

FAO-5041-2005 (O&M)
XOBJC-18-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-5041-2005 (O&M) with
XOBJC-18-2023 (O&M)
Reserved on : 01.03.2023
Date of decision : 14.03.2023

New India Assurance Company Ltd. ... Appellant(s)
Versus
Vinay Dhir & Ors. ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashwani Talwar, Advocate for the appellant.

Mr. Ajaivir Singh, Advocate
for respondent Nos.1 to 3/cross-objectors.

ALKA SARIN, J.

The present order shall dispose off appeal being **FAO No.5041 of 2005** and cross-objections being **XOBJC No.18 of 2023**.

The cross-objections have been filed in the year 2023 along with an application (**CM-2834-CII-2023**) seeking condonation of delay of 6400 days in filing the cross-objections. For the reasons stated in application, the same is allowed and the delay of 6400 days in filing the cross-objections is condoned. However, the cross objectors/claimants shall not be entitled to interest for the period of delay.

The present appeal has been preferred by the appellant-Insurance Company aggrieved by the award dated 28.07.2005 passed by the Motor Accident Claims Tribunal, Rupnagar (hereinafter referred to as

‘Tribunal’) on the ground that there was no involvement of the insured vehicle as has been alleged in the claim petition.

Learned counsel for the appellant-Insurance Company has vehemently contended that in the present case no FIR was lodged and that the truck/tanker was not even challaned. It is further the contention that the truck/tanker was sprinkling water and that the scooter of the deceased skidded on a heap of clay which was lying on the road and the deceased was crushed under the rear tyre of the truck/tanker. It is further the contention that in the DDR (Ex.PW3/A), there is a mention that the accident took place due to slipping of the scooter.

Per contra, learned counsel for the cross objectors/claimants has contended that the deceased was driving the scooter at a normal speed and was observing traffic rules and that when the deceased reached Gate No.6 the offending truck/tanker bearing registration No.PUR-5606 came from the opposite direction being driven by respondent No.4 herein rashly and negligently and at a very high speed and it hit the scooter of the deceased by going on to the wrong side of the road. As a result, the deceased fell from his scooter and his head was crushed by the back wheels of the truck/tanker and he died at the spot. It is further the contention that the eye-witness of the accident was cross-examined at length. Learned counsel has further contended that the driver of the truck/tanker (respondent No.4 herein), who would have been the best person to depose, chose not to step into the witness box.

The cross-objections have been filed seeking enhancement of the compensation as awarded by the Tribunal vide the award dated

28.07.2005. Learned counsel for the cross objectors/claimants has contended that the award is not as per the law laid down by the Hon'ble Supreme Court in the cases of **Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. [2009 (3) RCR (Civil) 77]**; **National Insurance Company Limited Vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]**; **Magma General Insurance Co. Ltd. V. Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 SCC 130]** and **N. Jayasree & Ors. Vs. Chola mandalam MS General Ins. Co. Ltd. [2021 ACJ 2685]**. It is further the contention that no amount has been awarded towards future prospects and further, keeping in view the age of the deceased, a multiplier of '13' ought to have been applied, however, a multiplier of '7' has been applied. Learned counsel has further contended that no amount has been awarded under the head consortium and that the amount awarded under the conventional heads is also on the lower side.

Learned counsel for the appellant-Insurance Company has contended that there is no scope for enhancement in the present case. Rather, there is no fault of the driver of the truck/tanker and hence the cross-objections deserve to be dismissed.

Heard.

In the present case, dealing with the argument of learned counsel for the appellant-Insurance Company regarding the involvement of the vehicle, the eye-witness of the accident - Rattan Singh - appeared as PW2 and filed his affidavit in examination-in-chief as Ex.PW2/A. He clearly stated that the accident took place because of the rash and negligent driving of the driver of the offending truck/tanker (respondent No.4 herein). There is no reason to disbelieve the eye-witness of the said accident. Further, the

driver of the truck/tanker would have been the best person to depose but he chose not to step into the witness box. There is no other evidence on the record to support the argument of learned counsel for the appellant-Insurance Company that the accident took place due to slipping of the scooter on the clay.

In view of the above, I do not find any merit in the present appeal and the same is, accordingly, dismissed.

Coming to the cross-objections, the Tribunal, in the present case, awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Annual income	Rs.2,25,000/-
2	Deduction 1/3 rd	[225000-75000] =Rs.1,50,000/-
3	Multiplier of 7	[150000x7] = Rs.10,50,000/-
4	Funeral expenses	Rs.2,000/-
	Total Compensation	Rs.10,52,000/-
	Interest	6% per annum

As per the law laid down in the cases of **Sarla Verma** (supra), **Magma General Insurance Co. Ltd.** (supra); **Pranay Sethi** (supra) and **N. Jayasree** (supra), while maintaining the income of the deceased, 1/3rd deduction has rightly been made keeping in view the claimants in the present case. However, a wrong multiplier has been applied keeping in view the age of the deceased which was 50 years and a multiplier of ‘13’ ought to have been applied. No amount has been awarded towards future prospects, hence, 30% addition would have to be made towards future prospects. No amount has been awarded under the head consortium. The cross objectors/claimants are the widow and the children of the deceased and they would be entitled to

an amount of Rs.44,000/- each under the head consortium and further they would also be entitled to Rs.16,500/- and Rs.16,500/- under the conventional heads. Accordingly, the reworked out compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Annual income	Rs.2,25,000/-
2	Deduction 1/3 rd	[225000-75000]=Rs.1,50,000/-
3	Future prospect @ 30%	[150000+45000]=Rs.1,95,000/-
4	Multiplier of 13	[195000x13]=Rs.25,35,000/-
5	Loss of estate	Rs.16,500/-
6	Funeral expenses	Rs.16,500/-
7	Loss of Consortium : (i) Parental (ii) Spousal's	Rs.88,000/- (44000 x 2) Rs.44000/- (Total Rs.1,32,000/-)
	Total Compensation	Rs.27,00,000/-
	Amount Awarded by the Tribunal	Rs.10,52,000/--
	Enhanced amount	Rs.16,48,000/-

The enhanced amount shall carry interest @ 6% per annum from the date of filing of the claim petition till realization excluding the period of delay in filing the cross-objections.

In view of the above, the appeal stands dismissed. The cross-objections stand allowed and the award of the Tribunal is modified to the above-mentioned extent. Pending applications, if any, also stands disposed off.

14.03.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO