IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-6587-2016 (O&M)

Cholamandalam MS General Insurance Company Ltd.

...Appellant

VERSUS

Paramjit Kaur and others

...Respondents

(ii) FAO-6846-2016 (O&M)

Cholamandalam MS General Insurance Company Ltd.

...Appellant

VERSUS

Avtar Singh and others

...Respondents

(iii) XOBJC-255-CII-2018 (O&M)

Cholamandalam MS General Insurance Company Ltd.

...Appellant

VERSUS

Avtar Singh and others

...Respondents

Date of Decision: August 13, 2024

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Punit Jain, Advocate
for the appellant.

None for respondents No.1 to 4 (in FAO-6587-2016).

Mr.Arvind Rajotia, Advocate
for respondent No.1-cross-objector
(in FAO-6846-2016).

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ARCHANA PURI, J.

These twin appeals have been filed by the appellant-Cholamandalam MS General Insurance Company Ltd., thereby, assailing two Awards, arising from the same accident, passed by learned Motor Accident Claims Tribunal, thereby, granting compensation, on account of death of Manjit Singh and injuries sustained by Avtar Singh, in the accident, which took place on 04.07.2012.

Even, cross-objections have been filed, at the instance of claimant-Avtar Singh, thereby, seeking enhancement of the compensation.

On appraisal of the evidence, brought on record, learned Tribunal had concluded about the accident to have taken place, on account of rash and negligent driving of the truck bearing registration No.RJ-10GA-0001, driven by respondent-Mahabir Parsad and as a result of this accident, Manjit Singh had died and Avtar Singh had sustained injuries. Thereupon, the compensation to the extent of Rs.28,20,000/- was granted qua death of Manjit Singh and Rs.7,16,700/- was granted to claimant-Avtar Singh, qua injuries sustained by him, in the accident in question.

The driver, owner and insurer of the offending truck were held to be jointly and severally, liable to pay the compensation.

Feeling aggrieved by the liability, so fastened upon the insurance company and also questioning the quantum of compensation awarded as well as the interest granted, the insurance company has filed the aforesaid two appeals.

However, at this juncture, it is pertinent to mention that even though, the insurance company, while filing appeals had raised question about the liability fastened upon the insurance company, as it asserted about the offending vehicle to be plying without permit, but however, at the inception stage only, learned counsel for the insurance company had not pressed the aforesaid issue and notice was issued only qua quantum of compensation and question of interest.

In pursuance of the notice issued, the claimants-respondents made appearance through counsel. Even, claimant-Avtar Singh has filed cross-objections, thereby, seeking enhancement of the compensation, as awarded by learned Tribunal.

Learned counsel for the parties heard.

Let us firstly consider the claim qua death of Manjit Singh. It is categoric claim of the claimants about Manjit Singh to be working as Mason and was earning Rs.15,000/- per month. He was also asserted to be 28 years old, at the time of accident. Paramjit Kaur, widow of the deceased, stepped into witness box as PW-2 and deposed, in consonance with the pleaded case. Even, post-mortem report of Manjit Singh has been proved as Ex.CY.

On appraisal of the evidence, brought on record, learned Tribunal had concluded about the deceased to be 28 years old. Considering him to be Mason, the earnings of the deceased were taken as Rs.10,000/- per month. On the count of 'future prospects', considering the age of the deceased, addition to the extent of 50% was made. Thereupon, 1/4th was deducted towards 'personal expenses'. Another amount of Rs.1 lakh was granted, towards 'loss of consortium' and Rs.25,000/- was awarded on the count of 'funeral expenses'. Besides the aforesaid, an amount of Rs.1 lakh was granted to each of the claimant, towards 'love and affection'. The work on the compensation, which was reproduced in tabular form by learned Tribunal, is herein given:-

Sl. No.	Heads	Calculation
i.	Income assessed	Rs.10,000/- per month
ii.	50% of (i) above to be added as future prospects =	Rs.10000+Rs.5000=Rs.15000/-
iii.	1/4th of (ii) deducted as personal expenses of the deceased=	Rs.15000-Rs.3750=Rs.11250/-
iv.	Compensation after multiplier of 18 is applied	Rs.11250x12x17=Rs.22,95,000/-
v.	Loss of consortium to claimant Paramjit Kaur	Rs.1,00,000/-
vi.	Loss of love and affection to all the claimants	Rs.1,00,000/- each
vii.	Funeral expenses	Rs.25,000/-
viii.	Total (iv) to (vii)	Rs.22,95,000+Rs.5,00,000+ Rs.25,000 = Rs.28,20,000/-

However, as per prevalent settled law, the compensation, so worked upon, do call for re-determination.

Throughout the arguments, much emphasis has been laid upon the earnings of the deceased, to have been taken on higher side. It is assiduously submitted that the earnings ought to be Rs.6877/- per month, as per minimum wages, existing as on 01.09.2012. In the light of the same, it is submitted that assessment of the income, is on higher side. No doubt, as per prevalent minimum wages, in the State of Punjab, as on 01.09.2012, it was Rs.6877/- per month, for 'skilled' worker. May it be so. Failure to produce documentary evidence regarding monthly income of the deceased, who is asserted to be Mason, some guess work, ought to be applied by the

Courts, for making assessment of the income of the deceased. However, this guess work, ought not to be totally detached from reality. It is a matter of common knowledge that family of a person, who works as Mason, can hardly lay their hands over any documentary proof, to show the vocation followed by the deceased, as well as the extent of his earnings. However, the same does not justify adoption of lowest tier of minimum wages, while computing the income. It is a matter of common knowledge that the persons, who are engaged in construction work, usually tend to do overtime, with the purpose to have more earnings.

Considering this aspect, with regard to overtime being spent, taking the minimum wages, as prevalent, at the relevant time, the income of the deceased, as assessed by learned Tribunal to the extent of Rs.10,000/-, p.m. cannot be said to be on higher side.

Taking this to be the extent of monthly earnings of the deceased, further, considering the age of the deceased to be 28 years, as per ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, addition to the extent of 40%, ought to be made, on the count of 'future prospects', instead of 50%, as done by learned Tribunal. As such, the monthly earnings of the deceased comes to be Rs.10000+4000(40%)=Rs.14,000/-.

The claim petition was filed by the widow and three minor children of deceased Manjit Singh. Considering the number of dependents, as per ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, deduction to the extent of 1/4th, has to be made, on the count of 'personal expenses. Thus, the residue amount, on the count of loss of dependency, comes to be Rs.14000-3500(1/4th)=Rs.10,500 per month, annual whereof, comes to be Rs.1,26,000/-.

Besides the same, considering the age of the deceased to be 28 years, as per ***Sarla Verma's case (supra)***, the appropriate and suitable multiplier, to be applied is '**17**' as applied by learned Tribunal, and thus, by applying the same, the loss of dependency, works out to be Rs.126000x17=**Rs.21,42,000/-**.

Besides the same, on the count of 'loss of consortium', as held in ***Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130***, each of the claimants are entitled to received 'spousal' and 'parental' consortium, which as per enhancement clause contained in ***Pranay Sethi's case (supra)***, works out to be Rs.48,400/- per dependent. Thus, in the present case, the compensation, on the count of 'loss of consortium' works out to be Rs.48400x4=**Rs.1,93,600/-**. Likewise, on the counts of 'loss of estate' and 'funeral expenses', the compensation payable, comes to be **Rs.18,150/-**, on each count.

During the course of arguments, it was also submitted on behalf of the appellant-insurance company that the compensation awarded towards 'loss of love and affection' is contrary to the ratio of the judgment of the Hon'ble Apex Court, rendered in '***United India Insurance Company Limited vs. Satinder Kaur Alias Satwinder Kaur and Others, (2021) 11 SCC 780***'. Therein, it was held that loss of love and affection is comprehended in loss of consortium and there is no justification to award compensation towards loss of love and affection, as a separate head. The relevant paragraphs from the ibid judgment, are reproduced, as follows:

