IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 3192/2016(O&M)

Date of decision: 16.05.2023.

New India Assurance Company Ltd.

………………Appellant

Vs.

Raj Rani and others

………………Respondents

FAO 6826/2016(O&M)

Raj Rani and others

……………Appellants.

Vs.

Kashmir Singh and others

………………Respondents

CORAM **HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Rahul Pathania, Advocate for the Insurance Company

Ms. Pooja Chopra, Advocate for the claimants.

Nidhi Gupta, J.

By this common order I shall dispose of aforesaid two cross appeals, the same being FAO 6826/2016 filed by the claimants; and FAO No.3192/2016 filed by the Insurance Company as the facts and questions of law involved therein are identical. Both appeals arise out of the one Award dated 7.4.2016 passed by Motor Accident Claims Tribunal, Patiala, (hereinafter referred to as 'the Tribunal') in MACT No.21 filed under Section 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act').

2. For the sake of convenience parties are being referred to by their respective status in the claim petition.

3. Vide impugned Award ld. Tribunal granted compensation of Rs.43,40,000/- to the claimants along with interest @ 8% per annum from the date of filing of the claim petition till realization. Ld. Tribunal granted compensation as above on account of death of Lachhman Singh aged 42 years. Ld. Tribunal on the appraisal of facts, pleadings and evidence on record held that the deceased had died due to injuries suffered by him in motor vehicular accident that took place on 8.1.2015 due to rash and negligent driving of truck bearing registration No. PB-11-AK-9754 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.1, owned by respondent no.2 and insured by respondent no.4. Claimants were widow, two major children, and parents of deceased Lachhman Singh. Liability to pay the compensation was joint and several.

4. Ld. counsel for the claimants seeks enhancement of compensation on the ground that income of the deceased has been taken as Rs.3 lacs per annum which is on lower side. It is submitted that prior to death deceased was working as an Electrician and used to take contracts of fittings in new homes and bungalows. It is submitted that as per ITR for the year 2011-12 Ex.P1 gross income of the deceased was shown as 2,19,183; as per ITR for the year 2012-13 Ex.P2 annual income of the deceased was 2,87,624/-; and as per ITR for the year 2013-14 Ex.P3 gross income has been shown as Rs.3,03,971/-; and for the year 2014-15, Ex.P4 gross income of the deceased

has been shown as Rs.3,25,337/-. It is submitted that accordingly, perusal of the ITRs shows that there has been constant and substantial increase in the income of the deceased over the years. It is submitted that therefore, keeping in view this constant increase in the income of the deceased, ld. Tribunal ought to have taken income of the deceased at least Rs.4.25 lacs per annum.

5. It is further submitted by the ld. counsel for the claimants that ld. Tribunal has granted only Rs.2,45,000/- under the conventional heads. It is submitted that as per judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram, 2018 (18) SCC 130;** claimants were entitled to much more under the conventional heads. It is stated that interest has been granted @ 8% whereas the same should be at least 9% or more. It is also stated that future prospects have been granted @ 30% whereas the same should have been 100%.

6. Per contra, it is submitted by the ld. counsel for the Insurance Company that in view of the ITRs of the deceased, income of the deceased is not disputed. It is submitted that even dependency is not disputed. It is submitted that however, ld. Tribunal has granted future prospects @ 30% whereas, as per judgment of the Hon'ble Supreme Court in **National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680**, the same ought to be 25% as, at the time of his death deceased was 42 years of age.

7. It is further submitted that as per latest judgments of Hon'ble Supreme Court in **Shri Ram General Insurance Company Limited v Bhagat Singh Rawat & others, C.A.No.2410-2412/2023; Mehmooda Bee and others v National Insurance Co. Ltd., SLP (C) No.16767 of 2022;** and

Bebi Giri vs. National Insurance Co. Ltd., Civil Appeal No.6551 of 2022 (SLP(C) No.8768 of 2018, a total sum of Rs.77,000/- can be granted under the conventional heads. It is also submitted by the ld. counsel for the Insurance Company that liability to pay the compensation could not have been fastened upon the Insurance Company in view of the fact that the driving licence of respondent no.1 for driving heavy motor vehicle had expired in 2013, and therefore, at the time of accident, respondent No.1 was not authorised to drive the offending vehicle/truck. It is submitted that therefore, recovery rights ought to have been granted to Insurance Company.

