

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****233****FAO-6963-2014 (O&M)
and XOBJC-25-CII-2015
Date of Decision : 08.01.2025**

National Insurance Co Ltd

....Appellant

VERSUS

Neelam and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sandeep Suri, Advocate for the appellant.

Mr. Vikas Kumar, Advocate
for respondent Nos.1 to 3/cross-objectors.

None for respondent No.4.

Respondent Nos.5 to 8 proceeded against ex parte
vide order dated 22.12.2014.**ALKA SARIN, J. (Oral)**

1. This order shall dispose off the appeal being **FAO-6963-2014** filed by the Insurance Company aggrieved by the findings returned by the Motor Accident Claims Tribunal, Faridabad (hereinafter referred to as the 'Tribunal') and the cross-objections being **XOBJC-25-CII-2015** filed by the claimants (respondent Nos.1 to 3 herein) challenging the quantum of compensation awarded by Tribunal on account of death of Vikas (hereinafter referred to as the 'deceased') vide award dated 11.04.2014.
2. The brief facts relevant to the present *lis* are that on 10.09.2012, Vikas (deceased) was going on his motorcycle bearing registration No.HR-51-AP-5403 at a moderate speed by following the traffic rules from his

village towards Dabua Colony, Faridabad. His uncle, namely, Ishwar Singh, was also accompanying him on his separate motorcycle. At about 01.00 pm, when the deceased reached at Dussehra Ground, Town No.3, a TATA Sumo bearing registration No.HR-38-P-0932 (hereinafter referred to as the ‘offending vehicle’), which was being driven by Jagbir (respondent No.4 herein) in a rash and negligent manner and at a high speed without blowing any horn and without adopting the traffic rules, came from front side and hit the motorcycle of the deceased as a result of which he fell on the road and sustained serious and fatal injuries. The driver of the offending vehicle was caught by Ishwar Singh with the help of passers-by. The said accident was witnessed by Ishwar Singh and the deceased was taken to B.K. Hospital, Faridabad where he was declared dead. FIR No.230 dated 10.09.2012 under Sections 279 and 304-A of the Indian Penal Code, 1860 was registered at Polie Station SGM Nagar, Faridabad against Jagbir (respondent No.4 herein).

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

Sr. No.	Heads	Compensation Awarded
1	Monthly income	Rs.6,000/-
2	Future prospects – 50%	[Rs.6,000 + 3,000] = Rs.9,000/-
3	Annual income	[Rs.9,000 x 12] = Rs.1,08,000/-
4	Deduction – 1/3 rd	[Rs.1,08,000 – 36,000] = Rs.72,000/-
5	Multiplier – 18	[Rs.72,000 x 18] = Rs.12,96,000/-
6	Loss of consortium	Rs.1,00,000/-
7	Funeral expenses	Rs.25,000/-
	Total Compensation	Rs.14,21,000/-
	Interest	7.5% per annum

4. Learned counsel for the Insurance Company would contend that the findings on issue No.1 are incorrect inasmuch as the alleged eye-witness i.e. PW4 Ishwar Singh was not actually an eye-witness as is apparent from a perusal of the *ruqa* which was got recorded by the doctor wherein it was stated that the deceased was brought to the hospital by one Rahul. It is further the contention that at best it could have been a case of contributory negligence as the accident took place in the middle of the Dussehra Ground. It has further been contended that the deceased in the present case was 23 years of age at the time of accident and the Tribunal has erroneously made addition of 50% towards loss of future prospects which ought to have been 40% as per the law laid down by the Hon'ble Supreme Court in case of **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]** and further that the amounts of Rs.1,00,000/- and Rs.25,000/- awarded by the Tribunal towards loss of consortium and funeral expenses, respectively, are also on the higher side.

5. *Per contra* learned counsel for respondent Nos.1 to 3/cross-objectors would contend that in the present case the accident took place at 01.00 pm and the FIR was lodged by PW4 Ishwar Singh at about 02.00 pm the same day. It is further the contention that the argument of learned counsel for the appellant-Insurance Company qua the contributory negligence was specifically dealt with and rejected by the Tribunal on the ground that no suggestion was put to PW4 Ishwar Singh in his cross-examination questioning the manner in which the accident is alleged to have taken place. It is further the contention that neither in the FIR nor in the

statement of PW4 has it been mentioned that it was a case of head-on collision and there was no evidence led by the Insurance Company to show that the accident was a head-on collision and in the absence of the same, the plea of contributory negligence would not stand. Learned counsel for respondent Nos.1 to 3/cross-objectors would further contend that the salary of the deceased has been assessed as Rs.6,000/- per month, which ought to have been assessed as Rs.14,000/- per month in view of the fact that the employer had stepped into the witness-box as PW-5 and deposed regarding income of the deceased. It is further the contention that no amount has been awarded under the head loss of estate and that nothing has been awarded to the minor child and mother of the deceased under the head loss of consortium.

6. Heard.

7. The argument of learned counsel for the Insurance Company that PW4 Ishwar Singh was not an eye-witness deserves to be rejected. The accident itself took place on 10.09.2012 at about 01.00 pm and at about 02.00 pm the FIR was got registered by PW4. It is not a case where Ishwar Singh was nowhere figuring earlier and had been set up only at the time of filing of the claim petition. There is no reason to doubt the statement of PW4 Ishwar Singh in the absence of any evidence led to the contrary by the Insurance Company. The argument of learned counsel for the Insurance Company that it was a case of contributory negligence also deserves to be rejected in the absence of any evidence having been brought on the record by the Insurance Company that it was a case of head-on collision. No such

suggestion was put to the eye-witness of the accident i.e. PW4 Ishwar Singh. The argument of learned counsel for the Insurance Company that an addition of 40% ought to have been made towards loss of future prospects in view of the law laid down by the Hon'ble Supreme Court in case of **Pranay Sethi** (supra) deserves to be accepted inasmuch as the deceased in the present case was 23 years of age and was not a permanent employee.

8. The argument of learned counsel for respondent Nos.1 to 3/cross-objectors that the salary ought to have been assessed as Rs.14,000/- per month deserves to be rejected in the absence of any cogent evidence. The evidence led by the claimants to show the salary of the deceased was unreliable inasmuch as the salary register, which has been produced on the record, was not even signed by any of the employees. There was no other evidence on the record. In view thereof, the income of the deceased has rightly been assessed as Rs.6,000/- per month.

9. The arguments of learned counsel for respondent Nos.1 to 3/cross-objectors that no amount has been awarded under the heads of loss of estate and loss of consortium to the minor child as well as to the mother of the deceased deserve to be accepted. However, keeping in view the fact that Rs.1,00,000/- has been awarded under the head loss of consortium to the widow, the amount under the head loss of consortium would have to be re-worked out in view of the law laid down by the Hon'ble Supreme Court in 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] and hence respondent Nos.1 to 3/cross-objectors 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.

10. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.6,000/-
2	Annual Income	[Rs.6,000 x 12] = Rs.72,000/-
3	Deduction – 1/3 rd	[Rs.72,000 – 24,000] = Rs.48,000/-
4	Future Prospects - 40%	[Rs.48,000 + 19,200] = Rs.67,200/-
5	Multiplier – 18	[Rs.67,200 x 18] = Rs.12,09,600/-
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/- Rs.48,000/- Rs.1,44,000/-
	Total	Rs.13,89,600/-

11. In view of the above discussion, the impugned award passed by the Tribunal is modified in the above terms and the appeal being **FAO-6963-2014** filed by the Insurance Company and the cross-objections being **XOBJC-25-CII-2015** filed by the claimants (respondent Nos.1 to 3) stand disposed off. Pending applications, if any, also stand disposed off.

08.01.2025
jk

(ALKA SARIN)
JUDGE

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