IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

272 **XOBJC-9-CII-2016 in/and**
FAO-6785-2015 (O&M)
Date of Decision : 04.12.2024

Reliance General Insurance Company Ltd ....Appellant

VERSUS

Sushila Devi and Ors ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Subhash Goyal, Advocate with
Mr. Vipul Sharma, Advocate for the appellant.

Mr. Vivek Suri, Advocate
for the cross-objectors/respondent Nos.1 to 4.

ALKA SARIN, J. (Oral)

1. This order shall dispose off the appeal being **FAO-6785-2015** filed by the Insurance Company and the cross-objections being **XOBJC-9-CII-2016** filed by the claimants (respondent Nos.1 to 4 herein) challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as the 'Tribunal') on account of death of Subhash (hereinafter referred to as the 'deceased') vide award dated 25.05.2015.

2. The brief facts relevant to the present *lis* are that on 18.07.2013, the deceased, Subhash, came to Rohtak from Julana, District Jind alongwith Bijender to inspect a site where the plots were to be demarcated. While returning to Julana in a car bearing registration No. HR-31-H-7064 (hereinafter referred to as the 'offending vehicle') when they reached at

Gohana-Rohtak Road, Rohtak, said Bijender (driver of the offending vehicle), who was driving the offending vehicle in a rash and negligent manner and at a high speed, lost control over it and struck the same in the divider of the road as a result of which they both received multiple serious injuries on their person. They were taken to Post Graduate Institute of Medical Sciences, Rohtak where Subhash succumbed to his injuries and accordingly, unnatural death report (Ex.P2) was prepared.

3. The Tribunal in the present case awarded the following compensation :

Sr. No.	**Heads**	**Compensation Awarded**
1	Monthly income	Rs.13,200/-
2	Deduction – 1/4th	[Rs.13,200 - 3300] = Rs.9,900/-
3	Annual income	[Rs.9,900 x 12] = Rs.1,18,800/-
4	Multiplier – 15	[Rs.1,18,800 x 15] = Rs.17,82,000/-
5	Loss of love and affection	Rs.1,00,000/-
6	Funeral expenses	Rs.28,000/-
	Total Compensation	**Rs.19,10,000/-**
	Interest	**7.5% per annum**

4. Learned counsel for the Insurance Company would contend that the accident did not take place due to rash and negligent driving of the offending vehicle and that there is no evidence qua the same. It is further the contention that no FIR was lodged regarding the said accident. Learned counsel for the Insurance Company would further contend that the deceased was employed with Shri Lal Mahal Limited, Bhagwan Dass Nagar, New Delhi and his employer was contributing towards ESI fund and hence the claim petition itself was not maintainable.

5. *Per contra* learned counsel for the cross-objectors/respondent nos.1 to 4 (claimants) would contend that the driver of the offending vehicle stepped into the witness-box as PW2 and admitted the accident. It is further the contention that the plea raised by the Insurance Company that the claim petition itself was not maintainable in view of the fact that the ESI contribution was made by the employer of the deceased, was not even raised in the written statement nor any evidence was led by the Insurance Company to this effect.

6. Heard.

7. The argument of learned counsel for the Insurance Company that the accident did not take place due to rash and negligent driving of the driver of the offending vehicle deserves to be rejected on the ground that the deceased alongwith Bijender was going in the offending vehicle for inspecting the site where the plots were to be demarcated at Rohtak. The offending vehicle was being driven by Bijender at a high speed. When they reached near Suncity Sector 35 and 36, a person came in front of the car and due to the high speed of the car, Bijender lost control and struck the same in the divider of the road. Due to the accident both the occupants of the car sustained injuries, however, Subhash succumbed to his injuries. Respondent No.5 – Bijender – had stepped into the witness-box as PW2 and narrated the manner in which the accident had taken place. In view of the clear admission by the driver of the offending vehicle and in the absence of any evidence to the contrary, no fault can be found with the findings returned by the Tribunal.

8. The second argument of learned counsel for the Insurance Company that the claim petition itself was not maintainable as the employer of the deceased was contributing towards ESI fund of the deceased also deserves to be rejected on the ground that the said plea was neither raised in the written statement nor was argued nor any evidence was led.

9. In view of the above, I do not find any merit in the appeal filed by the Insurance Company.

XOBJC-9-CII-2016

10. Learned counsel for the cross-objectors/respondent Nos.1 to 4 would contend that the income of the deceased has rightly been assessed and so as the deduction, however, no addition has been made towards loss of future prospects. The Tribunal has rightly applied a multiplier of '15', however, the amounts awarded under the conventional heads and under the head 'loss of consortium' need to be re-worked out. In support of his contention he has relied upon judgments of the Hon'ble Supreme Court 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]**.

11. Learned counsel for the Insurance Company would contend that sufficient amount has already been awarded in the present case and there is no scope of any further enhancement.

12. In the present case, income, deduction and multiplier have not been challenged by the claimants. However, no addition has been made towards loss of future prospects. The deceased in the present case was 38 years of age and keeping in view his age, 40% addition would have to be made towards loss of future prospects in view of the law laid down by the Hon'ble Supreme Court in the case of **Pranay Sethi** *(supra).* 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 the claimants would be entitled to Rs.18,000/- (Rs.15,000+20% increase) each towards loss of estate and funeral expenses. The claimants would also be entitled to Rs.48,000/- (Rs.40,000+20% increase) each towards loss of consortium.

13. Accordingly, the reworked compensation is as under :

Sr. No.	**Heads**	**Compensation Awarded**
1	Monthly Income	Rs.13,200/-
2	Annual Income	[Rs.13,200 x 12] = Rs.1,58,400/-
3	Deduction – 1/4th	[Rs.1,58,400 – 39,600] = Rs.1,18,800/-
4	Future Prospects - 40%	[Rs.1,18,800 + 47,520] = Rs.1,66,320/-
5	Multiplier – 15	[Rs.1,66,320 x 15] = Rs.24,94,800/-
6	Loss of estate	Rs.18,000/-
7	Funeral expenses	Rs.18,000/-
8	<u>Loss of consortium</u> (i) Spousal (ii) Parental (iii) Filial	 Rs.48,000/- [Rs.48,000 x 2] = Rs.96,000/- Rs.48,000/-
	Total	**Rs.27,22,800/-**

14. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 7.5% per annum from the date of filing of the claim petition till the realization of the entire amount. The enhanced amount of compensation shall be apportioned amongst the claimant-appellants as directed by the Tribunal.

15. In view of the above discussion, the appeal being **FAO-6785-2015** filed by the Insurance Company is dismissed and the cross-objections being **XOBJC-9-CII-2016** filed by the claimants (respondent Nos.1 to 4) stands allowed in the above terms. The award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
04.12.2024 **JUDGE**
jk

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