> *"34. At this stage, we consider it necessary to provide uniformity with respect to the grant of consortium, and loss of love and affection. Several Tribunals and the High Courts have been awarding compensation for both loss of consortium and loss of love and affection. The Constitution Bench in Pranay Sethi, has recognized only three conventional heads under which compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses. In Magma General, this Court gave a comprehensive interpretation to consortium to include spousal consortium, parental consortium, as well as filial consortium. Loss of Love and affection is comprehended in loss of consortium.*
>
> *35. The Tribunals and the High Courts are directed to award compensation for loss of consortium, which is a legitimate Conventional head. There is no jurisdiction to award compensation towards loss of love and affection as a separate head."*

Thus, on the count of 'loss of love and affection' as ordered by learned Tribunal, none of the claimants are entitled to any compensation, as it already stands comprehended in the count of 'loss of consortium'.

Considering the same, the compensation payable to claimants, on account of death of Manjit Singh, is re-computed, as herein given:-

Loss of dependency	**:**	**Rs.21,42,000/-**
Loss of consortium	**:**	**Rs.1,93,600/-**
Loss of estate	**:**	**Rs.18,150/-**
Funeral expenses	**:**	**Rs.18,150/-**
Total	**:**	**Rs.23,71,900/-**

In view of the aforesaid work on, it is also pertinent to mention that after computation of the compensation, learned Tribunal had apportioned the compensation, as herein given:-

Paramjit Kaur, widow of deceased Manjit Singh, claimant No.1	55% of Rs.28,20,000/- plus Rs.2.0 lakhs of consortium and loss of love and affection, plus Rs.25,000/- of funeral expenses plus interest as awarded.
Mandip Singh, Priyanka and Preeti, minors (claimant No.2 to 4)	15% each of Rs.28,20,000/-, plus Rs.1.00 lakh each of loss of love and affection plus interest as awarded.

However, the aforesaid apportionment is not appropriate as if given effect to, in this manner, the same shall exceed the amount awarded by learned Tribunal. As such, now, though the reduction of the awarded amount is called for, but however, as per the re-determination of the compensation, aforesaid, Paramjit Kaur-claimant No.1, shall be entitled to 55% of the reduced amount of Rs.23,71,900/-, which shall be inclusive of amount of Rs.48,400/-, granted to her on the count of 'loss of consortium'. However, claimants No.2 to 4, namely Mandip Singh, Priyanka and Preeti, shall be entitled to 15% each of the reduced amount of Rs.23,71,900/-, which shall be inclusive of the amounta of Rs.48,400/-, granted to each one of them, on the count of 'loss of consortium'.

In view of the re-determined compensation to have been reduced, the insurance company shall be entitled to effect recovery qua the reduced amount, which comes to Rs.28,20,000-23,71,900=Rs.4,48,100/-, to be recovered proportionately, from the extent of share of compensation awarded to appellants-claimants, as aforesaid.

Now, let us consider the compensation awarded to Avtar Singh, on account of the injuries suffered by him, in the accident in question.

It is the categoric claim of Avtar Singh that in the accident in question, he had sustained extensive injuries. Claimant Avtar Singh stepped into witness box as AW-1 and in his affidavit Ex.AW1/A, apart from deposing about the manner of taking place of the accident, he further deposed about himself to have suffered injuries, in the accident in question. Further, PW-3 Dr.Pardeep Arora, who was member of the Board, in the office of Civil Surgeon, Patiala, has also deposed about having examined said claimant on 23.01.2013 and he was found to be a case of amputation of right foot and amputation of three medial toes of right foot and his physical disability was assessed to be 40%. He proved the disability certificate Ex.PA. Even, CW-3 Dr.Prashant Gautam (now be read as CW-4) has deposed about Avtar Singh having admitted in the Plastic Surgery, Rajindra Hospital, Patiala, on 04.08.2012. He was admitted with skin loss of left foot stump. He also deposed that there was history of partial amputation and surgery of split skin grafting of the leg was done. He proved the original indoor file of patient I.e. CR No.24546 as Ex.CW3/A. Furthermore, the medical bills of Avtar Singh are Ex.AX1 to Ex.AX65.

Considering the aforesaid evidence, learned Tribunal, on the basis of the recitals of the medical record and the disability certificate, had concluded about age of Avtar Singh to be 45 yeas, at the relevant time. Taking it to be so and while considering him to be working as Mason, his earnings were taken as Rs.10,000/- per month and further, while making deduction, on the count of ‘personal expenses’, to the extent of 1/3rd and making addition of 30% towards increase in future income, the amount of compensation awarded by learned Tribunal was detailed in the tabular form, which is as herein given:-

Sl. No.	HEADS	CALCULATION
(i)	Annual Income	Rs.10,000x12= Rs.1,20,000/-
(ii)	After deducting 1/3rd of the total income for personal expenses, the balance will be:	Rs.1,20,000- Rs.40,000=Rs.80,000/-
(iii)	Add 30% towards increase in future income	Rs.80,000+Rs.24000= Rs.1,04,000/-
(iv)	Compensation after multiplier of 14 is applied	Rs,14,56,000/-
(v)	Applying the 40% functional disability, the claimant will be entitled to the compensation of 40% of Rs.14,56,000/-	Rs.5,82,400/-
(vi)	Reimbursement towards medical expenses =	Rs.1,09,300/-
(vii)	Amount towards extra nourishment, etc.	Rs.5,000/-
(viii)	Amount towards plain and sufferings =	Rs.10,000/-
(ix)	Amount towards expenses on attendant =	Rs.5,000/-
(x)	Amount towards transportation	Rs.5,000/-
	TOTAL COMPENSATION AWARDED [(v) to (x)]	Rs.7,16,700/-

Definitely, in the backdrop of the settled prevalent law, the compensation, so worked upon, calls for enhancement.

At the very outset, it is pertinent to mention that the Motor Vehicles Act is in the nature of social welfare legislation and its provisions make it clear that compensation should be **'justly'** determined. A person, therefore, is not only to be compensated for the injury suffered due to the accident but also for the loss suffered, on account of the injury and his inability to lead the life, he/she led prior to the life altering event. A three Judges' Bench in ***Jagdish Vs. Mohan and others, 2018 (4) SCC 571***, made the following relevant observations, on the intrinsic value of human life and dignity that is attempted to be recognised, through such compensatory awards:-

> *"...the measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. Our yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law."*

The Courts should, as such, strive to provide a realistic recompense, having regard to the realities of life, both in terms of assessment of the extent of disability and its impact, including the income generating capacity of the claimant and not only that, even the impact of the accident on his/her life, on account of his/her physical disability. The Courts should be mindful of the fact that though, the physical disability may be on the lesser count, but the functional disability, on account of injury sustained, can be on higher side.

The extent of economic loss, arising from a disability, may not be measured in proportions, to the extent of permanent disability. In this regard, suffice to make reference to the decision rendered by the Hon'ble Supreme Court in ***Raj Kumar Vs. Ajay Kumar and Anr., 2011 (1) SCC 343***.

The efforts of the Courts must always be to substantially ameliorate the misery of the claimant and recognize his actual needs, by accounting for the ground realities. However, the measures should be in correct proportion.

Now, adverting to the case in hand, it is pertinent to mention that the claimant had partial amputation of his foot and his disability assessed, as per the disability certificate, was 40%. Claimant-Avtar Singh was working as Mason. Considering his vocation, on the same analogy as followed aforesaid, the extent of earnings taken by learned Tribunal as Rs.10,000/-, is just and reasonable. Further, learned Tribunal had erroneously deducted amount to the extent of 1/3rd, on the count of 'personal expenses'. However, it is not to be done so. The present case being not of death and the claim not being made by the claimants, but the same being made by the survivor in the accident with injuries, resulting into his permanent disability, there could not be any justification for deduction of personal expenses. In this regard, beneficial reference is made to decision rendered in ***Rahul Ganpatrao Sable vs. Laxman Maruti Jadhav (Dead) through LRs and others, 2023(3) RCR (Civil) 573***.

Considering the age of claimant-Avtar Singh to be 45 years, as per ***Pranay Sethi's case (supra)***, addition of 25% has to be made, on the count of 'future prospects'. Thus, the earnings of the injured-claimant comes to be Rs.10,000+2500(25%)=Rs.12,500/-, annual whereof, comes to be **Rs.1,50,000/-**.

