

**Cross Objections Nos.66-CII of 2011
in/ and FAO No.6164 of 2011 (O&M)
and other connected cases**

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

**Cross Objections Nos.66-CII of 2011
in/ and FAO No.6164 of 2011 (O&M)
Date of decision: 24.04.2015**

New India Assurance Company Limited

..... Appellant

versus

Pankaj Kumar and others

.....Respondents

**Cross Objections Nos.67-CII of 2011
in/ and FAO No.6165 of 2011 (O&M)**

New India Assurance Company Limited

..... Appellant

versus

Pankaj Kumar and others

.....Respondents

**Cross Objections Nos.68-CII of 2011
in/ and FAO No.6166 of 2011 (O&M)**

New India Assurance Company Limited

..... Appellant

versus

Latika and others

.....Respondents

**Cross Objections Nos.69-CII of 2011
in/ and FAO No.6167 of 2011 (O&M)**

New India Assurance Company Limited

..... Appellant

versus

Rattan Lal and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldeep Singh

Present: Mr.Rajneesh Malhotra, Advocate for the appellant
Mr.P.K.Ganga, Advocate for the
cross-objectors/respondents

- 1. Whether Reporters of Local Newspapers 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?*

Kuldip Singh, J.

By this single order, I shall dispose of four FAOs bearing Nos.6164, 6165, 6166 and 6167 of 2011, filed by the New India Assurance Company Limited against the award dated 20.7.2011, passed by the Motor Accident Claims Tribunal, Sirsa (in short, 'the Tribunal'). This order will also dispose of the cross-objections bearing Cross Objections Nos.66-CII of 2011, 67-CII of 2011, 68-CII of 2011 and 69-CII of 2011, filed by the claimants in all the aforementioned FAOs, seeking enhancement of compensation.

Facts of the case are that on 18.8.2009 at about 2.00 a.m., Rupali alias Rupam and Smt.Urmila Devi (both now deceased), along with Mannu, Pankaj and Latika (all injured), were coming to Sirsa in their Santro Car bearing registration No.HR-24G-1600 from Salasar (Rajasthan) via Rajgarh, after performing some religious ceremonies. Pankaj Kumar was driving the Santro car. When the car reached near Civil Hospital, Siwani, an ass came in front of the Santro car. When Pankaj Kumar tried to save the said Ass, the Santro car turned towards left side and struck against a parked truck Trailer bearing registration No.RJ-07GA-2003. The said truck was

parked on the wrong side without giving any indication of parking lights. Due to the accident, all the occupants received injuries. Urmila Devi died in Civil Hospital, Sirsa on the same day, whereas Rupali alias Rupam Devi died on the next day. It is further stated that to save respondent No.1 driver of the truck trailer, the police of police station Sirsa recorded the statement of Latika which was never read over to her and on the basis of same, DDR No.41 dated 19.8.2009 was recorded.

Before the Tribunal, MACT Case No.14 of 2010 was filed by Pankaj Kumar and his minor daughter on account of death of Rupali alias Rupam Devi. MACT Case No.15 of 2010 was filed by Pankaj Kumar on account of injuries received by him in the accident. MACT Case No.16 of 2010 was filed by Latika on account of injuries and permanent disability. MACT Case No.17 of 2010 was filed by Rattan Lal, Pankaj Kumar and Latika on account of death of Smt.Urmila Devi wife of Rattan Lal and mother of Pankaj Kumar and Latika.

It was stated that the deceased Rupali @ Rupam Devi was 25 years of age. She was household lady.

Regarding Pankaj Kumar, it was stated that he was 28 years and doing the work of mobile repair and earning Rs.3200/- per month. He had spent Rs.4 lac on his medical expenses. He claimed Rs.10 lac as compensation.

Latika claimed that she was 24 years of age and pursuing MBA course and also doing the tuition work. Rs.3 lac were spent on

her treatment. She has claimed compensation of Rs.8 lac.

Legal heirs of Urmila Devi in MACT Case No.17 of 2010, claimed that Smt.Urmila Devi was household lady. Her income had assessed at Rs.3,000/- per month. They claimed Rs.10 lac as compensation.

The Tribunal, after giving opportunity of hearing to both the parties and recording the evidence, awarded Rs.6,51,479/- in MACT Case No.14 of 2010 regarding death of Rupali @ Rupam Devi. In MACT Case No.15 of 2010, regarding injuries suffered by Pankaj Kumar, compensation of Rs.91,865/- was awarded. In MACT Case No.16 of 2010, regarding injuries received by Latika, award of Rs.42,739/- was passed. In MACT Case No.17 of 2010, regarding death of Urmila Devi, award of Rs.5,50,000/- was passed along with interest @ 9% p.a. From the date of the claim petition till realisation.

