**IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH**

**FAO No.2367 of 2013(O&M)**
**Date of Decision: 25.05.2015**

Kalawati and another

..... APPELLANTS

*VERSUS*

Jamil Mohd. and others

..... RESPONDENTS

**FAO No.3399 of 2013(O&M)**

Maya Devi and others

..... APPELLANTS

*VERSUS*

Mehar Deen and others

..... RESPONDENTS

**FAO No.3597 of 2013(O&M)**

Dinesh Kumar

..... APPELLANT

*VERSUS*

Jamil Mohd. and others

..... RESPONDENTS

PRESENT: - Mr. J.K. Chauhan, Advocate
for the appellants. (FAO No.2367 of 2013)

Mr.Randeep Singh,Advocate
for the appellants. (FAO No.3399 of 2013)

Mr.Chander Shekher, Advocate
for the appellant. (FAO No.3597 of 2013)

Mr. K.K. Chaudhary, Advocate
for respondents No.1 and 2.

Ms. Rohini Bedi, Advocate for
Mr. Vishal Goel, