IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

218-2 **FAO-1848-2022 (O&M) &**
XOBJC-33-2022
Date of Decision : 04.01.2024

The Oriental Insurance Company Limited ....Appellant

VERSUS

Ram Parkash and Others ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Akashdeep Singh, Advocate for the appellant.

Mr. Yogesh Gupta, Advocate
for respondent Nos.1 to 4/Cross-objectors.

None for respondent Nos.5(a) to 5(c).

ALKA SARIN, J. (Oral)

1. The present appeal as well as Cross Objections have been filed challenging the award dated 24.11.2021 whereby the Motor Accident Claims Tribunal, SAS Nagar (Mohali) (hereinafter referred to as the 'Tribunal') awarded an amount of Rs.20,76,500/- along with interest @ 7% per annum from the date of filing of the claim petition till realization to the claimant-respondent Nos.1 to 4 on account of death of Neeraj (hereinafter referred to as the 'deceased').

2. The brief facts relevant to the present *lis* are that on the intervening night of 22/23.02.2019 after completing his work as Cook in Silver Oak Palace, Sirhind Road, Patiala, Neeraj (deceased) and his co-workers were going to their respective houses by foot. The deceased and the co-workers were walking on the left side on *katcha* portion of the road and their contractor, namely, Dhamsa Prasad, was standing in front of the Silver

Oak Palace on his motorcycle. At about 12.00 a.m., a Bolero Jeep bearing registration No.PB-11-BT-6226 (hereinafter referred to as the 'Offending Vehicle') came at a very fast speed and was being driven in a rash and negligent manner and initially struck against the motorcycle of Dhamsa Prasad and thereafter ran over Neeraj (deceased) and his co-workers. Due to the accident the deceased and his co-workers and the contractor suffered multiple and serious injuries. They were taken to Rajindra Hospital, Patiala from where the deceased was referred to PGI Chandigarh where he succumbed to his injuries. FIR No.32 of 2019 under Sections 279, 337 and 304-A of the Indian Penal Code, 1860 was registered at Police Station Anaj Mandi, Patiala against the driver of the offending vehicle, namely, Kesar Singh. The claim petition was filed by the legal representatives of the deceased wherein it was stated that the deceased was 19 years of age and was working as a Cook and was earning Rs.15,000/- per month. Claimants are the father, sisters and brother of the deceased. The driver and owner of the offending vehicle filed their written statement and raised a preliminary objection that the claim petition was not maintainable and also denied the factum of the accident. The appellant-Insurance Company also filed its reply wherein the factum of the accident was denied. It was further denied that the driver was holding a valid driving licence.

3. On the basis of pleadings of the parties, the following issues were framed :

1. Whether Neeraj had died on account of injuries sustained by him in a motor vehicular accident, which took place during the intervening night of 22.2.2019 and 23.2.2019 in front of Silver Oak Palace, Sirhind Road, Patiala, due

to rash and negligent driving of Bolero Jeep bearing registration No. PB-11-BT-6226, by respondent No.1? OPP

2. If issue No.1 is proved, whether the claimants are entitled to compensation, if so, to what extent and from whom? OPP.

3. Whether the petition is not maintainable? OPR

4. Whether this Tribunal has no jurisdiction to try the present claim petition? OPR

5. Whether the respondent No.1 was not holding valid and effective driving licence at the time of accident, if so, its effect?OPR-2

6. Relief.

4. The Tribunal has awarded the following compensation after assessing the income of the deceased as Rs.10,000/- pm :

Sr. No.	Heads	Compensation Awarded
1	Monthly income	Rs.10,000/-
2	Annual income	[10,000 x 12] =Rs.1,20,000/-
3	Deduction 1/3rd	[1,20,000-40,000] =Rs.80,000/-
4	Future prospects @ 40%	[80,000+32,000] = Rs.1,12,000/-
5	Multiplier of 18	[1,12,000x18] = Rs.20,16,000/-
6	Funeral expenses	Rs.15,000/-
7	Loss of Estate	Rs.15,000/-
8	Medical Bills	Rs.30,457/-
	Total Compensation	**Rs.20,76,457/- (rounded off to Rs.20,76,500/-)**
	Interest	**7% per annum**

