223

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-409-2016 (O&M)
Date of Decision : 27.01.2026

The New India Assurance Company Ltd ... Appellant

Versus

Rajbala and Others ... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

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

Mr. S.K. Yadav, Advocate for respondent Nos.1 to 5.

Mr. Varun Sharma, Advocate for respondent Nos.6 and 7.

ALKA SARIN, J. (Oral)

1. Present appeal has been preferred by the Insurance Company aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal, Narnaul (hereinafter referred to as the 'Tribunal') vide award dated 07.08.2015. The parties are being referred to claimants, driver and owner of the offending vehicle and the Insurance Company for the sake of clarity.

2. Since the factum of the accident is not in dispute, the facts are not being adverted to for the sake of brevity. The Tribunal had awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	₹33,480/-
2	Deduction - 1/4th	₹25,110/- [₹33,480 - ₹8,370]

3	Future Prospects - 15%	₹28,877/-	[₹25,110 + ₹3,767]
4	Annual Income	₹3,46,524/-	[₹28,877 x 12]
5	Multiplier - 11	₹38,11,764/-	[₹3,46,524 x 11]
6	Funeral expenses	₹25,000/-	
7	Loss of consortium	₹1,00,000/-	
	Total Compensation	**₹39,36,764/-**	
	Interest	**7.5%**	

3. Learned counsel for the Insurance Company would contend that though he does not challenge the income, future prospects and the multiplier as applied by the Tribunal as also the compensation awarded under the conventional heads and under the head 'loss of consortium', however he has contended that income tax to the extent of ₹515/- has been deducted, which should have been ₹6,180/- (₹515 x 12) since income tax of ₹515/- was being deducted monthly from the salary of the deceased as is apparent from the salary certificate (Ex.PW3/A). Learned counsel for the Insurance Company would further contend that a deduction of 1/3rd ought to have been applied inasmuch as children of the deceased were major and cannot be held to be dependent.

4. *Per contra* learned counsel for the claimants has candidly admitted that income tax of ₹515/- was being deducted per month and calculation for deduction of the income tax would be made annually. Learned for the claimants has further contended that a deduction of 1/4th has rightly been applied as there are five claimants in the present case. It is further the contention that even the major sons and daughter have been held to be dependents and in support of his contention, he has relied upon judgment of the Hon'ble Supreme Court in the case of **National Insurance Company Limited vs. Birender & Ors. [2020 (1) RCR (Civil) 694]**. Learned counsel for the claimants has further contended that though no appeal has been preferred by the claimants however this Court under Order XLI Rule 33 of the

Code of Civil Procedure, 1908 is empowered to make or pass any such order as required notwithstanding that an appeal or cross-objections have not been preferred by the claimants. It has further been contended that the compensation awarded under the conventional heads as well as under the head 'loss of consortium' is not in accordance with 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]**.

5. Heard.

6. In the present case, the income tax ought to have been deducted on the annual income. As per salary certificate (Ex.PW3/A), an amount of ₹515/- was being deducted monthly from the salary of the deceased hence while calculating the income tax the same ought to have been calculated as ₹6,180/- (₹515 x 12). The same is accordingly modified and amount to be deducted towards income tax is assessed as ₹6,180/-. The argument of learned counsel for the Insurance Company that a deduction of 1/4th has incorrectly been applied and that the major sons and daughter of the deceased cannot be treated as dependents, cannot be accepted in view of the law laid down by Hon'ble Supreme Court in case of **Birender** *(supra)*, wherein it has been held as under :

> *"15. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply*

for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between ₹1,00,000 - and ₹1,50,000/- per annum. In that sense, they were largely dependant on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years."

7. In view of the law laid down by Hon'ble Supreme Court in case of **Birender** *(supra)*, major sons and daughter of the deceased are to be considered as dependents and accordingly, deduction of 1/4th has correctly been applied by the Tribunal.

8. Since there is no challenge to the income, multiplier and loss of future prospects, the same are accordingly maintained. The argument of learned counsel for the claimants that despite there being no appeal this Court is empowered under Order XLI Rue 33 CPC to pass any order as may be required, deserves to be accepted. Hon'ble Supreme Court in the case of **Surekha & Ors. vs. Santosh & Ors. [2021(1) PLR 795]** has held as under :

"3. By now, it is well-settled that in the matter of insurance claim compensation in reference to the motor accident, the court should not take hyper technical approach and ensure that just compensation is awarded to the affected person or the claimants".

9. In view of the order in the case of **Surekha** (supra) and by invoking the provisions of Order XLI Rule 33 CPC, the argument of the learned counsel for the claimants that the compensation awarded under the head loss of consortium and under the conventional head is on the lower side is accepted and the compensation is modified accordingly. The amount awarded under the conventional heads and under the head 'loss of consortium' is not 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)*. Hence, the claimants would be entitled to ₹18,000 (₹15,000 + 20% increase) towards loss of estate and ₹18,000 (₹15,000 + 20% increase) towards funeral expenses. The claimants being children of the deceased would also be entitled to ₹48,000/- each (₹40,000 + 20% increase) towards loss of consortium.

Sr.No.	**Heads**	**Compensation Awarded**
1	Monthly Income	₹33,480/-
2	Annual Income	₹4,01,760/- [₹33,480 x 12]
3	Annual income after deduction the income tax of ₹6,180/-	₹3,95,580/- [₹4,01,760 – 6,180]
3	Deduction - 1/4th	₹2,96,685/- [₹3,95,580 - ₹98,895]
4	Future Prospects - 15%	₹3,41,188/- [₹2,96,685 + ₹44,503]
5	Multiplier - 11	₹37,53,068/- [₹3,41,188 x 11]
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 1] (iii) Spousal	 ₹1,44,000/- ₹48,000/- ₹48,000/- (Total ₹2,40,000/-)
	Total Compensation	**₹40,29,068/-**

10. 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.

11. In view of the decision by the Hon'ble Supreme Court in **Parminder Singh vs. Honey Goyal & Ors. [AIR 2025 SC 1713 = 2025 SCC OnLine SC 567]**, after calculation of the enhanced amount, the same be transferred by the Insurance Company in the bank account(s) of the claimants 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 claimant-appellants 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.

12. In view of the above discussion, the award passed by the Tribunal is modified and the present appeal stands disposed off accordingly. Pending applications, if any, also stand disposed off.

27.01.2026 **(ALKA SARIN)**
jk **JUDGE**

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