counsel appearing for the appellant-Insurance Company (insurer of the offending truck), submitted that the accident in question had not taken place on account of the rash and negligent driving of the truck bearing registration No. J07-GA-3432 only, but it had come in the evidence of PW-3 Gopal Chand that the drivers of the bus as well as the offending truck were driving rashly and negligently and thus, it had occurred on account of the negligence of both the drivers. Learned counsel

submitted that the Tribunal failed to appreciate this fact and wrongly fastened the liability on the driver of the offending truck.

Learned counsel for respondent No.9-Insurance Company (insurer of the bus), also challenged the compensation assessed, with respect to the income of the deceased, which was taken as Rs. 5000/- p.m. It was submitted that there was no evidence in support of the income of the deceased and hence, monthly income of the deceased required to be reassessed. It was also submitted that under the conventional heads i.e. loss of consortium, funeral expenses and other deductions, the Tribunal had erred in awarding an exorbitant compensation.

Learned counsel appearing for respondents No.1 to 5/cross-objectors/claimants, on the other hand, submitted that the monthly income assessed in the sum of Rs. 5000/- by the Tribunal needed to be enhanced to at least Rs. 15000/- p.m., since the deceased was earning a substantial sum of money from agriculture. It was also submitted that the multiplier of 7, which had been applied was wrong and in fact, a multiplier of 9 should have been applied, since the age of the deceased stood reflected as 50 years in the postmortem report. Besides this, learned counsel also submitted that under the conventional heads, like loss of estate, funeral expenses and loss of consortium, the compensation awarded was on the lower side and thus, required to be enhanced accordingly.

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

This Court does not find any merit in the submissions made by learned counsel for the appellant-Insurance Company that the accident in question occurred on account of the rash and negligent driving of the

drivers of both the vehicles i.e. bus as well as the truck. A perusal of the testimony of the witnesses reveals that it was the offending truck, which came rashly and negligently and hit the bus on the wrong side. No doubt, PW-2 Gopal Chand did submit that both the drivers were driving rashly, however, the factum of the offending truck hitting the bus from the wrong side, leaves no manner of doubt that the driver of the offending truck was in the wrong. Still further, the factum of the offending truck hitting the bus from the wrong side also finds reflected in the FIR, which was registered promptly soon after the accident in question.

Coming to the next submission *qua* the compensation awarded to the claimants/cross-objectors/respondents No.1 to 5 being inadequate, this Court is of the opinion that no interference is warranted with respect to the monthly income of the deceased, which has been rightly assessed by the Tribunal in the sum of Rs. 5,000/- p.m. The minimum wages fixed by the Government of Haryana with respect to the unskilled labourers for the relevant period was Rs. 5,000/-, hence, the Tribunal cannot be faulted with on that count. The submissions made by the learned counsel for the claimants/cross-objectors/respondents No.1 to 5, that the multiplier applied should have been 9 and not 7, in view of the age of the deceased having been mentioned as 50 years in the postmortem report, is also devoid of merit. Admittedly, the deceased was a retired Government employee as per claimant-respondent No.1 Khajani Devi i.e. widow of the deceased. She stated that at the time of her husband's death, he was 62 years old. Hence, the age of the deceased was rightly taken to be 62 years and the multiplier of 7 was rightly applied.

This Court is, however, of the opinion that since the

compensation awarded under loss of estate and funeral expenses, is on the higher side and not in consonance with the judgment rendered by the Constitution Bench of Hon'ble Supreme Court in *National Insurance Co. Vs. Pranay Sethi : 2017 SCC 270* and *Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. : (2009) 6 SCC 121*, it needs to be reassessed and modified in the following terms:-

The Hon'ble Supreme Court in *Pranay Sethi's case (supra)* has quantified the amount in the sum of Rs.15,000/- each, to be awarded for loss of estate & funeral expenses and Rs.40,000/- each, for loss of consortium. Still further, it has been held that the aforesaid amount would be further subject to 10% enhancement after every three years. Therefore, the appellants would be entitled to 10% enhancement *qua* the compensation under conventional heads, as has also been held and reassessed by 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 conventional heads stands modified to Rs.16,500/- each, for loss of estate & funeral expenses and Rs.44,000/- each for loss of consortium (spousal & parental), for each of the five claimants, who are wife and four sons of the deceased Ricchpal Singh.

Resultantly, the compensation payable to the claimants would be as follows:-

Sr. No.	Head	Amount
1.	Monthly Income	Rs.5000/-
2.	Annual Income	12 x 5000=Rs.60,000/-
3.	Future Prospects	Nil (since the deceased was 62 years of age)
4.	Total Annual Income	Rs.60,000/-

5.	Deduction towards personal expenses (1/4 th)	Rs.15,000/-
6.	Loss of Annual future earnings	Rs.45,000/-
7.	Multiplier	7
8.	Loss of Future earnings	Rs.45,000 x 7 = Rs. 3,15,000/-
9.	Loss of consortium (widow and children)	Rs.44,000/- x 5 = Rs.2,20,000/-
10.	Funeral Expenses	Rs.16,500/-
11.	Loss of Estate	Rs.16,500/-
12.	Total Compensation	Rs.5,68,000/-

The claimants are, therefore, held entitled to a total sum of Rs.5,68,000/- as compensation along with interest @ 9% per annum from the date of filing of claim petition till its actual realization.

With these modifications, the present appeal of the Insurance Company stands dismissed and cross-objections stands disposed of in the above terms.

(MANJARI NEHRU KAUL)
JUDGE

April 05, 2022

J.Ram

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