



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 03.12.2025

FAO-431-2013(O&M)

Bharti Axa General Insurance Co. Ltd.

...Appellant(s)

Vs.

Aemna & Others

...Respondent(s)

Cross-Objections-103-CII-2013

Bharti Axa General Insurance Co. Ltd.

...Appellant(s)

Vs.

Aemna & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sachin Gupta, Advocate
for the appellant/insurance company.

Mr. Sanjiv K. Bawa, Advocate
for respondents No.1 to 5/claimants/cross-objectors.

NIDHI GUPTA, J.

IOIN-FAO-431-2013

Registry has put up the present matter under the category of IOIN. At request of learned counsel for the parties, main matter i.e. FAO-431-2013 is taken up for arguments today itself. IOIN stands disposed of accordingly.

FAO-431-2013 AND CROSS-OBJECTIONS-103-CII-2013

Present appeal has been filed by the Insurance Company laying challenge to the Award dated 19.10.2012 passed by the Motor Accident



Claims Tribunal, Nuh (hereinafter 'the learned Tribunal') whereby Claim Petition No.508 dated 02.08.2010 filed under Section 166 of the Motor Vehicles Act (hereinafter "the Act") by the claimants/respondents No.1 to 5 herein, has been allowed and compensation of Rs.7,45,080/- wrongly mentioned as Rs.7,63,800/- in Award, has been awarded to the claimants along with interest @ 6% per annum. The five claimants are the 42-year-old widow, 22-year-old son, 18-year-old daughter, 15-year-old son and 13-year-old son of deceased Saddik, who was 46 years old at the time of accident.

2. Brief facts of the case are that the Id. Tribunal on the basis of pleadings and oral & documentary evidence adduced by the parties, concluded that deceased Saddik had died due to the injuries suffered by him in a motor vehicular accident that took place on 13.04.2010 due to the rash and negligent driving of three-wheeler bearing registration No.HR-55G-2245 (hereinafter "the offending vehicle") being driven by respondent No.6, owned by respondent No.7, and insured by the appellant. The appellant and respondents No.6 and 7 were held jointly and severally liable for payment of compensation.

3. The claimants have filed Cross-Objections bearing CM-103-CII-2013, seeking enhancement of the above-said compensation awarded by the learned Tribunal.

4. Learned counsel for the claimants/cross-objectors seeks enhancement of compensation by submitting that the deceased was doing



agricultural work and was also a milkman. Yet, income of the deceased has been taken on the lower side as that of an unskilled labourer as only Rs.4,000/- per month. It is argued that as per the relevant Notification, even Minimum Wages for an unskilled labourer are Rs.4,214/- per month. However, income of the deceased ought to have been taken at least as that of a skilled labourer, as milking a cow requires skill; and therefore, the income of the deceased ought to have been taken at least as a skilled labourer. It is further submitted that meagre amount of Rs.5,000/- only has been awarded towards consortium. Nothing has been awarded under the other conventional heads. Even interest is on the lower side as 6% per annum, whereas the same deserves to be enhanced. It is accordingly prayed that the cross-objections of the claimants be allowed and compensation enhanced.

5. Learned counsel for the appellant-Insurance Company controverts the submissions made on behalf of the claimants and submits that compensation already in excess of what is admissible to the claimants has been paid to them; inasmuch as future prospects have been added @ 30%; whereas the same should be 25%. Moreover, deduction of 1/10th has been made; whereas the same should be 1/5th as there are five claimants.

6. It is also submitted that the Ld. Tribunal has erred in not deducting sum of Rs. 4 Lacs from the compensation awarded to the claimants. It is pointed out that a sum of Rs. 3 Lacs was received by the claimants in the Personal Accidental Insurance Cover of the deceased; and Rs. 1 Lac was



received by them under the "Rajive Gandhi Parivaar Bima Yojna". It is contended that the Hon'ble Apex Court in **United India Assurance Co. Limited Versus Patricia Jean Mahajan** have rendered that the deductions are admissible from the amount of compensation in case the claimants receive the benefit as consequence of the injuries sustained which otherwise he would not entitled too. Ld. Counsel also refers to a three-Judge Bench decision of the Apex Court rendered in **Gobald Motor service Ltd. Vs. R.M.K. Veluswami**, which has been relied upon in Patricia Jean Mahajan's case. It is submitted that therefore, the Ld. Tribunal has erred in not deducting the same sum of Rs. 4 Lacs from the compensation awarded to the claimants.

7. Ld. Counsel for the contends that the Ld. Tribunal has erred in holding the appellant/Insurance Company to be liable even though no permit of the offending vehicle which is a transport vehicle was brought on the record. A direction was issued by the Ld. Tribunal vide order dated 03.08.2012, but nothing was tendered by the owner. The Ld. Tribunal had observed that in case the direction for tendering the permit and fitness certificate was not complied by the owner and the driver, an adverse inference will be drawn at the appropriate stage. The Ld. Tribunal, therefore, erred in holding Insurance Company to be liable. Learned counsel accordingly prays that the impugned Award be modified.



8. This last contention of the Insurance Company is countered by learned counsel for the claimants by submitting that the offending vehicle being a three-wheeler, it did not require a route permit.