Taking into consideration the age of the claimant, as per ***Sarla Verma's case (supra)***, the appropriate and suitable multiplier to be applied is '14' and also multiplying the same with 40% of disability and dividing the same by 100, as per standard multiplier process, on account of the same, the loss is assessed as **Rs.1,50,000x14x40/100=Rs.8,40,000/-**.

The claimant remained admitted in the hospital for a sufficiently long time. The total of the medical bills, proved in evidence, qua his treatment is **Rs.1,09,300/-**.

On the count of 'pain and suffering', an amount of Rs.10,000/-

has been granted, which is on lesser side and deserves to be enhanced. Thus, it stands enhanced to **Rs.50,000/-**. Likewise, on the counts of 'special diet' for healing process as well as transportation used for 'to and fro' to the hospital, during the period of his treatment and follow-up, the amount granted to the extent of Rs.5000/- each, now stands enhanced to **Rs.10,000/-** on each count.

Similarly, no amount, as such, has been granted on the count of 'attendant charges'. However, it is quite obvious that soon after the accident, on account of injuries sustained and while claimant remained admitted in the hospital, he must have been looked after by a bye-stander/attendant throughout. Even if, the claimant was being looked after only by his family members, then also, it should be noted that they could perform the role of care-giver, only by diverting their own time, from any form of gainful employment, which could have generated some income. Considering the same, another amount of **Rs.10,000/-** is granted, on the count of 'attendant charges'.

Thus, on various counts, as detailed aforesaid, the compensation to be granted to claimant-Avtar Singh, is re-computed, as herein given:-

1.	**Loss of earnings**	**Rs.8,40,000/-**
2.	**Medical Bills**	**Rs.1,09,300/-**
3.	**Pain and suffering**	**Rs.50,000/-**
4.	**Special diet**	**Rs.10,000/-**
5.	**Transportation charges**	**Rs.10,000/-**
6.	**Attendant charges**	**Rs.10,000/-**
	Total	**Rs.10,29,300/-**

As such, the compensation, awarded by learned Tribunal, stands enhanced from **Rs.7,16,700/-** to **Rs.10,29,300/-**. On the enhanced amount of compensation, i.e. Rs.10,29,300-7,16,700=Rs.3,12,600/-, claimant-Avtar Singh shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the cross-objections, till realization of the enhanced amount of compensation.

Besides the aforesaid, it is submitted by learned counsel for the insurance company that when the claim petitions were pending before learned Tribunal, the claim petitions were dismissed on 07.08.2014 and restored only on 30.03.2016. Therefore, during this interregnum period, the claimants ought not to be entitled to the interest of this period, which caused delay in disposal of the claim petitions. However, the aforesaid submission is not tenable.

No doubt, from the zimini orders passed by learned Tribunal, it is evident that the claim petitions were dismissed on 07.08.2014, but however, the same were restored on 30.03.2016, while passing a detailed order. No rider was passed by learned Tribunal, at the time of restoration of the claim petitions. The requisite order dated 30.03.2016, vis-a-vis, restoration of the claim petition, as such, was not challenged further by the insurance company.

In the given circumstances, there arises no necessity to deduct the interest for the aforesaid period from 07.08.2014 to 29.03.2016. Thus, the submission, so made, on this account, is bereft of merits and the same is hereby rejected.

In the light of the aforesaid discussion, the appeal filed by the insurance company i.e. **FAO-6587-2016**, stands allowed and the amount of compensation granted qua death of Manjit Singh, is hereby reduced and the insurance company shall be at liberty to effect the recovery, as observed in the earlier portion of the judgment.

Similarly, **FAO-6846-2016** filed by the insurance company is hereby dismissed, whereas, **XOBJC-255-CII-2018** filed by claimant-Avtar Singh stands allowed.

Accordingly, the impugned Award dated 04.08.2016 stands modified, to the extent, as indicated aforesaid. The residue terms of the impugned Award, shall remain the same.

August 13, 2024 **(ARCHANA PURI)**
Vgulati **JUDGE**

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