5. Learned counsel for the appellant-Insurance Company would contend that the Tribunal has erred in law in assessing the income of the deceased as Rs.10,000/- per month since there was no evidence to the effect that the deceased was earning Rs.10,000/- per month. It is further the contention that the monthly income of an unskilled labourer at the relevant point of time was Rs.8077.71 ps. Learned counsel for the appellant-Insurance Company has relied upon the judgments of the Hon'ble Supreme Court in the cases of **Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. [(2009) 6 SCC 121]** and **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]** to contend that in the present case a deduction of 1/3rd has been applied whereas the deceased was a bachelor and 50% deduction ought to have been applied.

6. *Per contra* learned counsel for respondent Nos.1 to 4/Cross-Objectors has contended that the deceased was working as a Cook and the contractor had stepped into witness-box as PW2 and had stated that the deceased was earning Rs.15,000/- per month. Learned counsel for respondent Nos.1 to 4/Cross-Objectors has further contended that the father in the present case was not employed and he and the siblings of the deceased were dependent upon the deceased and hence the Tribunal has rightly applied the deduction of 1/3rd. It has further been contended that no amount has been awarded under the head consortium as per the law laid down by the Hon'ble Supreme Court in the cases of **Pranay Sethi** *(supra),* **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 SCC 130]** and **N. Jayasree & Ors. vs. Cholamandalam M.S General Insurance Company Ltd. [2021(4) RCR (Civil) 642]**.

7. I have heard learned counsel for the parties.

8. In the present case the contractor had appeared as PW2 and had deposed that the deceased was working with him as a Cook and that while returning home after completing their work at Silver Oak Palace, Sirhind Road, Patiala the deceased met with an accident in which the deceased, his co-workers and the contractor were all injured. Though the contractor had stated that the deceased was working as a Cook, however, there is no evidence which has come on the record regarding the income of the deceased. Keeping in view the evidence of the contractor, the deceased is treated as a skilled worker since he was working in the capacity of a Cook and applying the minimum wages relevant at that point of time for a skilled worker, the income of the deceased is assessed as Rs.9,754/- per month. The Tribunal has erred in applying the deduction of 1/3rd since father and the minor siblings could not be treated as solely dependent upon the deceased. The father of the deceased, who is 46 years of age, is not stated to be incapacitated in any manner and hence it cannot be presumed that the entire family was dependent on the income of the deceased. That being so, a deduction of 50% would have to be applied keeping in view the fact that the deceased was a bachelor. Addition of 40% towards future prospects and multiplier of 18 have rightly been applied by the Tribunal. However, no amount has been awarded under the head of loss of filial consortium. The claimant-respondent Nos.1 to 4 would thus also be entitled to compensation towards loss of filial consortium as per the settled law in the cases of **Magma General Insurance Company Limited** *(supra)* and **N. Jayasree** *(supra)*.

9. In view of the above, the amount of compensation to which the claimant-appellants are held entitled to is re-calculated as under applying

20% increase on the amounts under the conventional heads and the head loss of consortium :

Sr. No.	Heads	Compensation Awarded
1	Monthly income	Rs.9,754/-
2	Annual income	[9,754 x 12] =Rs.1,17,048/-
3	50% Deduction	[1,17,048-58,524] =Rs.58,524/-
4	Future prospects @ 40%	[58,524+23,410] = Rs.81,934/-
5	Multiplier of 18	[81,934x18] = Rs.14,74,812/-
6	Funeral expenses	Rs.18,000/-
7	Loss of Estate	Rs.18,000/-
8	Medical Bills	Rs.30,457/-
9	Loss of Consortium : (i) Filial	Rs.1,92,000/- (48,000x4)
	Total Compensation	**Rs.17,33,269/- (rounded off to Rs.17,33,300/-)**
	Interest	**7% per annum**

10. In view of the above discussion, the present appeal (FAO-1848-2022) filed by the Insurance Company as well as the cross-objections (XOBJC-33-2022) filed by the claimant-respondent Nos.1 to 4 are partly allowed. The award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

04.01.2024
jk

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