The Insurance Company has come up in appeals challenging the quantum of compensation awarded to the claimants as well as pleading that on account of injuries received by Pankaj Kumar and Latika that they are not entitled to any compensation under Section 163 A of the Motor Vehicles Act, 1988 since there was no permanent disability.

On the other hand, the claimants have also filed cross-objections, seeking enhancement of compensation.

I have heard learned counsel for the parties and have also carefully gone through the file.

Undisputedly, claim petitions were filed under Section 163-A of the Motor Vehicles Act, 1988 (in short, 'the Act). 163-A of the Motor Vehicles Act, 1988 provides as under:-

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 accident arising out of the use of 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.

It shows that the compensation under the said Section can only be awarded on account of death or permanent disability. Therefore, it was required to be proved that Pankaj Kumar and Latika had suffered some permanent disability to avail the benefit of Section

163-A of the Act.

The scrutiny of original file as well as impugned award shows that the Tribunal has noticed the fracture on the body of Pankaj Kumar. It is stated that he has received fracture shaft of humerus Rt. Fracture Moteggia, fracture dislocation RT side with fracture ulnar shaft and 5th Metatarsal Lt hand and mandible. The medical bills were produced. Similarly, in the case of Latika, fracture of dorselspine D#8 was found and the medical bills were produced. However, neither in the case of Pankaj Kumar nor in the case of Latika, any evidence was led to show that they had suffered any permanent disability. Once, there is no permanent disability, no compensation under Section 163-A of the Act could be claimed. Therefore, claimants Pankaj Kumar and Latika could not get any compensation under Section 163-A of the Act. Consequently, FAO Nos.6165 and 6166 of 2011 are allowed and the award passed in MACT Case No.15 of 2010 and MACT Case No.16 of 2010 is set aside. The cross-objections of the claimants bearing Cross Objections Nos.67-CII of 2011 and 68-CII of 2011 are also dismissed.

Now coming to the claim case regarding death of Rupali @ Rupam Devi, learned counsel for the Insurance Company has not disputed the notional income of Rs.3,000/- and 25 years age of the deceased. It has been argued that 1/3rd deduction has not been made as per second schedule and that the funeral expenses and medical bills have been allowed in excess of the limits prescribed under the second schedule. The Tribunal awarded the following

amounts:-

- (a) Funeral expenses Rs.10,000/-
- (b) Medical expenses Rs.29,429/-

After going through the award, I find that in this case, though the notional income was rightly assessed, but in case of age of 25, multiplier of 18 was to be applied in place of multiplier of 17. The Tribunal also erred in not deducting the 1/3rd expenses towards the personal expenses as provided under the second schedule of Section 163-A of the Act. After deducting 1/3rd, the notional income will be reduced to Rs.2000/- and the amount of compensation will come to Rs.4,32,000/- (2000x12x18). As per second schedule, Rs.2000/- on account of funeral and last rites, Rs.5000/- for loss of consortium to the husband, Rs.2500/- for loss of estate and Rs.15000/- for medical expenses are allowed. Total amount of compensation comes to Rs.4,56,500/-. The claimants are not entitled to any enhancement. Therefore, amount of compensation is reduced from Rs.6,51,479/- to Rs.4,56,500/-. The remaining part of the award qua compensation regarding death of Rupali @ Rupam Devi is kept intact.

Similarly, in case of death of Urmila Devi, Rs.3000/- taken as notional income, out of which 1/3rd deducted as personal expenses as per second schedule of Section 163-A of the Act. The deceased was 45 years of age and in this case, multiplier of 15 is to be applied. The amount of compensation comes to Rs.3,60,000/- (2000x12x15). As per second schedule, Rs.2000/- on account of

funeral and last rites, Rs.5000/- for loss of consortium to the husband, Rs.2500/- for loss of estate are allowed. Total amount of compensation comes to Rs.3,69,500/-. Consequently, award passed in MACT Case No.17 of 2010 is also modified and compensation is reduced from Rs.5,50,000/- to Rs.3,69,500/-. The remaining part of the award qua compensation regarding death of Urmila Devi is kept intact. The cross-objections filed by the claimants for increase of compensation on account of deaths of Rupali @ Rupam Devi and Urmila Devi are dismissed.

In view of the foregoing discussions, FAO Nos. 6165 and 6166 of 2011 are allowed and FAO Nos.6164 and 6167 of 2011 are partly allowed as indicated above, whereas Cross Objections Nos.66-CII of 2011, 67-CII of 2011,68-CII of 2011 and 69-CII of 2011, filed by the claimants in all the aforementioned FAOs are dismissed.

24.04.2015
gk

(Kuldip Singh)
Judge