

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****108****FAO-2561-2017 (O&M)
XOBJC-183-CII-2018 (O&M) and
XOBJC-210-2019 (O&M)
Date of Decision : 27.02.2025**

Oriental Insurance Company Ltd.

....Appellant

VERSUS

Sheela and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**Present :** Mr. Rajneesh Malhotra, Advocate
for the appellant-Insurance Company.Mr. Vipul Sharma, Advocate for
Mr. Ashwani Arora, Advocate
for cross-objector/respondent No.1 in XOBJC-183-CII-2018.Mr. Anil Kumar Spehia, Advocate
for cross-objectors/respondent Nos.2 and 3
in XOBJC-210-2019.**ALKA SARIN, J. (Oral)****CM-22486-CII-2019 in XOBJC-210-2019**

1. For the reasons stated in the application, the same is allowed.

The delay of 655 days in filing the cross-objections is condoned.

FAO-2561-2017 (O&M), XOBJC-183-CII-2018 (O&M) and**XOBJC-210-2019 (O&M)**

2. Present appeal shall dispose off the appeal being FAO-2561-2017 preferred by the Insurance Company, cross-objections being XOBJC-183-CII-2018 filed by the claimant and the cross-objections being XOBJC-210-2019 filed by the driver and owner of the Canter bearing registration No.HR-64-7653 (hereinafter referred to as the 'offending vehicle').

3. The appeal (FAO-2561-2017) has been preferred by the Insurance Company aggrieved by the findings recorded as well as the compensation awarded. Cross objections (XOBJC-183-CII-2018) have been filed by the claimant aggrieved by the quantum of compensation while the cross-objections (XOBJC-210-2019) have been filed by the driver and owner of the offending vehicle aggrieved by the recovery rights granted to the Insurance Company.

4. The parties are referred to as the Insurance Company, claimant, driver and owner hereinafter for the sake of clarity.

5. The brief facts relevant to the present *lis* are that on the intervening night of 20/21.12.2014, Ashish @ Aashish Bhambhu was going from Gurugram to Shimla in a car bearing registration No.HR-26CC-2765 alongwith Sanchit Kataria, Love Sharma, Sanjay Bhambhu and Sukhbir. When they reached near Jharmari Barrier, Lalru, the car struck against the offending vehicle which was parked in the middle of the road without any indicator or signal as a result of which Ashish Bhambhu (hereinafter referred to as the 'deceased') received serious injuries and died at the spot. FIR was registered. It was averred in the claim petition that the deceased was owner of a three-wheeler. He was plying the three-wheeler and was earning Rs.30,000/- per month. He was also paying an installment of loan of the three-wheeler.

6. The driver of the offending vehicle put in appearance through counsel, however, the owner of the offending vehicle did not file his written statement and was proceeded against *ex parte*. The driver also initially

appeared and when the case was fixed for filing of the written statement, none appeared on his behalf and he was proceeded against *ex parte*. Later again driver of the offending vehicle put in appearance but again on 13.12.2016 none appeared on his behalf and he was proceeded against *ex parte*. Insurance Company filed its written statement raising various objections qua the maintainability and *locus standi* and that the driver of the offending vehicle was not holding a driving licence and raised objections qua fitness certificate and route permit.

7. On the basis of the pleadings of the parties the following issues were framed :

1. Whether Aashish @ Ashish Bhambhu died in a road side accident caused by respondent no.1 while driving Canter No.HR-64-7653 in a rash and negligent manner ? OPC
2. Whether claim petition is not maintainable ? OPR
3. Whether the claimant is entitled to receive compensation, as prayed for, if so to what extent and from whom ? OPC
4. Whether respondent no.1 being driver of above said vehicle was not holding a valid and effective driving licence, route permit at the time of accident ? OPR-3
5. Whether respondent no.2 had committed breach of terms and conditions of the insurance policy, if so, its effect ?
OPR-3
6. Relief.

8. The Tribunal held that the driver and owner of the offending vehicle have violated the terms and conditions of the insurance policy and the Insurance Company was at liberty to recover the amount of compensation from them. The Tribunal awarded the following compensation:

Sr. No.	Heads	Compensation Awarded
1	Monthly income assessed	Rs.9,000/-
2	An addition of 50% of (i) actual salary to be added towards future projects	Rs.13,500/-
3	1/2 of (ii) deducted towards personal expenses	Rs.13,500 minus Rs.6,750/- pm = Rs.6,750/-
4	Compensation after multiplier of ‘18’ is applied	Rs.6,750 x 12 x 18 = Rs.14,58,000/-
5	Loss of love and affection	Rs.25,000/-
6	Funeral expenses	Rs.25,000/-
	Total Compensation	Rs.15,08,000/-

9. Learned counsel for the Insurance Company has contended that it was a case of contributory negligence as the offending vehicle was standing while it was hit from behind. It is further the contention that income assessed of the deceased assessed is also on the higher side and that a wrong multiplier of 18 has been applied by the Tribunal. It has further been contended that an addition of 40% ought to have been made towards loss of future prospects whereas an addition of 50% has wrongly been made.

10. Learned counsel appearing on behalf of the cross-objectors in XOBJC-210-2019 i.e. driver and owner of the offending vehicle has contended that vide award dated 13.01.2017, the same Tribunal had given

the Insurance Company liberty to recover the amount of compensation from the driver and owner, however, the same Tribunal in a claim petition being MACT No.31 of 2015 arising out of the same very accident vide award dated 09.02.2017 held that there was no violation of the terms and conditions of the insurance policy and held the Insurance Company liable. It is further the contention that the said award dated 09.02.2017 has not been challenged by the Insurance Company.

11. Learned counsel appearing on behalf of the cross-objector in XOBJC-183-CII-2018 i.e. claimant would contend that the income of the deceased has wrongly been assessed as Rs.9,000/- per month as it was proved on the record that the deceased was paying a monthly installment of Rs.11,823/- towards the loan taken for the purchase of autorickshaw. Learned counsel for the claimant has referred to Ex.P3, which is the registration certificate of the autorickshaw, wherein it has clearly been shown that the autorickshaw had been hypothecated with IndusInd Bank Ltd. as also to Ex.P8, which is the statement of account showing the payment of the installments. Learned counsel for the claimant has relied upon a judgment of Hon'ble Supreme Court in case of **Gurpreet Kaur & Ors. vs. United India Insurance Company Ltd. & Ors. [Civil Appeal nos.6981-82 of 2022]** decided on 27.09.2022 to contend that in the said case Hon'ble Supreme Court regarding an accident which had taken place in 2014 and wherein the deceased was paying an EMI of Rs.11,550/- per month, had assessed the income as Rs.25,000/- per month. It has further been contended that the amounts awarded under the conventional heads as

well as under the head loss of consortium are in accordance with the law. In support of his contention, he has relied upon judgments of 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]**. However, there is no dispute qua the deduction.

12. Heard.

13. In the present case, firstly dealing with the argument raised by learned counsel for the driver and owner in XOBJC-210-2019 that recovery rights have wrongly been given to the Insurance Company deserves to be accepted. Learned counsel for the Insurance Company during the course of the arguments was not in a position to deny the fact that in the same very accident two people had lost their lives and in MACT No.31 of 2015 filed by the legal representatives of Sanchit Kataria, who was also travelling in the same car, the liability has been fastened on the Insurance Company. Learned counsel for the Insurance Company was further not in a position to deny that the said award dated 09.02.2017 has never been challenged by the Insurance Company. Keeping in view the fact both the deaths occurred in the same accident and in MACT-31-2015 the liability was fastened on the Insurance Company, which has never been challenged by the Insurance Company, this Court is of the opinion that the finding regarding recovery rights cannot be sustained and the same is accordingly set aside.

14. The argument of learned counsel for the Insurance Company that it was a case of contributory negligence deserves to be rejected. In the present case the offending vehicle was parked in the middle of the road. The accident took place on the intervening night of 20/21.12.2024. There is no evidence to the contrary that the offending vehicle was not parked in the middle of the road without any indicator or signal. In the absence of any evidence to the contrary, there would be no question of any contributory negligence.

15. The argument of learned counsel for the Insurance Company qua the income of the deceased having been wrongly assessed and a wrong multiplier has been applied also stand rejected. The issue regarding the income of the deceased would be discussed in the later part of the judgment while dealing with the cross-objections filed by the claimant. The deceased in the present case was 20 years of age. As per judgment of Hon'ble Supreme Court in the case of **Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. [(2009) 6 SCC 121]** a multiplier of 18 has correctly been applied. However, the argument of learned counsel for the Insurance Company that addition of 40% ought to have been made towards loss of future prospects instead of 50% deserves to be accepted as per the law laid down by Hon'ble Supreme Court in the case of **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]**.

16. The argument of learned counsel for the claimant/cross-objector in XOBJC-183-CII-2018 is that the income of the deceased has wrongly been assessed as Rs.9,000/- since he was paying a monthly EMI of

Rs.11,823/-. Hon'ble Supreme Court in the case of **Gurpreet Kaur** (supra) qua an accident which had occurred on 12.11.2014 and where the deceased was paying a monthly installment of Rs.11,550/- towards loan of the tractor had assessed the monthly income as Rs.25,000/-. In the present case, there is cogent evidence on the record to show that the deceased was paying a monthly installment of Rs.11,823/- as per Ex.P8. In view thereof, taking a cue from the judgment of the Hon'ble Supreme Court in the case of **Gurpreet Kaur** (supra), the income of the deceased is assessed as Rs.25,000/- per month. In view thereof, the argument of the counsel for the insurance company that the income assessed is on the higher side stands rejected.

17. The deceased was 20 years of age and hence a multiplier of 18 has rightly been applied as per the law laid down by Hon'ble Supreme Court in case of **Sarla Verma** (supra) and the same is maintained. An addition of 50% has been made towards loss of future prospects as discussed above and the same should be 40%. Further, the amounts awarded under the conventional heads as well as under the head loss of consortium is not in accordance with the law laid down and hence as per 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), the claimant would be entitled to Rs.18,000/- (Rs.15,000+20% increase) towards loss of estate and Rs.18,000/- (Rs.15,000+20% increase) towards funeral expenses. She would also be entitled to Rs.48,000/- (Rs.40,000+20% increase) towards loss of filial consortium.

18. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.25,000/-
2	Annual Income	[Rs.25,000 x 12] = Rs.3,00,000/-
3	Deduction – 50%	[Rs.3,00,000 – 1,50,000] = Rs.1,50,000/-
4	Future Prospects - 40%	[Rs.1,50,000 + 60,000] = Rs.2,10,000/-
5	Multiplier – 18	[Rs.2,10,000 x 18] = Rs.37,80,000/-
6	Loss of estate	Rs.18,000/-
7	Funeral expenses	Rs.18,000/-
8	<u>Loss of consortium</u> (i) Filial	Rs.48,000/-
	Total	Rs.38,64,000/-

19. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 6% per annum from the date of filing of the claim petition till the realization of the entire amount.

20. In view of the above discussion, the award passed by the Tribunal is modified accordingly and the appeal filed by the Insurance Company as well as the cross-objections filed by the claimant and the driver and owner of the offending vehicle stand disposed off. Pending applications, if any, also stand disposed off.

27.02.2025
jk

(ALKA SARIN)
JUDGE

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