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

1.

FAO-8445-2014 (O&M)
Reserved on : 18.7.2023.
Date of Decision:- 22.9.2023

United India Insurance Company Ltd.

… Appellant

Versus

Shanti Devi and Ors.

... Respondents

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2.

Cross Objections No.XOBJC-247-CII-2015 (O&M)

Shanti Devi and another

Versus

United India Insurance Company Limited and others

**CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH**

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**Argued by** :-
Mr. Varun Sharma, Advocate
for the appellant in **FAO-84453-2014**.

Mr. Brijeshwar Vashist, Advocate and
Mr. Tarunveer Vashist, Advocate
for appellants No.1 and 2 in **XOBJC-247-CII-2015** and
for respondents No.1 and 2 in **FAO-8445-2014**.

Mr. Jugnash Goyal, Advocate for
Mr. Denesh Goyal, Advocate
for respondent No.4.

Mr. Kuldeep, Advocate for
Mr. Tribhwan Singla, Advocate
for respondent No.5.

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**KARAMJIT SINGH, J.**

1. This order of mine shall dispose of above mentioned two cases i.e. FAO-8445-2014 (filed by the insurance company for setting aside the award) and Cross Objections having XOBJC-247-CII-2015 (filed by the claimants for enhancement of compensation). For convenience, facts are taken from FAO-8445-2014.

2. The brief facts of the case of claimants are that the claimants/cross-objectors are parents of deceased Birbal @ Nikku. On 12.10.2012 at about 7:00 P.M. Birbal @ Nikku was coming back from his work place to his village Passiana on foot and when he reached near bus-stop of village Wazidpur, a truck/tanker No.PB06-D-2388, which was driven in rash and negligent manner by Jatinder Singh came there and struck Birbal @ Nikku as a result of which, he sustained multiple injuries and died at the spot. FIR No.118 dated 12.10.2012 was registered against Jatinder Singh under Section 279-/304-A IPC in Police Station Passiana with regard to aforesaid accident, which was witnessed by Shamshad Ali son of Sita Khan resident of village Mehmadpur. The offending truck was owned by Kanchan Singh and Lachman Dass and was insured with The United India Insurance Company. The deceased was 20 years of age and was carpenter by profession and used to earn ₹ 16,000/- per month by doing work of Carpenter and he was also earning another ₹ 8,000/- per month by doing private job and his total monthly income was ₹ 24,000/-. That both the claimants were dependent on the income of the deceased and they claimed compensation worth ₹ 25,30,000/- along with interest.

3. The claim petition was contested by the driver, owners and insurer of the offending truck. Respondents No.3 and 4 filed joint written statement wherein the factum of accident was denied and it was pleaded that false FIR was registered by the police against Jatinder Singh.

4. Insurance company filed separate written statement, wherein also the factum of accident was denied and insurer also took preliminary objections that at the time of accident, the driver of the offending vehicle was not holding valid and effective licence and the truck in question was being driven in violation of the provisions of Motor Vehicle Act and the terms and conditions of the insurance policy.

5. Respondent No.5-Lachman Dass filed a separate written statement, wherein he disclosed that he had already sold the truck in question to respondent No.4-Kanchan Singh.

6. On the pleading of the parties, following issues were framed:-

1. Whether the deceased Birbal @ Nikku son of Narata Ram died in a road side accident caused by rash and negligent driving by respondent No.1? OPP.

2. Whether the claimants are entitled to receive the compensation, if so from whom and to what amount? OPP

3. Whether the claim petition is not within limitation? OPD

4. Whether the driver of the Truck/Tanker bearing No.PB-06-D-2388 was not holding a valid and effective driving license and route permit at the time of alleged accident? OPR.

5. Relief.

7. The counsel for the claimants examined PW-1 Narata Ram-father of the deceased, who produced and proved post-mortem report Ex.P1, FIR Ex.P2, Insurance Policy Ex.P3 and registration certificate of offending vehicle Ex.P4. PW-2 Shamshad Ali deposed regarding the accident in question being eye-witness. PW-3 Garib Dass ex-Sarpanch of village Sawajpur Nawan was examined, in order to establish that the deceased was earning ₹ 24,000/- per month and that the claimants were totally dependent on the deceased.

8. On the other hand Lachman Dass appeared in the witness box as RW-1 while the other respondents had not led any evidence.

