IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.332 of 2005 (O&M)
Date of Decision: 27.08.2015.

Sukhwinder Kaur and others ....Appellants.

VERSUS

Jaibir Singh and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Ravindra Jain, Advocate for the appellants.

Mr. G.D. Gupta, Advocate for respondent No.3.

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<u>SNEH PRASHAR, J.</u>

The appellants-claimants have filed this appeal for enhancement of the amount of compensation awarded to them by Motor Accident Claims Tribunal, Yamuna Nagar (hereinafter referred to as, "the tribunal") vide award dated 25.11.2004 in MACT case No.22 of 2003.

The facts which need reference are that on 31.01.2003 Varinder Singh (husband of claimant No.1, father of claimant No.2 and son of claimants No.3 and 4) was travelling in a car alongwith his two friends and were going from Bhopal to Indore. At about 6 a.m., when they reached near village Rafique Ganj, a truck No.MP-09D-1042 (hereinafter referred to as,

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"the offending truck") being driven rashly and negligently and in a high speed came from the opposite direction and struck into the car. As an impact of the accident, Varinder Singh and his friend Jai Kishan suffered multiple, grievous and serious injuries and died at the spot.

The appellants being legal heirs of the deceased filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, "the Act of 1988") claiming compensation for the pecuniary loss suffered on account of untimely death of Varinder Singh.

The claim petition was contested by the respondents including respondent No.3-insurer of the offending truck. Both the parties adduced evidence in support of their rival contentions. By way of award dated 25.11.2004, learned tribunal awarded a compensation of Rs.1,06,000/- to the appellants for the death of Shri Varinder Singh. The respondents (driver, owner and insurer) were held jointly and severally liable for payment of the compensation amount.

Feeling unsatisfied with the amount awarded as compensation, the appellants-claimants preferred the instant appeal.

The submissions made by Mr. Ravindra Jain, learned counsel representing the appellants-claimants and Mr. G.D. Gupta, learned counsel representing respondent No.3 insurance company have been heard.

Learned counsel for the appellants-claimants argued that the tribunal assessed the income of the deceased as Rs.3000/- per month. The deceased was drawing a pension to the tune of Rs.2200/- per month being an Ex. Serviceman. In addition to the pension, he was earning more than

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Rs.8,000/- per month from the agricultural land owned by him. The said earnings were not added while assessing the income of the deceased which was paramountly against the facts of the case. Learned counsel further argued that the tribunal also committed error by deducting the amount of Rs.1500/- being drawn as family pension by the appellants from the income of the deceased which was assessed as Rs.3000/- per month. The deduction of 1/3rd amount from the earnings on account of personal expenditure of the deceased was also not proper. The deceased was the only earning member of the family and having two small children and mother beside his wife to maintain, he used to utilize his entire earnings for the maintenance of the family members. Lastly, learned counsel contended that the amount awarded towards loss of consortium and loss of estate was also inadequate.

The contention of the claimants that the deceased was earning Rs.8000/- per month from the agricultural land was not substantiated by any substantive and reliable evidence. Admittedly, the deceased was drawing pension of Rs.2200/- per month. Considering all facts, it appears that the monthly income of the deceased as Rs.3000/- was rightly assessed by the tribunal. However, the deduction, if any, from the earnings of the deceased could be the amount he was spending on his personal requirements and there could be no deduction of the amount which the appellants-claimants were getting as family pension.

Indeed, it has been held by Apex Court in the case of ***Lal Dei & Ors. vs. Himachal Road Transport, (2007) 3 SCC (Crl.) 550*** as under:-

"It is contended by the learned counsel for the appellant

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> *that while calculating the dependency, the Motor Accident Claims Tribunal as well as the High Court committed an error in deducting the family pension amount. We find that the submission made by the counsel for the appellant is correct. The Motor Accident Claims Tribunal as well as the High Court could not have deducted the amount of family pension given to the family while calculating the dependency of the claimants. In the case of Mrs. Helen C. Rebellow and other vs. Maharastra State Road Transport Corpn. And another reported in 1998(4) RCR (Civil) 177: AIR 1998 page 3191 this Court has specifically dealt with this question and said that the family pension is earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. There is no co-relation between the two and therefore, the family pension amount paid to the family cannot be deducted while calculating the compensation awarded to the claimants. In view of this the appeal is allowed. The order of deduction of the family pension is set aside. Accordingly, the appellants would be entitled for an amount of Rs. 10,27,000/- as compensation with interest at the rate of 9% from the date of the filing of the petition."*

Since the dependents of the deceased were four in number, namely Sukhwinder- widow, Aman minor son and Mohinder Singh and Parsan Kaur – parents, the deduction towards personal expenses of the deceased from his monthly income had to be 1/4th as laid down in ***Sarla Verma vs. D.T.C. and another, 2009(3) R.C.R. (Civil) 77***.

The age of the deceased was 33 years. As per Sarla Verma's

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case supra, the multiplier of 16 should have to be applied instead of 17 by the tribunal.

Accordingly, the total compensation under the loss of dependency comes to Rs.3000/- (monthly income) x 1/4 (dependency) x 12 x 16 (multiplier) = Rs.4,32,000/-. The amount of Rs.2000/- awarded under the funeral expenses is enhanced to Rs.10,000/- whereas the amount of Rs.5000/- awarded towards loss of consortium is enhanced to Rs.1 lac. A further amount of Rs.20,000/- each is awarded to the appellants for loss of love and affection. In the above premise, the appellants-claimants are held entitled to compensation of Rs.5,62,000/- as indicated above. Accordingly, the appeal filed by the appellants-claimants is allowed. The amount of compensation awarded to the appellants shall be deposited by the insurance company alongwith interest at the rate of 7.5% per annum from the date of claim petition. The amount shall be deposited within a period of 45 days from the date of receipt of certified copy of this judgment. Out of the amount of Rs.5,62,000/-, an amount of Rs.2,62,000/- be disbursed to claimant No.1 Sukhwinder Kaur- widow, Rs.2,00,000/- shall be deposited in the name of claimant No.2 in some beneficial scheme of fixed deposit with a nationalized bank and shall be paid to her only on her attaining the age of majority under the orders of Tribunal and Rs.50,000/- each be disbursed to claimants No.3 and 4 Mohinder Singh and Parsan Kaur- parents of the deceased.

(SNEH PRASHAR)
JUDGE

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