IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

105-3 **FAO-3786-2014 (O&M) and**
XOBJC-10-CII-2015
Date of Decision : 18.12.2024

New India Assurance Company Ltd ....Appellant

VERSUS

Sharda and Others ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. R.C. Kapoor, Advocate
for the appellant-Insurance Company.

Mr. Dheeraj Narula, Advocate
for respondent No.1/cross-objector.

None for respondent Nos.2 and 3.

ALKA SARIN, J. (Oral)

1. This order shall dispose off the appeal being **FAO-3786-2014** filed by the Insurance Company and the cross-objections being **XOBJC-10-CII-2015** filed by the claimant (respondent No.1 herein) challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal, Sirsa (hereinafter referred to as the 'Tribunal') on account of death of Dharamvir (hereinafter referred to as the 'deceased') vide award dated 10.03.2014.

2. Brief facts relevant to the present *lis* are that on 14.03.2012 deceased-Dharamvir alongwith Naresh Kumar was coming back in an Indica car bearing Registration No.HR-44-C-0909 to Sirsa from Malout after attending a marriage. At that time, the car in question was being driven by

the deceased whereas Naresh Kumar was in the car as a passenger. One Bhoop Singh alongwith Rajender was also coming in his own car behind the car in question and when they reached little ahead of village Tappi at about 11.00 pm, a truck tipper bearing Registration No.HR-55-C-0673 (hereinafter referred to as the 'offending vehicle') was going ahead of the car in question. Dharamvir gave a dipper and blew the horn seeking way to overtake the offending vehicle upon which the driver of the offending vehicle indicated allowing them to overtake. However, when Dharamvir started overtaking, all of a sudden, the driver of the offending vehicle turned it towards its right side as a result of which the car in question struck against the rear end of the offending vehicle and both the occupants of the car i.e. Dharamvir and Naresh Kumar received serious injuries and subsequently succumbed to their injuries. FIR No.27 dated 15.03.2012 was registered under Sections 279, 304-A and 427 of the Indian Penal Code, 1860. It was averred that the accident took place due to rash and negligent driving of the driver of the offending vehicle. The Tribunal vide the impugned award held that the driver of the offending vehicle was driving the vehicle in a rash and negligent manner and awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Monthly income	Rs.5,500/-
2	Future Prospects 30%	[Rs.5,500 + 1,650] = Rs.7,150/-
3	Deduction 1/3rd	[Rs.7,150 – 2,383] = Rs.4,767/-
4	Annual Income	[Rs.4,767 x 12] = Rs.57,204/-
5	Multiplier of 14	[Rs.57,204 x 14]=Rs.8,00,856/-
6	Loss of love and affection	Rs.25,000/-

7	Funeral expenses	Rs.25,000/-
8	Transportation	Rs.2,000/-
9	Loss of consortium	Rs.1,00,000/-
	Total Compensation	**Rs.9,52,856/- rounded off to Rs.9,53,000/-**
	Interest	**7.5% per annum**

3. Aggrieved by the same, **FAO-3786-2014** has been filed by the Insurance Company and cross-objections being **XOBJC-10-CII-2015** have been filed by the claimant.

4. Learned counsel for the Insurance Company would contend that the driver of the car i.e. deceased-Dharamvir was negligent in not maintaining a safe distance from the offending vehicle and hence it would be a case of contributory negligence as the car hit the offending vehicle from behind. Learned counsel for the Insurance Company would further contend that the driver of the offending vehicle had two driving licences and when one was found to be forged and fabricated, a second licence was produced and hence, relying upon the judgment of this Court in the case of **National Insurance Company Ltd. Vs. Arfoon Nisa & Ors. [2015 (9) RCR (Civil) 406]** learned counsel would contend that the Insurance Company ought to have been given recovery rights. Qua the quantum of compensation, learned counsel for the Insurance Company would contend that the deduction ought to have been 50% as there is only one claimant. In support of his contention, he has relied upon a judgment of this Court in the case of **Harpal Kaur & Ors. vs. Sita Ram & Ors. [2017(4) PLR 368]**. It is further the contention that the Tribunal has made addition of 30% towards loss of future prospects,

however, keeping in view the age of the deceased, who was 45 years of age, an addition of 25% ought to have been made. However, he has not laid any challenge to the multiplier. Learned counsel for the Insurance Company would further contend that the amounts awarded under the conventional heads as well as under the head of 'loss of consortium' also need to be re-worked out. In support of his contention, he has relied upon judgments in cases of **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]**, **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]**.

5. *Per contra*, learned counsel for respondent No.1/cross-objector would contend that the deceased, who was driving the car, tried to overtake the offending vehicle by giving a dipper and blowing the horn and after the driver of the offending vehicle had indicated allowing the car to overtake, the deceased started overtaking and all of a sudden the driver of the offending vehicle turned it towards its right side, as a result of which the accident took place. Learned counsel would further contend that no evidence has been led to the contrary. Learned counsel for respondent No.1/cross-objector would further contend that the income of the deceased has been taken as per minimum wages. It has been contended that the deceased was owner of about 38 Bighas of land and he was cultivating the same as per Jamabandi (Ex.P-9). It has further been contended that the deceased was earning Rs.20,000/- from cultivating the said land.