9. After hearing the counsel for the parties, the Motor Accident Claims Tribunal, Patiala (in short, "the Tribunal") allowed the claim petition and granted compensation worth ₹ 7,32,000/- along with interest @ 7.5% per annum from the date of filing of the petition till its realization in favour of the claimants in equal shares and the driver owner and insurer of the offending vehicle were jointly as well as severally held liable to pay the awarded amount.

10. The insurance company being aggrieved by the Award has filed FAO-8445-2014 while the claimants in order to seek enhancement of awarded amount have filed cross-objections XOBJC-247-CII-2015.

11. I have heard the counsel for the parties.

12. The counsel appearing on behalf of the insurance company submits that the deceased was bachelor and as such dependency of the parents

on him is to be taken as ½ and not 1/3 as has been calculated by Tribunal, in the light of law laid down by Hon'ble Apex Court in **Sarla Verma** v. **Delhi Transport Corporation, 2009(3) Law Herald (SC) 2017**. The counsel for insurance company has further contended that while passing the impugned award, the Tribunal awarded ₹ 1,00,000/- as loss of consortium to the mother of the deceased. That as per the ratio laid down in **National Insurance Company** v. **Parnay Sethi,** 2017(4) RCR(Civil) 1009, loss of consortium cannot be more than ₹ 40,000/-. In this context the counsel for the insurance company has also placed reliance upon the decision of Hon'ble Apex Court in **Shri Ram General Insurance Company Limited** v. **Bhagat Singh Rawat and others;** 2023 (2) TAC 713 (SC). The counsel for the insurance company also tried to dispute the fact of accident in question and submitted that the accident had not taken place due to rash and negligent driving of truck No.PB06-D-2388, which was insured with the United India Insurance Company at the time of the alleged accident. Counsel for the insurance company further contended that the deceased was not doing any work and as such, his income assessed by the learned Tribunal as ₹ 4500/- per month is also on higher side. So, prayer is made that the appeal filed by the insurance company be allowed while cross objections filed by the claimants deserve to be dismissed.

13. On the other hand, the counsel for the claimants has contended that issue No.1 with regard to factum of accident in question is rightly decided by the Tribunal in favour of the claimants and against the

respondents. It has been further submitted that deceased was unmarried and he was skilled workman being carpenter and his minimum wages were ₹ 177.34 per day as per the rate fixed by the State Government. It has been further submitted that multiplier of 18 should have been applied as the age of deceased at the time of the death was 20 years. The counsel for the claimants has further submitted that the claimants are entitled to get compensation under all the conventional heads as per **Parnay Sethi's** case (supra) along with 40% future prospects and further enhancement of 10% after lapse of 3 years. It has been further submitted that the appeal filed by the insurance company deserves to be dismissed, whereas the cross-objections filed by the claimants be allowed and amount of compensation awarded by the Tribunal should be enhanced, as per law.

14. I have considered submissions made by counsel for the parties.

15. Eye witness namely PW2-Shamshad Ali while appearing in the witness box deposed regarding factum of accident in question. From the perusal of the testimony of the said eye witness coupled with FIR Ex.P2 and post mortem report Ex.P1, it stands fully proved that the accident in question was caused by respondent-Jatinder Singh while driving truck/tanker No.PB06-D-2388 in a rash and negligent manner on 12.10.2012 and as a result of the said accident, Birbal @ Nikku son of the claimants had died. So, the findings of the learned Tribunal with regard to issue No.1 are hereby affirmed.

16. Admittedly, the deceased was 20 years of age and was unmarried and the cross-objectors namely Shanti Devi and Narata Ram are parents of the deceased. The accident in question took place on 12.10.2012. No reliable evidence is led by the cross-objectors/claimants in order to establish that the deceased was carpenter by profession or that his monthly income was ₹ 24,000/-. The oral testimony of PW3-Garib Dass, Ex-Sarpanch to the effect that he was running carpenter shop in village and the deceased was also working with him as a carpenter and was getting ₹ 16000/- per month as a salary remains uncorroborated and thus, was rightly disbelieved by the learned Tribunal while passing the impugned award. However, it is settled position of law that in case of a deceased who was not earning or doing any job at the time of the accident/death, his income is to be determined on the basis of guess work. Taking into consideration the fact that the accident in question took place in the year 2012 and at that time, the deceased was aged about 20 years and prior to the accident, the deceased was hale and hearty and thus, even if the deceased was doing some manual labour, his income could be taken as ₹ 5000/- per month at the time of the accident/death. Thus, the monthly income of the deceased at the relevant time is assessed as ₹ 5000/- per month in place of ₹ 4500/- per month as was assessed by the learned Tribunal.