9. No other argument is made on behalf of the parties.

10. I have heard learned counsel and perused the case file in detail.

10.1 It was the pleaded case of the claimants before the learned Tribunal that at the time of accident, the deceased was 45 years old; he was an agriculturist and a milk vendor; and earning Rs.12,000/- per month. However, except for oral evidence of claimant no.1, no documentary evidence was produced by them to prove the said alleged avocation or income of the deceased. Accordingly, the learned Tribunal had assessed notional income of the deceased as that of a daily wager as Rs.4,000/- per month as admissible at the time of accident on 13.04.2010. The contention of learned counsel for the claimants that at the relevant time, income of unskilled labourer was Rs.4,214/- per month is without merit as no Notification to this effect has been produced by the claimants. As such, I find no error in the income as assessed by the learned Tribunal.

10.2 Age of the deceased was determined to be 46 years at the time of accident on the basis of his Post-Mortem Report (Ex.P5). As such, future prospects ought to have been added @ 25%. However, the learned Tribunal has made an addition of 30% towards future prospects, which is not permissible as per law.



10.3 Multiplier of 13 has been correctly applied.

10.4 I find merit in the submission of learned counsel for the appellant-Insurance Company that as there were five claimants, deduction of $1/5^{\text{th}}$ ought to have been made; and not $1/10^{\text{th}}$ as incorrectly made by the learned Tribunal.

10.5. Under the conventional heads, the learned Tribunal has awarded Rs.10,000/- towards last rites and Rs.5,000/- towards consortium to the claimant No.1/widow. Needless to say, as per the structured formula enunciated by the Hon'ble Supreme Court in numerous judgments, under the conventional heads, the claimants are entitled to Rs.15,000/- towards funeral expenses; Rs.15,000/- towards loss of estate; and Rs.40,000/- each to the five claimants towards spousal and filial consortium respectively.

11. It has been pointed out by learned counsel for the appellant/Insurance Company that the claimants have also received Rs.3,00,000/- under the Personal Accident Insurance Cover and Rs.1,00,000/- under the Rajiv Gandhi Parivaar Beema Yojana which is a Government Welfare Scheme. In this regard, it has been contended on behalf of the learned counsel for the claimants that against the amount of Rs.3,00,000/- received under the Personal Accident Insurance Cover, Insurance Premium was paid and therefore, the said amount is not recoverable. However, the amount of ₹1,00,000 received by the claimants under the Government Welfare Scheme of Rajiv Gandhi Parivaar Beema



Yojana is liable to be deducted, in terms of judgment in “**National Insurance Co. Ltd. Vs. Mohan M.S. S2008 (14) RCR (CrI.) 724, Law Finder Doc ID # 199896**, wherein it has been held that: -

“Claimant received expenses incurred towards repair of car from his insurance company – Claimant also claimed damages from owner of jeep and his insurance company – Held, claimant cannot be allowed to make any double benefit”.

12. Reliance may also be placed upon judgment of Hon’ble Supreme Court in **Krishna v. Tek Chand, (SC) : Law Finder Doc ID # 2531576**, wherein it is held that family of a deceased in a motor accident cannot seek “double benefits”. If the family has received benefits from the State Government on account of the death of the deceased, then such benefits are liable to be deducted from the compensation payable under the Motor Vehicles Act. This view has been reiterated by the Hon’ble Supreme Court in “**Reliance General Insurance Co. Ltd. Vs. Shashi Sharma & Ors.” Law Finder Doc ID # 792568**.

13. The argument of learned counsel for the appellant/Insurance Company that recovery rights ought to have been granted as the offending vehicle was not having valid Route Permit, is outrightly rejected as admittedly in the present case, the offending vehicle was a three-wheeler (Autorickshaw); and no Route Permit is required for plying a three wheeler (Autorickshaw). In view of the above discussion, compensation payable to the claimants is re-assessed in the following manner:-



Head	Awarded by learned Tribunal	Re-assessed compensation
Income	Rs.4,000/- per month	Rs.4,000/- per month
Future prospects	(30%) Rs.4,000/- + Rs.1,200/- = Rs.5,200/-	(25%) Rs.4,000/- + Rs.1000/- = Rs.5,000/-
Deduction	(1/10 th) Rs.5,200/- - Rs.520/- = Rs.4,680/-	(1/5 th) Rs.5,000/- - Rs.1000/- = Rs.4,000/-
Multiplier	(13) Rs.4,680/- x 13 x 12 = Rs.7,30,080/-	(13) Rs.4,000/- x 13 x 12 = Rs.6,24,000/-
Last rites	Rs.10,000/-	Rs.15,000/-
Loss of estate	Nil	Rs.15,000/-
Spousal and filial consortium to all the claimants	Rs.5000/-	Rs.40,000/- x 5 = Rs.2,00,000/-
Total	Rs.7,45,080/-	Rs.8,54,000/-
Deduction	Nil	Rs.1,00,000/-
Net total	Rs.7,45,080/-	Rs.7,54,000/-

14. Accordingly, both, the present appeal filed by the Insurance Company, as well as the Cross-Objections filed by the claimants, are **partly allowed**; in above terms.

15. Pending application(s) if any also stand(s) disposed of.

03.12.2025
Sunena

(Nidhi Gupta)
Judge

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