6. I have heard the learned counsel for the parties.

7. The argument of the learned counsel for the Insurance Company that it would be a case of contributory negligence deserves to be rejected. In the present case, PW2 had stepped into the witness box to depose qua the accident and he had specifically stated in his affidavit filed in examination-in-chief that the accident took place when the driver of the offending vehicle, after giving an indicator allowing the deceased to overtake, turned the offending vehicle towards its right side leading to the accident. Not even a suggestion was put that the manner in which the accident took place, as narrated by the said witness, was incorrect. In view thereof no fault can be found with the finding returned by the Tribunal.

8. The argument of the learned counsel for the Insurance Company that the driver of the offending vehicle was holding two driving licences also deserves to be rejected. In the case of **National Insurance Company Ltd. vs. Swaran Singh & Ors. [(2004) 3 SCC 297]** Hon'ble Supreme Court has *inter-alia* held that " The breach of policy condition e.g. *disqualification of the driver or invalid driving licence of the driver, as contained in sub section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling*

the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time".

9. There is not an iota of evidence on the record led by the Insurance Company to show that the second driving licence was not a valid licence. Further, in view of the law laid down by the Hon'ble Supreme Court in the case of **Swaran Singh** (supra), the judgment relied upon by the learned counsel for the Insurance Company in the case of **Arfoon Nisa (supra)** would not come to his aid. In view thereof, this argument of learned counsel for the Insurance Company stands rejected.

10. The argument of learned counsel for respondent No.1/cross-objector that income of the deceased has not been assessed correctly deserves to be accepted. In the present case, Jamabandi (Ex.P-9) was placed on the record and the Insurance Company has not led any evidence to the contrary to show that the deceased was not the owner of 38 Bighas of land which he was cultivating. Hon'ble Supreme Court in the case of **State of Haryana & Anr. vs. Jasbir Kaur & Ors. [2003 ACJ 1800]** has held that since the land remains with the family, therefore, normal rule of deprivation of income would not be strictly applicable. However, keeping in view the fact that the family may be required to engage a person to look after the agricultural work, the income of the deceased was assessed as Rs.3,000/- per month from agricultural work. In the said case the accident had taken place in the year 1999. In the present case, the accident took place in the year 2012 and taking a cue from the said judgment, this Court deems it fit to consider the deceased as a skilled worker and assess his income as Rs.5,617/- per

month on the basis of minimum wages prevailing at the relevant point of time. The argument of learned counsel for the Insurance Company qua the deduction deserves to be rejected in view of the order passed by this Court in case of **The New India Assurance Company Ltd. vs. Smt. Ramesh Kanta Sharma & Anr. [2020(3) PLR 346]** wherein it has been held as under :

> " 6. *Applying the said analogy, this Court is of the considered opinion that even where the claimant is one and the deceased was married, 1/3rd deduction would be applied. Being a married man, he would be contributing more to the household than a bachelor. There cannot be a straight-jacket formula and a lot would depend on the facts and circumstances of the case. In the present case, the wife, who is the claimant, is 73 years of age, it cannot be presumed that the deceased would be spending half of his income on himself. A married man cannot be equated with a* bachelor."

11. A multiplier of '14' has rightly been applied. The argument of learned counsel for the Insurance Company that addition of 25% ought to have been made towards loss of future prospects deserves to be accepted. The deceased in the present case was 45 years of age and in view of the law laid down by the Hon'ble Supreme Court in the case of **Pranay Sethi** *(supra)*, 25% addition would have to be made towards loss of future prospects. Further, the amounts awarded under the conventional heads and under the head 'loss of consortium' also need to be re-worked in view of the law laid down by the Hon'ble Supreme Court in the cases of **Pranay Sethi** *(supra)*, **Magma General Insurance Company Limited** *(supra)* and **N.**

Jayasree *(supra)* and hence, respondent No.1/cross-objector would be entitled to Rs.18,000/- (Rs.15,000+20% increase) under each head of loss of estate and funeral expenses. Respondent No.1/cross-objector would also be entitled to Rs.48,000/- towards loss of spousal consortium. The amount of Rs.2,000/- awarded by the Tribunal towards transportation is maintained.

12. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.5,617/-
2	Annual Income	[Rs.5,617 x 12] = Rs.67,404/-
3	Deduction – 1/3rd	[Rs.67,404 – 22,468] = Rs.44,936/-
4	Future Prospects - 25%	[Rs.44,936 + 11,234] = Rs.56,170/-
5	Multiplier – 14	[Rs.56,170 x 14] = Rs.7,86,380/-
6	Loss of estate	Rs.18,000/-
7	Funeral expenses	Rs.18,000/-
8	Loss of consortium (i) Spousal	 Rs.48,000/-
9	Transportation charges	Rs.2,000/-
	Total	**Rs.8,72,380/-**

13. In view of the above discussion, the appeal being **FAO-3786-2014** filed by the Insurance Company and cross-objections being **XOBJC-10-CII-2015** filed by the claimant stand disposed off. The impugned award is modified to the extent discussed above. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

18.12.2024
jk

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