17. As per law laid down by Hon'ble Supreme Court in **Sarla Verma** v. **Delhi Transport Corporation, (**2009) 6 SCC 121, the deceased being bachelor, deduction should be 50% and not 1/3rd as has been assessed

by the learned Tribunal, the reason being the family of the deceased was not large. So, in the present case, the dependency of the cross objectors/claimants on the deceased is to be taken as one half. Thus, the monthly dependency of the claimants on the deceased in the present case comes out to be Rs.2500/- and their annual dependency comes out to be Rs.30,000/-.

18. As observed by the Hon'ble Supreme Court in **National Insurance Company Limited** v. **Pranay Sethi,** (2017) 16 SCC 680, the determination of income of the deceased while computing compensation has also to include future prospects. In the instant case, the deceased being 20 years of age and having no fixed source of income or permanent job, an addition of 40% of the income should be made towards future prospectu. So, as per law laid down in **Pranay Sethi's** case (supra), an amount of Rs.12,000/- per annum is to be added in the aforesaid total annual dependency of Rs.30,000/-. So, total annual dependency of the claimants on the deceased comes out to be Rs.42,000/-.

19. As per ratio laid down by Hon'ble Supreme Court in **Sarla Verma's** case (supra), multiplier of 18 is to be applied in the present case in place of multiplier of 17 as has been applied by the learned Tribunal while passing the impugned award and in this manner, the amount comes out o be ₹ 7,56,000/-.

20. As per judgment of Hon'ble Supreme Court in **Pranay Sethi's** case (supra), the parents are also entitled to get reasonable compensation under the conventional heads namely : -

| | | |
|---|---|---|
| Loss of Consortium | - | ₹ 40,000/- |
| Funeral expenses | - | ₹ 15,000/- |

21. In the instant case, the claimants are not entitled not get any compensation under the head of loss of estate. However, the claimants are entitled to get in total ₹ 52,000/- on account of loss of consortium and ₹ 19,500/- as funeral expenses as per aforesaid settled law while taking into consideration that the amounts are to be enhanced @ 10% after every 3 years. Further, as per decision of Hon'ble Supreme Court in **Magma General Insurance Company Limited** v. **Nanu Ram @ Chuhru Ram and others** 2018 (4) RCR (Civil) 333 and **Shri Ram General Insurance Company's** case (supra), the claimants being parents of the deceased aged about 20 years are also entitled to get compensation worth ₹ 50,000/- on account of loss of love and affection. Further, the claimants are entitled to litigation expenses worth ₹ 15,000/- to be payable by the insurance company in view of judgment passed by Hon'ble Supreme Court in case **Sidram** v. **the Divisional Manager, United India Insurance Company Limited and another** 2023 (1) RCR (Civil) 44.

22. In light of above discussion, FAO-8445-2014 deserves to be dismissed while cross objections filed by the claimants are to be allowed and the claimants are entitled to get ₹ 7,56,000/- + ₹ 1,36,500/- = ₹ 8,92,500/- in place of ₹ 7,32,000/- as principal compensation amount assessed by the learned Tribunal. The enhanced amount of compensation i.e. ₹ 1,60,500/- over and above the amount awarded by the learned Tribunal is to be paid by the insurance

company to the claimants in equal shares at the rate of interest as granted by the learned Tribunal and the said excess amount is to be deposited within 2 months from the date of receipt of certified copy of this judgment, with the Tribunal. The remaining conditions of disbursal of the amount as are imposed by the learned Tribunal shall remain un-altered. Needless to mention that the amount, if any, already deposited by the insurance company shall be adjusted.

23. The appeal filed by the insurance company is hereby dismissed whereas the cross-objections filed by the claimants are disposed of in the above terms.

**( KARAMJIT SINGH )**
**JUDGE**

**September 22, 2023**
Gaurav Sorot/Paritosh Kumar

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