

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

FAO No.1471 of 1998

Date of decision: 22.04.2015

Muni Ram

... Appellant

Versus

Ramesh Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Kulvir Narwal, Advocate,
for the appellant.

Mr. Robin Lohan, Advocate,
for respondents No.3 and 4.

AMOL RATTAN SINGH, J.

1. The sole appellant in this appeal, Muni Ram, sought compensation by filing a claim petition before the learned Motor Accident Claims Tribunal, Jind, after the death of his son, Sant Ram, in a motor vehicle accident on 01.04.1996.

2. The facts, as taken from the judgment/Award of the Tribunal, dated 06.04.1998, are that on the said date, Sant Ram was travelling in a trailer being pulled by tractor bearing registration No.HYF-3270, alongwith one Sumer and Ram Phal. The trailer is stated to have been loaded with sand/earth. The tractor was driven by respondent no.3, Jai Bhagwan and was

owned by respondent no.4, Lilu Ram.

When the tractor reached near the field of one Kewal, in village Karsola, another tractor, bearing registration No.HRV-2137, stated to have been loaded with bricks and being driven by Ramesh Kumar (respondent no.1), struck against the trailer of the tractor in which Sant Ram was travelling. Due to the impact, Sant Ram is stated to have fallen down and was then run over by the “offending vehicle”, i.e. tractor bearing registration No.HRV-2137.

Thus, the allegation was that tractor bearing registration No.HRV-2137 having been driven in a rash and negligent manner, caused the accident due to which Sant Ram lost his life.

3. In the claim petition, the drivers and the owners of both the tractors were impleaded as respondents no.1 to 4 by the claimant and the widow of Sant Ram was impleaded as respondent no.5, with her address given to be that of her father, in Ludhiana, Punjab.

Respondents no.1 and 2 contested the claim petition jointly, as did respondents no.3 and 4. Sunita, respondent no.5, widow of the deceased, was proceeded against *ex parte*, not having responded to the notices issued to her.

Before this Court also, the respondents have been arrayed in the same order in which they were arrayed before the Tribunal.

It needs to be noticed that as per the report of the Registry of this Court, service is complete as against all respondents, but only respondents no.3 and 4, i.e. the driver and owner of the tractor in which deceased Sant Ram was travelling (bearing registration No.HRF-3270) have chosen to appear through their counsel.

It is also stated, in the memo of parties, that respondent no.5 was proceeded against *ex parte* in the Court below (Tribunal) despite publication (by way of substituted service).

As noticed by this Court during the course of dictation of the judgment and on a perusal of the lower court record, that a plea had been taken by the claimant (present appellant), before the Tribunal, that respondent no.5, Sunita, had abandoned her husband, i.e. deceased Sant Ram. (Hence, she was impleaded as a respondent).

Since she was stated to be living at her parental home in Ludhiana, Punjab, with her father, but was not served at the address given in the claim petition, permission had been granted by the Tribunal to effect service upon her by alternate means of publication in a daily newspaper. Service still not having been effected, it was yet again ordered to be effected by the same means, i.e. publication in a newspaper, which publication was thereafter duly made. However, a perusal of the order of the Tribunal, as also the record thereof, shows that such publication was made in a Hindi daily, 'Chetna', on 29.04.1997, which is commonly known to have circulation only in Haryana and as such, it is doubtful whether said newspaper was actually available in Ludhiana (Punjab). Hence, whether or not such publication can be deemed to have been an effective means of alternative service, is a debatable point, even though accepted by the Tribunal.

Somehow, this issue was not raised before this Court, during the hearing of the case and has been noticed only at the time of dictation of the judgment. However, since obviously no fresh address is available, of respondent no.5, with either side, it would be pointless, in the opinion of

this Court, to put up the matter for rehearing yet again, only to try and effect service upon her. Yet, since she would obviously be the primary beneficiary of compensation awarded to her husband, as there is admittedly no document of legal separation upon which the appellant can rely, therefore, as to how compensation is to be disbursed, would be dealt with by this Court, at the end of the judgment.

4. Coming back to the claim of the appellant before the Tribunal, he was held to be not entitled to compensation because he was not proved to be dependent on the deceased and further, because, as per the Tribunal, nothing was shown to the effect that compensation can be paid to the father, ignoring the widow, even though she had been proceeded against *ex parte*. The finding with regard to the appellant not being dependent on his deceased son, was also based on the fact that he has another son, Om Parkash, with whom he was stated to be living, as per his own admission before the Tribunal, while testifying as PW1. Still further, it was held that since the claimant himself was an earning hand with an income of Rs.2,000/- per month, there was no dependency on the deceased son and as such, he was not entitled to any compensation at all.

5. Though two separate issues were framed, the first with regard to whether there was any negligence on the part of respondent no.1, while he was driving tractor bearing registration No.HRV-2137, due to which the deceased suffered injuries; and the second with regard to the amount of compensation the appellant was entitled, and from whom, both these issues were decided under the head of issue no.1 itself, by the Tribunal.

6. Be that as it may, as regards rash and negligent driving, the Tribunal held that since neither Sumer nor Ram Phal, who were both

allegedly stated to be travelling alongwith Sant Ram, were examined, and only one Vishva Nath stepped into the witness box as PW2, who could not prove that he was present at the spot when the accident took place, negligence by respondent no.1, in causing the accident, was not proved.

It needs mention that PW2, one Vishva Nath, as per the Award, had testified that one person from Karsola had taken two labourers from the contractor, one being Sumer and the second the deceased, and the Contractor had sent them in the tractor driven by respondent no.3, before he (PW2) reached his place of work. Thereafter, some farmers had come and informed the Contractor about the accident and therefore, he, i.e. PW2, had reached the place of the accident and found the deceased lying on the road.

7. The Tribunal dismissed the claim petition, holding that neither was the negligence of respondent no.1 proved, nor did the appellant have any locus to file the claim petition.

Hence, the present appeal.

8. Mr. Kulvir Narwal, learned counsel for the appellant, first submitted that the claim petition before the Motor Accident Claims Tribunal was filed not under Section 166, but under Section 163-A of the Motor Vehicles Act, 1988. Therefore, he submitted, that negligence on the part of any of the respondents did not have to be proved, to claim compensation in terms of Section 163-A of the Act.

To fortify his submission, Mr. Narwal relied upon a judgment of the Supreme Court in **Gujarat State Road Transport Corporation, Ahmedabad v. Ramanbhai Prabhatbhai and another (1987) 3 SCC 234.**

Mr. Narwal submitted that though the said judgment was delivered after considering the provisions of the now repealed Motor

Vehicles Act, 1939, the principle would still hold good as regards what was laid down in relation to Section 92-A of the repealed Act, which is now reflected in Section 140 and Section 163-A of the new Act. He drew attention to the following part of paragraph 10 of the judgment (SCC citation):-

XXXXXX

XXXXXX

XXXXXX

“Section 92-A of the Act provides that where the death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of the said section. The amount of compensation which is payable thereunder in respect of the death of any person is a fixed sum of fifteen thousand rupees and the amount of compensation payable under it in respect of the permanent disablement of any person is a fixed sum of seven thousand and five hundred rupees. Sub-Section (3) of Section 92-A of the Act provides that in any claim for compensation under sub-section (1) of Section 92-A, the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful Act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person. It is thus seen that to a limited extent relief has been granted under Section 92-A of the Act to the legal representatives of the victims who have died on account of motor vehicles accidents. Now they can claim Rs.15,000 without proof of any negligence on the part of the owner of the vehicle or of any other person. This part of the Act is clearly a departure from the usual common law principle that a claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming any compensation for the

death or permanent disablement caused on account of a motor vehicle accident. To that extent the substantive law of the country stands modified.”

XXXXXX

XXXXXX

XXXXXX

9. Learned counsel for the appellant then pointed to Section 163-A (2) to submit that the same provision is included in the new Act. As such, he submitted that whether or not the appellant could prove negligence on the part of respondent no.1 or respondent no.3, once it was established that the said respondents were driving the two vehicles in question which had hit each other thereby resulting in injuries to Sant Ram, due to which he died, respondents no.1 to 4, as drivers and owners of the two vehicles, became jointly and severally liable to pay compensation to the next of kin of the deceased, i.e. the present appellant.

10. Referring again to the same judgment, Mr. Narwal submitted that in order to claim compensation for the death of a person in a motor vehicle accident, his legal heirs and representatives need not prove that they were dependent upon his income. In this regard, he referred to what was held in the said judgment as follows:-

“13. We feel that the view taken by the Gujarat High Court is in consonance with the principles of justice, equity and good conscience having regard to the conditions of the Indian society. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realisation of compensation and that is provided by Sections 110-A to 110-F of the Act. These provisions are in consonance with the principles of law of torts that every injury must have a remedy. It is for the Motor Vehicles Accidents Tribunal to determine the compensation which appears to it to be just as provided in Section 110-B of

the Act and to specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by Section 110-B of the Act amongst the legal representatives for whose benefit an application may be filed under Section 110-A of the Act have to be done in accordance with well-known principles of law. We should remember that in an Indian family brothers, sisters and brothers' children and some times foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855 which as we have already held has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicles accidents. We express our approval of the decision in *Megjibhai Khimji Vira v. Chaturbhai Taljabhai* and hold that the brother of a person who dies in a motor vehicle accident is entitled to maintain a petition under Section 110-A of the Act if he is a legal representative of the deceased.”

Thus, learned counsel for the appellant submitted that the Tribunal erred on both counts, firstly, in dismissing the claim petition on account of negligence not having been proved and secondly by holding that the appellant had no locus to claim compensation, in the absence of any dependency shown on the income of the deceased.

11. On the other hand, Mr. Robin Lohan, learned counsel appearing for respondents no.3 and 4, submitted that since the negligence of respondent no.3 was not proved and, in fact, was not even alleged against respondent no.3, in the claim petition, the appellant could not, at this stage, claim compensation from the 3rd and 4th respondents. If any compensation was to be paid, then as per learned counsel for these respondents, it was

only by respondents no.1 and 2, as in any case, it was the tractor driven by respondent no.1 that had come and hit the tractor in which the deceased was travelling (driven by respondent no.3), from behind, and in fact, the deceased is stated to have been run over by the tractor driven by respondent no.1, i.e. tractor bearing registration No.HRV-2137.

He, therefore, prayed that the appeal be dismissed in view of the findings of the learned MACT, especially on the issue of negligence, as also on account of the fact that the appellant being the father of the deceased and not dependent upon his income, could not claim compensation, as has been rightly held by the Tribunal.

In the alternative, learned counsel for the 3rd and 4th respondents submitted that if at all this Court were to arrive at a finding that compensation is payable to the appellant, then it would only be payable by respondents no.1 and 2, i.e. the driver and owner respectively, of tractor bearing registration No.HRV-2137.

12. Having heard learned counsel for the parties and having perused the pleadings, as also the record of the learned Tribunal, I find that the impugned judgment/Award of the learned MACT, is wholly unsustainable.

Firstly, as regards the *locus-standi* of the appellant, Muni Ram, father of deceased Sant Ram, to claim compensation under the Motor Vehicles Act, 1988, by way of filing of a claim petition under Section 163-A of the said Act; though Section 163-A does not postulate as to who is competent to raise such a claim, Section 166(1) stipulates as follows:-

“166. Application for compensation.- (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made-

- a) by the person who has sustained the injury; or
- b) by the owner of the property; or
- c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or
- d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

- 3) xxxxxx
- 4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act.”

13. Thus, as per the statute, any application for compensation is to be made by a legal representative of the deceased and where all legal representatives have not been joined as claimants in the application, those that are so not joined are to be impleaded as respondents.

In the present case, as already observed earlier, the widow of deceased Sant Ram, i.e. Sunita, is respondent no.5 before this Court and was also a respondent before the Tribunal, though she had eventually been proceeded against *ex parte*.

14. Further, though Section 163-A has not been referred to in Section 166, it is obvious that any application for compensation, including one made under Section 140 of the Act, which deals with compensation to be made on the principle of “no fault liability”, is to be made in terms of Section 166(1) of the Act of 1988, because as can be inferred from the proviso to sub-section 2 of Section 166, even when a claim is to be made under Section 140, it is to be made in an application filed under Section 166, and if no claim is made under Section 140, then such fact is to be stated in the application (made under Section 166).

Therefore, in the absence of any other provision in the Act, by which a claim petition can be filed before a Motor Accidents Claims Tribunal, the only provision by which it can be done, is Section 166, which would then further contain a claim, either under Section 140 or Section 163-A, if the claimant chooses to avail compensation in terms of these two statutory provisions.

Still further, it is stipulated in Section 163-A as follows:

“163A.Special provisions as to payment of compensation on structured formula basis.-(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to an accident arising out of the use of a motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the

victim, as the case may be.

Explanation.-For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.”

Thus, even as per Section 163-A (i) of the Act, compensation, is payable to the legal heirs of the victim, not just to those who were dependent on him.

15. In any case, that issue need not be gone into in further detail, in view of what has been held by the hon'ble Supreme Court in **Manjuri Bera v. The Oriental Insurance Company Ltd. and another (2007) (2) RCR (Civil) 765**, the relevant part of which is reproduced herein below:-

“10. The Tribunal has a duty to make an award, determine the amount of compensation which is just and proper and specify the person or persons to whom such compensation would be paid. The latter part relates to the entitlement of compensation by a person who claims for the same.

11. According to Section 2(11) of Civil Procedure Code, “legal representative” means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on

whom the estate devolves on the death of the party so suing or sued. Almost in similar terms is the definition of legal representative under the Arbitration and Conciliation Act, 1996, i.e. under Section 2(1)(g).

12. As observed by this Court in *Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique*, (AIR 1989 Supreme Court 1589) the definition contained in Section 2(11) Civil Procedure Code is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression 'legal representative'. As observed in *Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai and Anr.*, (AIR 1987 Supreme Court 1690) a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child.

13. There are several factors which have to be noted. The liability under Section 140 of the Act does not cease because there is absence of dependency. The right to file a claim application has to be considered in the background of right to entitlement. While assessing the quantum, the multiplier system is applied because of deprivation of dependency. In other words, multiplier is a measure. There are three stages while assessing the question of entitlement. Firstly, the liability of the person who is liable and the person who is to indemnify the liability, if any. Next is the quantification and Section 166 is primarily in the nature of recovery proceedings. As noted above, liability in terms of Section 140 of the Act does not cease because of absence of dependency.

14. Section 165 of the Act also throws some light on the

controversy. The explanation includes the liability under Section 140 and 163-A.

15. Judged in that background where a legal representative who is not dependant files an application for compensation, the quantum cannot be less than the liability referable to Section 140 of the Act. Therefore, even if there is no loss of dependency the claimant if he or she is a legal representative will be entitled to compensation, the quantum of which shall be not less than the liability flowing from Section 140 of the Act. The appeal is allowed to the aforesaid extent. There will be no order as to costs. We record our appreciation for the able assistance rendered by Shri Jayant Bhushan, the learned Amicus Curiae.”

Therefore, in view of what has been held by the Apex Court, and because, as per Section 163-A itself, legal heirs are entitled to compensation, the father of a deceased would obviously have *locus* to file a claim petition before the Tribunal, seeking compensation for the unnatural death of his son, in a motor vehicle accident, from those who are liable to so compensate him.

16. Coming to whether it is respondents No.1 and 2 alone, i.e. the driver and owner of the tractor bearing registration No.HRV-2137, who are liable to pay compensation to the appellant, or whether it is respondents no.1 and 4 jointly and severally, that, is now to be determined.

Though the claim was contested by respondents no.1 and 2, as also by respondents no.3 and 4, before the Tribunal, as already noticed, before this Court respondents no.1 and 2 have chosen not to put in appearance to contest the appeal, despite service upon them, as reported by the Registry of this Court.

Countering the argument of Id. Counsel for respondents no. 3 &

4, that only the 1st two respondents are liable to compensate the appellant as it was respondent no. 1, who was negligent in driving, Mr. Narwal, learned counsel for the appellant, rightly submitted that the claim petition before the Tribunal having been filed under the provisions of Section 163-A of the Act of 1988, negligence of the drivers of any of the vehicles involved in the accident, need not be proved.

In fact, Section 163-A is, in furtherance of what is contained in Section 140 of the Act, which foists the liability to pay compensation in respect of the death or disablement of a victim, jointly and severally upon the owners of the vehicles concerned; the difference between the two provisions being that, whereas in case of a petition filed under Section 140 of the Act, the liability in case of the death of any person is limited to compensation of an amount of Rs.50,000/-, Section 163-A provides that compensation would be payable as indicated in the Second Schedule of the Act, to the legal heirs of the person who died in the motor vehicle accident.

As per Section 163-B, compensation can be claimed either under Section 140 or under Section 163-A.

17. It needs to be further emphasised that Section 163-A(2) stipulates that it need not be established that death or permanent disablement of a victim was the result of any wrongful act or neglect of the owner of the vehicle or vehicles; in other words, liability can be foisted on the owners of all the vehicles involved in the accident.

In the present case, though the tone of the claim petition filed before the Tribunal suggests that compensation was claimed primarily against the owner and driver of tractor bearing registration No.HRV-2137, i.e. respondents no.1 and 2, however, it is seen that an amendment was

made in the claim petition by adding that the owners, drivers and insurers of both the vehicles are equally liable to pay compensation to the petitioners. This is seen to be added in the claim petition at three places in paragraph no.24 thereof, in ink. However, the fact that the addition is in ink, need not be paid much heed to, in view of the fact that even in the reply filed on behalf of respondents no.3 and 4, i.e. the driver and the owner of tractor bearing registration No.HYF-3270, on which the deceased was travelling, though the entire claim petition has been admitted to be correct, in reply to paragraph no.24, it has been stated that the accident took place due to the negligence of respondent no.1 and not that of respondent no.3 and as such, respondents no.3 and 4 are not liable to pay any compensation.

In the reply to the claim petition, filed by respondents no.1 and 2, first the entire blame for the accident is sought to be foisted upon the deceased himself, and then also on to the driver and owner of tractor bearing registration No.HYF-3270 (respondents no.3 and 4), stating further that it is against respondent no.4 that the police filed a report under Section 173 of the Cr.P.C., in the criminal proceedings initiated.

18. The outcome of the above perusal of the pleadings before the Tribunal, shows that the factum of the accident had not been denied by either respondents no.1 and 2 or by respondents no.3 and 4.

Hence, once that is established, then in terms of Section 163-A of the Act, no negligence on either side needs to be proved, and the liability to pay compensation to the legal heirs of the person who died as a result of the accident, would be on the owners or insurers of both the vehicles.

In the present case, the vehicles in question both not having been insured at the time of the accident, the liability to pay compensation, in

terms of the Act, lies on respondents no.2 and 4, jointly and severally.

19. The question that now, therefore, needs determination, is the amount of compensation payable to the appellant/other legal heirs of deceased Sant Ram.

Section 163-A stipulates that compensation shall be paid as per the formula laid down in the Second Schedule to the Act of 1988.

Hence, what has to be determined is the age and income of the deceased and, thereafter, to arrive at the sum which is to be taken to be his income, from which a 1/3rd amount is to be deducted towards his personal living expenses, had he remained alive, as stipulated in the note below the table provided in the Second Schedule.

20. The age of the deceased being 22/23 years, as given in the claim petition and 22 years in the post mortem report, it was also shown to be the same in the Award of the Tribunal. Hence, accepting it to be above 22 but below 25 years, then, as per the Second Schedule, the multiplier to be applied would be 17. Though in Smt. Sarla Verma and others Vs. Delhi Transport Corporation and others, (2009 (6) SCC 121), it was noticed that the Second Schedule contains a clerical error and a separate set of multipliers relatable to the age of the deceased was laid down in the judgment, however, that was in relation to compensation payable other than under Section 163-A of the Act. Hence, as regards the multiplier to be applied, to determine compensation under Section 163-A, the multiplier stipulated in the Second Schedule would need to be followed and as such, it is held to be 17, in the present case.

21. As regards the income of the deceased, though it was claimed that the deceased earned Rs.3500/- per month by doing labour work,

however, since no evidence was led even before the Tribunal in that regard, normally this Court would remit the matter to the Tribunal, to determine in the light of the evidence led there, as to what compensation is to be paid. However, since compensation is to be determined by a mathematical formula, under Section 163-A, therefore, the best method of determining the income of the deceased would be by reference to the minimum wages notified by the Government of Haryana at the relevant period, which in this case is 01.04.1996.

Both learned counsel had agreed that, if this Court were to allow the appeal, then this would be the best method of such determination, as remanding the case back at this stage, for eventual application of a simple method of calculation, would be pointlessly time consuming.

Hence, since as per the available chart provided by the Department of Labour, Government of Haryana, to the Mediation Centre of this Court, the minimum monthly wages for an unskilled worker, between 01.01.1996 and 01.07.1996, are shown to be Rs.1417.66 paise, the same is accepted as such, thereby making the annual income of the deceased to be equal to Rs.17011.92 paise. As observed by the Supreme Court in *Smt. Sarla Verma's case* (supra), the Second Schedule contains a clerical error, which is obvious from the fact that where the income of the deceased is shown to be Rs.12,000/- per annum, after applying a multiplier of 16 the compensation to be awarded is shown as Rs.2,28,000/-; whereas upon applying a multiplier of 17 to the same income, the compensation is shown as Rs.2,16,000/-. Hence, the best method, in the opinion of this Court, would be to apply the multiplier stipulated in the Second Schedule, to the actual income assessed by the Court and thereby, arrive at a sum, from

which a 1/3rd amount is to be deducted.

Therefore, to the annual income determined, of Rs. 17011.90 paise, a multiplier of 17 is to be applied, thus bringing the sum to a total of Rs.2,89,202.64 paise. From this is to be deducted 1/3rd of the said amount, towards the personal living expenses of the deceased had he remained alive, thereby bringing the amount of compensation payable to be Rs.1,92,801.76 paise, which is rounded off to Rs.1,92,800/-.

The above calculated amount of Rs.1,92,800/- would carry a simple interest @ 6% per annum, from the date of filing of the claim petition till the date of pronouncement of this judgment, provided such compensation is deposited with the Tribunal, in terms of what is further held, within a period of four months from the date of receipt of a certified copy of this order. In case the amount is not so deposited, the interest would continue to accrue at the same rate, i.e. 6% per annum, till the date that actual payment is made.

22. Thus, having determined that the amount of compensation payable by respondents no.2 and 4, jointly and severally, is Rs.1,92,800/-, plus interest as held above, the question would then be as to whether it is payable only to the appellant, or also is apportionable to respondent no.5, Sunita, widow of the deceased.

No doubt, she was proceeded against *ex parte* before the Tribunal, not having put in appearance even after substituted service, though the efficacy of such service is rather doubtful, for the reason already noticed earlier. However, again for the reasons already given, viz. that she, even if estranged from her husband, is not shown to have been either divorced or legally separated from him, and in fact, there is no proof at all of

her even having abandoned him, she would obviously be the first beneficiary of compensation to be awarded on the death of her husband. As such, this Court is bound to try and ensure, that at least efforts are made, that she gets her due share of compensation. Whether she is now remarried or not, would be irrelevant, in view of the fact that, admittedly, at the time of filing of the claim petition, after the death of her husband, she was not remarried and was accepted even by the appellant, to be his late sons' widow and was, therefore, impleaded by him as respondent no.5.

23. Hence, the best course, in the opinion of this Court, would be to direct the appellant to furnish the correct address of respondent no.5 to the Motor Accident Claims Tribunal, Jind, which would then try and effect service upon respondent no.5 and if, despite its best efforts, such service is not effected even by substituted means (if necessary), then, after fully satisfying itself with regard to the same, the entire compensation be released to the appellant.

24. In the meantime, the appellant be released only 50% of the compensation awarded and the remaining 50% be deposited with a nationalized bank drawing maximum interest. If service is effected upon respondent no.5, then that 50%, as is to be deposited in the bank, be released to her. However, if, despite efforts to serve her, as per the satisfaction of the Tribunal, she still remains unserved, then the remaining amount be also disbursed to the appellant.

The appeal is allowed in the terms given above, with no order as to costs.

22.04.2015

dinesh

(AMOL RATTAN SINGH)
JUDGE