IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-2293-2015 (O&M)

Shri Ram General Insurance Company Limited

...Appellant

VERSUS

Santosh and others

...Respondents

(ii) XOBJ-198-2019 (O&M)

Shri Ram General Insurance Company Limited

...Appellant

VERSUS

Santosh and others

...Respondents

Date of Decision: January 21, 2026

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Sanjeev Goyal, Advocate
for the appellant.

Mr.Vikrant Rana, Advocate
for respondents No.1 to 5.

Mr.Ajit Sihag, Advocate
for respondent No.6.

Mr.Raj Kumar Rana, Advocate
for respondent No.7-cross-objector.

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ARCHANA PURI, J.

Appellant-Shri Ram General Insurance Company Limited has filed the present appeal, thereby, assailing the Award dated 06.09.2014 passed by learned Motor Accident Claims Tribunal, whereby, compensation was awarded, on account of death of Subhash, in a motor vehicular accident.

Suffice to consider that the accident had taken place on 22.05.2012. In the claim petition filed by the claimants, respondents No.1 and 2 i.e. driver and owner of the offending truck bearing registration No.GJ-16X-7471, made appearance through counsel. Even, the insurance company made appearance and had filed reply. Thereupon, issues were framed and evidence was adduced.

On appraisal of the evidence, it was concluded that the accident had taken place due to rash and negligent driving of the truck bearing registration No.GJ-16X-7471, driven by respondent-Vijender Singh and Subhash had sustained fatal injuries, in the said accident.

The claimants had asserted about deceased Subhash to be 40 years old, working as private contractor and earning Rs.15,000/- per month. However, on appraisal of the evidence, brought on record, more particularly, considering the date of birth of Subhash recorded as 02.04.1974, in the copy of Aadhaar card Ex.P7 as well as PAN card Ex.P6, learned Tribunal had concluded about Subhash to be 38 years old, at the time of accident. On the basis of the documents i.e. copies of contracts Ex.P8 and Ex.P9, copies of bills Ex.P10 to Ex.P13, which were prepared by PW-3 R.N.Jourwall, it was concluded by learned Tribunal that deceased was certainly working as building contractor, but however, his income could not be assessed from the documents brought on record and thus, his income, in the year 2012 was assessed to be Rs.10,000/- per month.

Taking it to be so, the compensation as worked upon by learned

Tribunal, which in the tabular form, is herein given:-

Earnings	Rs.10,000/-
Addition of 50%	Rs.10,000+5000=Rs.15,000/- annual whereof is Rs.1,80,000/-
Deduction 1/4th	Rs.1,80,000-45,000=Rs.1,35,000/-
Considering the age multiplier of '15' was applied	Rs.1,35,000x15=Rs.20,25,000/-
Funeral expenses	Rs.25000/-
Loss of consortium to widow	Rs.1,00,000/-
Loss of care and guidance to children	Rs.1,00,000/-
Total	**Rs.22,50,000/-**

However, respondent-Vijender Singh was held to be driving the offending vehicle, without a valid driving licence and on this account, the insurance company was held liable to pay the amount of compensation, at first instance and was given recovery rights.

Being aggrieved, the insurance company filed the present appeal, thereby, assailing the Award on the quantum as well as on various other counts. However, during the course of arguments, counsel for the appellant-insurance company confined his prayer, only to assail the Award on the quantum of compensation.

Upon notice issued, the respondents No.1 to 5 made appearance, who were the claimants. Even, respondents No.5 and 6, who are driver and owner of the offending vehicle, had made appearance through counsel. Respondent No.7 also filed cross-objections, to assail the recovery rights as granted to the insurance company.

Along with the cross-objections, an application under Order 41 Rule 27 read with Section 151 CPC was also filed to prove on record the documents, vis-a-vis, driving licence of respondent No.6-Vijender Singh and various other documents. Reply was not filed to the said application by the insurance company. Even, an opportunity was given to verify about the genuineness of the documents, but however, no steps, as such, were taken.

Along with the main arguments, the arguments on the application for additional evidence were also heard.

Perusal of the Tribunal record reveals that driver and owner of the offending vehicle (respondents No.1 and 2 before Tribunal), as such, had made appearance through Sh.Ram Kumar Saini, at first instance and he had also disclosed about the particulars of the insurance policy. Thereafter, none had appearance on their behalf and vide order dated 07.03.2014, they were proceeded against ex-parte. Thereupon issues were framed, which are reproduced, as herein given:-

> *"1. Whether accident dated 22.5.2012 resulting in death of Subhash occurred on account of rash and negligent driving of vehicle no.GJ-16-X-7471 by respondent no.1? OPP.*
> *2. Whether the claimants are entitled for compensation for causing death of Subhash, if so, to what extent and from whom? OPR.*
> *3. Whether the driver of offending vehicle was not holding a valid & effective driving license on the date of accident and the vehicle was being driven in violation of the terms and conditions of the insurance policy? OPR3.*
> *4. Relief."*

The evidence was adduced on the said issues by the parties. Issues No.1 and 2 were decided in favour of the claimants. As the driving licence of respondent-Vijender Singh had not come forth, as such, the liability was fastened upon respondents No.1 and 2, i.e. driver and owner, to pay the compensation as assessed. However, respondent No.3-insurance company was made liable to pay the amount of compensation, at first instance and the recovery rights were granted.

Such being the progress of the case, when it was pending before the Tribunal, it is significant to note that the driver and owner of the offending vehicle-respondents No.6 and 7 herein, while being impleaded as respondents No.1 and 2 before the Tribunal, had made appearance, meaning thereby, they were in know of the pending claim petition, filed at the instance of legal heirs of deceased Subhash.

Even, they had been proceeded against ex-parte. They did not bother to pursue the litigation any further. Even, the Award was passed on 06.09.2014 and recovery rights were granted to the insurance company and then also, they did not bother to assail the Award. It was only when the insurance company had filed the appeal in hand, the owner made appearance and filed the cross-objections, along with the application for additional evidence.

Now, it is submitted that respondent-Vijender Singh was having a driving licence, at the relevant time. Further, it is submitted that despite exercise of due diligence and due to the reasons, beyond the control of the applicant-cross-objector, the documents, as such, could not be produced before the Tribunal. However, the submission so made, is palpably erroneous.

As observed aforesaid, the driver and owner of the offending vehicle were in know of the pending litigation, as they had made appearance through counsel. Why they chose to remain away from the proceedings and were proceeded against ex-parte, it is within their knowledge. Counsel for respondent No.7-owner, now submits that respondent No.7 is resident of Gujarat and therefore, he had asked the driver to pursue the litigation, but he did not pursue the same in the proper manner. This is no reason to allow the application and by any stretch of imagination, it cannot be said that despite exercise of due diligence, these documents could not be produced.

Precisely on this account, when there was silence maintained by the driver and owner, despite knowing about the litigation, now at this stage, after lapse of five years thereafter, no application, as such, can be allowed for additional evidence. It is making a mockery of the provisions of law, to come to the Court, when the adverse order has been passed against them, with regard to the right of recovery granted to the insurance company.

Hence, no case is made out for allowing the application i.e. **CM-21387-CII-2019** and the same is hereby dismissed.

Now, proceeding further, counsel for the insurance company has confined his prayer, only to assail the Award on the quantum.

From the evidence, brought on record, more particularly, the PAN card and Aadhaar Card, it stands established that date of birth of Subhash was 02.04.1974 and thus, he was appropriately considered as 38 years old, at the time of accident. Even, on the basis of testimony of PW-2 Santosh and PW-3 R.N.Jourwall as well as considering the documents i.e. copies of contracts Ex.P8 and P9, copies of bills Ex.P10 to Ex.P13, it has bee appropriately held by the Tribunal that it was certain that deceased was working as building contractor.

Considering it to be so and also taking into consideration the minimum wages, as prevalent, at the relevant time and also the fact that it is not all the time required to consider the extent of earnings of a person, even though, working as contractor, at the lowest tier of the minimum wages, the Tribunal had appropriately assessed the earnings of the deceased as Rs.10,000/- per month.

However, the 'work on' upon the same, as detailed in the earlier portion of the judgment, do call for re-computation, as per prevalent law.

The addition, on the count of 'future prospects' has been made to the extent of 50%, which is not correct, as it has to be made in consonance with ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, wherein, it is stated that in case of self employed person, to be below 40 years, the addition to the extent of 40% has to be made. The deduction on the count of 'personal expenses' has to be to the extent of 1/4td, as done by the Tribunal. Moreover, the multiplier of '15' applied by learned Tribunal is appropriate. However, under the conventional heads, also the amount, as prevalent, in consonance with ***Pranay Sethi's case (supra)***, on the count of 'funeral expenses' is Rs.18,150/- and to the similar extent, on the count of 'loss of estate'.

However, on the count of 'loss of consortium', the amount of Rs.1,00,000/- granted to widow of deceased, is also on higher side. As per ***Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130***, all the dependents are entitled to compensation, on the count of 'loss of consortium, be it 'filial', 'spousal' or 'parental', which also comprehends 'loss of love and affection'. As per ***Pranay Sethi's case (supra),*** the minimum amount payable is Rs.40,000/-. While applying enhancement clause to the extent of 10%, after every three years of passing of the judgment, the compensation payable to each dependent is Rs.48,400/-. Thus, respondents-claimants No.1 to 5 as well as are also entitled to compensation, on the count of 'loss of consortium' to the extent of Rs.48,400/- each i.e. Rs.48,400x5=**Rs.2,42,000/-**.

Considering the same, the compensation payable to respondents-claimants No.1 to 5, on account of death of Subhash is re-computed, as herein given:-

Income	Rs.10000/-
Addition of future prospects @ 40%	Rs.10000+4000=Rs.14,000/-
Deduction of 1/4th	Rs.14,000-3500=Rs.10,500/-, annual whereof is Rs.1,26,000/-
Multiplier of '15'	**Rs.126,000x15=Rs.18,90,000/-**
Funeral expenses	**Rs.18,150/-**
Loss of estate	**Rs.18,150/-**
Loss of consortium	**Rs.2,42,000/-**
Total	**Rs.21,68,300/-**

As such, the amount so awarded by learned Tribunal stands reduced from Rs.22,50,000/- to Rs.21,68,300/- and differential amount comes to be **Rs.81,700/-**. The impugned Award dated 06.09.2014 stands modified, to the extent, as indicated aforesaid. However, the differential amount of **Rs.81,700/-** shall be equally reduced from the share of the claimants.

The claimants are bound to refund the differential amount of **Rs.81,700/-** to the insurance company within a period of six months. In the eventuality of not paying of the aforesaid amount to the insurance company, within the requisite period, the appellant-insurance company shall be at liberty to file an application before the Executing Court to seek the recovery of Rs.81,700/- and not by way of filing of separate suit. On filing of the said application, the insurance company shall also be entitled to penal interest @ 6% per annum, from the date of filing of such application, till realization.

So far as, the cross-objections are concerned, as already observed in the earlier portion of the judgment, no evidence, as such, was led by the driver and owner of the offending vehicle to substantiate that

Vijender Singh, driver was driving the offending vehicle, while holding the valid driving licence.

In the light of the same, the findings on issue No.3 are hereby affirmed. The impugned Award dated 06.09.2014 stands modified, to the extent, as indicated aforesaid. The residue terms of the impugned Award, shall remain the same.

With the above observations, the appeal filed by appellant-Shri Ram General Insurance Company Limited stands allowed, whereas, the cross-objections filed by the respondent No.7-owner, stands dismissed.

The pending civil misc. applications, if any, shall stand disposed of.

January 21, 2026 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**