8. No other argument has been raised.

9. Heard ld. counsel.

10. A perusal of the record of the case shows that undisputedly, age of the deceased was 42 years at the time of death. As per PAN Card of the deceased Ex.P1/B, and his driving licence Ex.PW1/C, the date of birth of the deceased is mentioned therein as 1.1.1973. Therefore, on the date of accident 8.1.2015 the deceased was 42 years of age.

11. As regards income of the deceased, perusal of the record evidences that Ex.P3 and P4 which are ITRs of the deceased for the year 2013-14 and 2014-15 respectively, were filed after the death of the deceased. Even otherwise, I find no merit in the argument made on behalf of the claimants that as there was increase in the income of the deceased over the years, therefore, his income ought to have been taken as Rs.4.25 lacs per annum. To do so would be to venture into the realm of conjecture. The average income of the deceased as per ITRs produced by the claimants comes to Rs.2,81,778.75. Ld. Tribunal has still taken the income on higher side as Rs.3

lacs. As ld. counsel for the Insurance Company has not disputed income of the deceased accordingly, income of the deceased is maintained as Rs. 3 lacs per annum.

12. There can be no dispute that as per judgment of the Hon'ble Supreme Court in **Pranay Sethi** (supra), as the deceased was 43 years of age at the time of death, future prospects ought to have been added @ 25%, and not 30% As claimants are five in number deduction of 1/4th has correctly been made by the Tribunal. as deceased was admittedly, 42 years of age, at time of death, multiplier of 14 has correctly been applied.

13. Under the conventional heads ld. Tribunal has granted Rs. 1 lac towards loss of consortium to applicant/claimant no.1/widow of the deceased, claimants no.2 to 5 have also been granted Rs.1 lac towards loss of love and affection; and Rs.25,000/- towards funeral expenses and Rs.20,000/- towards loss of estate. Undoubtedly, as per latest judgments of the Hon'ble Supreme Court in **Bhagat Singh Rawat (supra), Mehmooda Bee (supra),** and **Bebi Giri (supra),** a total sum of Rs.77,000/- only can be granted under the conventional heads.

14. Accordingly, compensation payable to the claimants is re-calculated as follows: -

Sr.No.	**HEAD**	**MACT(in Rs.)**	**APPEAL(in Rs.)**
1.	Income	3,00,000/-	3,00,000/-
2.	Future prospects	@30% = 90,000/-	@ 25% 75,000/-
3.	Annual income	3,90,000/-	3,75,000/-
4.	Deduction 1/4th	2,92,500/-	2,81,250/-
5.	Multiplier	14	14
6.	Total loss of dependency	40,95,000/-	39,37,500/-

7.	Conventional heads	2,45,000/-	77,000/-
8.	Total compensation	43,40,000/-	40,14,500/-
9.	Interest	8% per annum	8% per annum

15. As regards argument of the ld. counsel for the Insurance Company that recovery rights ought to have been granted to the Insurance Company as respondent no.1 did not possess valid driving licence at the time of accident, perusal of the impugned Award shows that no such argument was raised by the Insurance Company before the ld. Tribunal. In fact, in para 16 of the impugned Award, ld. Tribunal has noticed that "*copy of driving licence of respondent no.1 is Ex.R1 which shows that he was holding a legal and valid driving licence to drive the truck in question at the time of accident*". Even otherwise, it is admitted that no verification report in respect of driving licence of respondent no.1 was produced by the Insurance Company before the ld. Tribunal.

16. In view of the above discussion, the appeal filed by the claimants i.e. FAO No.6826 of 2016 is **dismissed**; whereas the appeal filed by the Insurance Company i.e. FAO No.3192 of 2016, stands **partly allowed**, in above terms.

17. Pending applications is any, stand disposed of.

16.05.2023. **(Nidhi Gupta)**
Joshi **Judge**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**