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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**FAO-8247-2017 (O&M)
XOBJC-68-CII-2018 (O&M)
Date of Decision : 31.01.2025**

United India Insurance Co. Ltd. ... Appellant(s)

Versus

Rani & Ors ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Harsh Aggarwal, Advocate for the appellant.

Mr. Sandeep Kotla, Advocate
for respondent Nos.1 to 6/cross-objectors.

Ms. Suman Sagar, Advocate for respondent Nos.7 and 8.

ALKA SARIN, J. (Oral)

CM-6622-CII-2018 in XOBJC-68-CII-2018

1. This is an application for condonation of delay of 10 days in filing the cross-objections.

2. For the reasons stated in the application, delay of 10 days in filing the cross-objections is condoned. CM stands disposed off.

FAO-8247-2017 & XOBJC-68-CII-2018

3. The present appeal (FAO-8247-2017) has been filed by the appellant-Insurance Company and the cross-objections (XOBJC-68-CII-2018) have been filed by the claimants-respondent Nos.1 to 6 aggrieved by the award dated 05.09.2017 passed by the Motor Accident Claims Tribunal, Fatehabad (hereinafter referred to as 'Tribunal'). The parties are being referred to as Insurance Company, claimants and owner and driver for the sake of clarity.

4. Brief facts relevant to the present *lis* are that the accident in the present case took place on 10.11.2015 when Kala Singh (since deceased) alongwith Buta Singh was riding motorcycle Hero Honda bearing registration No.HR-24-7527 and was going towards his fields at Kukranwali where they had taken a piece of land on contract for cultivation. Kala Singh was riding the motorcycle at a moderate speed and was wearing a helmet and following all the traffic rules. At about 07.30 am, when they crossed the waterworks of the village and were going towards Dariyapur, a Cruiser Jeep bearing registration No.HR-56A-9425 being driven by the driver at a high speed, rashly and negligently, came from the opposite side and struck against the motorcycle. The accident resulted in the death of Kala Singh and injury to Buta Singh and, hence, two claim petitions were filed - one by the legal representatives of Kala Singh and one by Buta Singh for the injury received. Both the claim petitions were disposed off vide the impugned award dated 05.09.2017. The present appeal (FAO-8247-2017) arises out of the claim petition filed by the legal representatives of Kala Singh. The Tribunal vide the impugned award had awarded the following compensation:

Sr. No.	Heads	Compensation Awarded
1	Monthly income	₹7,800/-
2	Future prospects 50%	[₹7,800 + 3,900] = ₹11,700/-
3	Annual income	[₹11,700 x 12] = ₹1,40,000/-
4	Deduction 1/4 th	[₹1,40,000 – 35,100] = ₹1,05,300/-
5	Multiplier of 16	[₹1,05,300 x 16] = ₹16,84,800/-
6	Medical treatment	₹84,000/-
7	Funeral expenses	₹25,000/-
8	Loss of consortium	₹1,00,000/-
9	Love and affection	₹2,00,000/-
	Total Compensation	₹20,93,800/-
	Interest	7.5% per annum

5. Learned counsel for the Insurance Company has referred to Ex.R8, which is the Medico Legal Report of Kala Singh, wherein it has been noted by the doctor that there was an alcoholic smell present in the breath and he was grossly intoxicated. It is further the contention of the learned counsel that since both Buta Singh and Kala Singh were intoxicated, it would be a case of contributory negligence. The learned counsel for the Insurance Company has not disputed the multiplier of 16 and deduction of 1/4th. However, he states that the income of the deceased as assessed by the Tribunal is on the higher side as the minimum wage at the time of accident was ₹5,886/- per month. It is further the contention of the learned counsel for the Insurance Company that an addition of 40% ought to have been made qua future prospects instead of 50% and that the amounts awarded under the under the conventional heads and under the head 'loss of consortium' are not as per the law laid down by 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. *Per contra* the learned counsel for the claimants/cross-objectors would contend that it has nowhere come in evidence as to the level of alcohol present in the blood of Buta Singh or Kala Singh. The learned counsel has referred to Section 185 of the Motor Vehicles Act, 1988 which states that if a person driving or attempting to drive a motor vehicle has in his blood alcohol exceeding 30 mg. per 100 ml. of blood detected in a test by

a breath analyzer or in any other laboratory test, he would be held to be under the influence of liquor and not otherwise. In the absence of any evidence regarding the alcohol content in the blood, no conclusion can be drawn as to whether Kala Singh and Buta Singh were intoxicated or not. The learned counsel for the claimants/cross-objectors would further contend that the age of the deceased has wrongly been applied by the Tribunal as 32 years as he was 29 years of age at the time of the accident and his date of birth was 03.05.1986 as per the statement made by the wife of the deceased while appearing in the witness box as PW4 (Smt. Rani). The learned counsel would further contend that the income has rightly been assessed by the Tribunal.

7. I have heard the learned counsel for the parties.

8. In the present case, the argument raised by the learned counsel for the Insurance Company that it was a case of contributory negligence deserves to be rejected. Section 185 of the Motor Vehicles Act, 1988 reads as under :

185. Driving by a drunken person or by a person under the influence of drugs - Whoever, while driving, or attempting to drive, a motor vehicle, -

(a) has, in his blood, alcohol exceeding 30 mg. per 100 ml. of blood detected in a test by a breath analyser, or in any other test including a laboratory test, or

(b) is under the influence of a drug to such an extent as to be incapable of exercising proper control over the vehicle,

shall be punishable for the first offence with imprisonment for a term which may extend to six months,

or with fine of ten thousand rupees, or with both; and for a second or subsequent offence, with imprisonment for term which may extend to two years, or with fine of fifteen thousand rupees, or with both.

There is an observation made under the head 'General condition of Patient' by the treating doctor (Ex.R8) wherein it had been stated that the patient was semi-conscious and there was alcoholic smell present in his breath and he was grossly intoxicated. However, there is no evidence on the record regarding any laboratory test or a breath analyzer having been used to measure the alcohol content in the breath of the deceased. In the absence of any evidence, it cannot be held that the deceased was intoxicated at the time of the accident. Hence, the said argument of the learned counsel for the Insurance Company stands rejected.

9. The argument of the learned counsel for the Insurance Company that the income of the deceased has wrongly been assessed as ₹7,800/- per month deserves to be accepted. Minimum wage at the time of the accident i.e. 10.11.2015 was ₹5,886/- per month. However, the same was increased on 01.01.2016 to ₹7,976/- per month. Hon'ble the Supreme Court in the case of **Chandra @ Chanda @ Chandraram vs. Mukesh Kumar Yadav [2021 (4) RCR (Civil) 492]** has held 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."

Keeping in view the above-noted judgment and the fact that the minimum wage was increased on 01.01.2016 to ₹7,976/- per month, this Court deems it appropriate to assess the income of the deceased as ₹7,000/- per month.

10. The argument of the learned counsel for the claimants/cross-objectors that the age of the deceased was 29 years at the time of the accident deserves to be rejected in view of the fact that no evidence was led

qua the age of the deceased though Smt. Rani (PW4) stated that date of birth of the deceased was 03.05.1986, however, in her cross-examination, she stated that she has no age proof of the deceased. Accordingly, multiplier of ‘16’ and deduction of 1/4th as applied by the Tribunal are maintained.

11. The arguments of the learned counsel for the Insurance Company that an addition of 40% ought to have been made towards loss of future prospects instead of 50% and that the amounts awarded under the conventional heads and under the head ‘loss of consortium’ are not as per the law laid down by the Hon’ble Supreme Court, are also accepted keeping in view the law laid down by the Supreme Court in the case of **Pranay Sethi** (supra), **Magma General Insurance Company Limited** (supra) and **N. Jayasree** (supra). Accordingly, as per the law laid down by the Hon’ble Supreme Court in the case of **Pranay Sethi** (supra), 40% addition is made towards future prospects and the claimants/cross-objectors would be entitled to ₹18,000/- (₹15,000+20% increase) towards loss of estate and ₹18,000/- (₹15,000+20% increase) towards funeral expenses and the claimants/cross-objectors (wife, three children and parents of the deceased) would also be entitled to ₹48,000/- each (₹40,000+20% increase) towards loss of consortium. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	₹7,000/-
2	Annual Income	₹84,000/- [₹7,000 x 12]
3	Deduction 1/4 th	₹63,000/- [₹84,000 – 21,000]
4	Future Prospects - 40%	₹88,200/- [₹63,000 + 25,200]
5	Multiplier - 16	₹14,11,200/- [₹88200 x 16]
6	Loss of estate	₹18,000/-

7	Funeral expenses	₹18,000/-
8	Loss of consortium (i) Parental [₹48,000/- x 3] (ii) Filial [₹48,000/- x 2] (iii) Spousal's	₹1,44,000/- ₹96,000/- ₹48,000/- (Total ₹2,88,000/-)
	Total Compensation	₹17,35,200/-

12. In view of the above discussion, the present appeal (FAO-8247-2017) filed by the Insurance Company is allowed and the cross-objections (XOBJC-68-CII-2018) filed by the claimants-respondent Nos.1 to 6 are dismissed. The impugned award passed by the Tribunal stands modified accordingly in the above terms. Pending applications, if any, also stand disposed off.

31.01.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

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