IN THE HIGH COURT OF PUNJ AB AND HARYANA AT CHANDIGARH

238 **FAO-2948-2018 (O&M)**
and XOBJC-70-2019
Date of Decision : 16.05.2025

National Insurance Co. Ltd. ....Appellant

VERSUS

Hardeep Kaur and Others ....Respondents

238-1 **FAO-4634-2018 (O&M)**

Royal Sundram General Insurance Co. Ltd. ....Appellant

VERSUS

Hardeep Kaur and Others ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Paul S. Saini, Advocate
for the appellant in FAO-2948-2018 and
for respondent No.4 in FAO-4634-2018.

Mr. Abhinav Singla, Advocate
for the appellant in FAO-4634-2018 and
for respondent No.6 in FAO-2948-2018.

Mr. Ashwani Arora, Advocate and
Mr. Vipul Sharma, Advocate
for cross-objectors/respondent Nos.1 and 2 in XOBJC-70-2019.

ALKA SARIN, J. (Oral)

1. Present order shall dispose off the above-captioned appeals and the cross-objections. The appeal being FAO-2948-2018 has been filed by the National Insurance Co. Ltd. while the appeal being FAO-4634-2018 has been filed by Royal Sundram General Insurance Company and the cross-

objections being XOBJC-70-2019 have been filed by the claimants challenging the award dated 23.02.2018 passed by the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as the 'Tribunal') on account of death of Rajdeep Kaur (hereinafter referred to as the 'deceased').

2. The brief facts relevant to the present *lis* are that the deceased alongwith her friend Sandeep Kumar was going towards village Dhilwan in a car bearing registration No.PB-10FL-2046, which was being driven by Sandeep Kumar while the deceased was sitting on the front seat of the car. When they reached near village Dhilwan, at about 04.30 pm, a truck bearing registration No.PB-06L-9704 was parked in the middle of the road without taking any precautions. No indication or bushes were placed around the truck in order to indicate warning as a result of which the car being driven by Sandeep Kumar struck into the stationary truck. In the accident, both the occupants of the car sustained multiple grievous injuries and they were taken to the hospital at Samrala, where Rajdeep kaur was declared dead.

3. The Tribunal had awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Monthly income	₹8,000/-
2	Annual income	[₹8,000 x 12] = ₹96,000/-
3	Deduction 50%	[₹96,000 – 48,000] = ₹48,000/-
4	Future prospects @ 50%	[₹48,000 + 24,000] = ₹72,000/-
5	Multiplier of 18	[₹72,000 x 18] = ₹12,96,000/-
6	Funeral expenses	₹15,000/-
7	Loss of estate	₹15,000/-
	Total Compensation	**₹13,26,000/-**
	Interest	**6% per annum**

4. Learned counsel appearing on behalf of both the Insurance Companies have raised similar pleas. Learned counsel appearing on behalf of the Royal Sundram General Insurance Co. Ltd. states that it was the truck, insured with the National Insurance Co. Ltd., which was entirely negligent while learned counsel appearing on behalf of the National Insurance Co. Ltd. has contended that the car, which was insured with Royal Sundram General Insurance Co. Ltd., was negligent. It is further the contention that the Tribunal while making addition towards loss of future prospects has made an addition of 50%, however, keeping in view the fact that the deceased was 19 years of age and was a student of B.A. 1st Year, an addition of 40% ought to have been made towards loss of future prospects.

5. *Per contra* learned counsel appearing on behalf of respondent Nos.1 and 2/cross-objectors in XOBJC-70-2019 would contend that it was a clear case of composite negligence as has been held by the Tribunal and no fault can be found with the same. It is further the contention that the income of the deceased has been taken as ₹8,000/- per month, however, the income of a highly skilled worker at the time of accident as per notification dated 01.09.2016 was ₹10,167.56 ps. and since the accident took place in August 2016, the income should be assessed as ₹10,167.56 ps. It is further the contention that the amounts awarded under the conventional heads are not in consonance with the judgments of the Hon'ble Supreme Court and that no amount has been awarded under the head 'loss of consortium'. In support of his contention, he has relied upon the judgments of the Hon'ble Supreme Court in the 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]**.

6. Heard.

7. In the present case, the argument of learned counsel for the Insurance Companies deserves to be rejected qua negligence. The Tribunal while dealing with the issue of negligence held as under :

> *"13. PW2-HC Mukhtiar Singh has categorically stated in his examination-in-chief regarding the mode and manner of the accident and has stated that the truck bearing registration No. PB 06L 9704 was standing in the middle of the road without indicators Sandeep Kumar was driving his car rashly and negligently which struck into the truck. Respondent-Sandeep Kumar driver of the car and Balwinder Singh driver of the truck have imputed negligence on the part of each other. The evidence when gone through proves the fact that both the drivers of the offending vehicles were at fault in causing the accident. Though the FIR has been got registered against respondent Balwinder Singh, which is an admitted fact but the involvement of both the vehicles is proved. The evidence led before this court cannot be brushed aside in as much as the accident has been admitted. Both the*

> *drivers were equally negligent in causing the accident. Therefore, all the respondents are jointly and severally liable to compensate the claimants as it is a case of composite negligence of both the vehicles qua the claimants since the deceased was a passenger in the car driven by Sandeep Kumar."*

8. The Tribunal held that the truck, which was stationary, was standing in the middle of the road without any indicators and the driver of the car was also driving the car rashly and negligently and hence struck into the truck. The accident took place at 04.30 pm during broad daylight. In view of the finding returned by the Tribunal, which is apparent on the face of the record that both the truck and the car were negligent, the truck having being parked in the middle of the road and the car driver, who was driving rashly and negligently and despite it being broad daylight did not see the parked truck and hence no fault can be found with the said finding.

9. The argument of learned counsel for the Insurance Company - National Insurance Co. Ltd. - qua addition towards loss of future prospects, deserves to be accepted. As per the law laid down by Hon'ble Supreme Court in the case of **Pranay Sethi** *(supra)* an addition of 40% ought to be made and hence the same is modified. An addition of 40% would be made towards loss of future prospects.

10. The argument of learned counsel for respondent Nos.1 and 2/cross-objectors qua income deserves to be accepted. Hon'ble Supreme

Court in the case of **Baby Sakshi Greola Vs. Manzoor Ahmad Simon & Anr. [2025 (1) RCR (Civil) 238]** has held as under :

> *“29. This Court in the case of Kajal (supra) has held that taking notional income is not the correct approach. Instead, the minimum wages payable to a skilled workman in the concerned State has to be taken into consideration because, that would be the minimum amount which she would have earned on becoming a major. In this case, the minimum wage payable to a skilled workman in the State of Delhi at the time of the accident, i.e., 2nd June 2009, was Rs. 4,358/- per month.”*

11 Hon’ble Supreme Court recently in the case of **Karuna Parmar Vs. Prakash Sinha & Ors. [Civil Appeal No.2317 of 2025 arising out of SLP (C) No.6428 of 2023 decided 11.02.2025]**, yet again relying on **Baby Sakshi Greola** (supra), awarded compensation in the case of a 6 years’ old child who had died in an accident which occurred on 07.03.2014 as per the minimum wages applicable for a skilled worker in the year 2014.

12. The accident in the present case took place on 11.08.2016. The minimum wages for a skilled worker prevalent at the relevant point of time were ₹9,919.52 ps. per month. Further, Hon’ble Supreme Court in the case of **Chandra @ Chanda @ Chandraram & Anr. Vs. Mukesh Kumar Yadav & Ors. [2021 (4) RCR (Civil) 492]** has held that a certain amount of guesswork can be done in motor accident claim cases while assessing the

income when there is no definite proof regarding income. Para 10 of the said judgment reads as under :

> *"10. It is the specific case of the claimants that the deceased was possessing heavy vehicle driving licence and was earning Rs.15000/- per month. Possessing such licence and driving of heavy vehicle on the date of accident is proved from the evidence on record. Though the wife of the deceased has categorically deposed as AW-1 that her husband Shivpal was earning Rs.15000/- per month, same was not considered only on the ground that salary certificate was not filed. The Tribunal has fixed the monthly income of the deceased by adopting minimum wage notified for the skilled labour in the year 2016. In absence of salary certificate the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to fix the income of the deceased. In absence of documentary evidence on record some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality. Merely because claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income. There is no*

reason to discard the oral evidence of the wife of the deceased who has deposed that late Shivpal was earning around Rs.15000/- per month. In the case of Minu Rout & Anr. v. Satya Pradyumna Mohapatra & Ors. (2013) 10 SCC 695 this Court while dealing with the claim relating to an accident which occurred on 08.11.2004 has taken the salary of the driver of light motor vehicle at Rs.6000/- per month. In this case the accident was on 27.02.2016 and it is clearly proved that the deceased was in possession of heavy vehicle driving licence and was driving such vehicle on the day of accident. Keeping in mind the enormous growth of vehicle population and demand for good drivers and by considering oral evidence on record we may take the income of the deceased at Rs.8000/- per month for the purpose of loss of dependency. Deceased was aged about 32 years on the date of the accident and as he was on fixed salary, 40% enhancement is to be made towards loss of future prospects. At the same time deduction of 1/3 rd is to be made from the income of the deceased towards his personal expenses. Accordingly the income of the deceased can be arrived at Rs.7467/- per month. By applying the multiplier of '16' the claimants are entitled for compensation of Rs.14,33,664/. As an amount of

Rs.10,99,700/ is already paid towards the loss of dependency the appellant-parents are entitled for differential compensation of Rs.3,33,964/. Further in view of the judgment of this Court in the case of Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram & Ors. (2018) SCC Online SC 1546 = (2018) 18 SCC 130 the appellants are also entitled for parental consortium of Rs.40,000/- each. The finding of the Tribunal that parents cannot be treated as dependents runs contrary to the judgment of this Court in the case of Sarla Verma (Smt). & Ors. v. Delhi Transport Corporation & Anr.(2009) 6 SCC 121. The judgment in the case of Kirti & Anr. v. Oriental Insurance Company Limited (2021) 2 SCC 166 relied on by the counsel for the respondent would not render any assistance in support of his case having regard to facts of the case and the evidence on record."

13. It is trite that the minimum wage notification is merely a yardstick while determining the compensation payable to the claimants in motor vehicular accidents. It has been laid down in a plethora of judgments by the Hon'ble Supreme Court that the Courts must strike a balance between inflated and unreasonable demands of the victim and the equally untenable claim of the opposite party saying that nothing is payable. Accordingly, keeping in view the fact that the deceased was 19 years of age and was a

student of B.A. 1st Year, whose life and career was cut-short abruptly because of the accident and the law laid down by Hon'ble Supreme Court in the case of **Chandra @ Chanda @ Chandraram** (supra), this Court deems it appropriate to apply the minimum wages as applicable to a highly skilled worker as per the notification dated 01.09.2016. A student, after completing his/her graduation, normally would earn more than a skilled worker. However, taking a conservative view, this Court deems it appropriate to assess the income of the deceased as ₹10,167.56 ps. rounded off to ₹11,000/- per month. The claimants (cross-objectors) would be entitled to 40% addition towards loss of future prospects, as noticed above.

14 Since there is no challenge to the deduction and the multiplier as applied by the Tribunal, the same are maintained.

15. Further, the amounts awarded under the conventional heads are also not in accordance with the law inasmuch as an amount of ₹30,000/- has been awarded towards loss of estate and funeral expenses and no amount has been awarded under the head 'loss of consortium' 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 claimants 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. The claimants would also be entitled to Rs.48,000/- each (Rs.40,000+20% increase) towards loss of filial consortium.

16. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded	
1	Monthly Income	₹11,000/-	
2	Annual Income	₹1,32,000/-	[₹11,000 x 12]
3	Deduction - 50%	₹66,000/-	[₹1,32,000 – 66,000]
4	Future Prospects - 40%	₹92,400/-	[₹66,000 + 26,400]
5	Multiplier - 18	₹16,63,200/-	[₹92,400 x 18]
6	Loss of estate	₹18,000/-	
7	Funeral expenses	₹18,000/-	
8	Loss of consortium (ii) Filial [₹48,000/- x 2]	₹96,000/-	
	Total Compensation	**₹17,95,200/-**	

17. 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.

18. In view of the decision by the Hon'ble Supreme Court in **Parminder Singh vs. Honey Goyal & Ors. [2025 INSC 361 : Civil Appeal No.4299 of 2025 arising out of SLP (C) No.4484 of 2020 decided on 18.03.2025]**, after calculation of the enhanced amount, the same be transferred by the Insurance Company in the bank account(s) of the claimants (respondent Nos.1 and 2 herein) within six weeks from today and the apportionment thereof shall be as per the percentage directed by the Tribunal. The particulars of the bank account(s) alongwith the requisite documents(s) in support thereof shall be furnished by the claimants to the Insurance company within a period of two weeks from the date of this order and needful shall be done by the Insurance Company after verification

thereof within four weeks thereafter alongwith up-to-date interest. The compliance shall be reported by the Bank to the Tribunal concerned.

19. In view of the above discussion, the award passed by the Tribunal is modified and the appeals filed by the Insurance Companies being FAO-2948-2018, FAO-4634-2018 and the cross-objections being XOBJC-70-2019 filed by the claimants stand disposed off accordingly. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
16.05.2025 **JUDGE**
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NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO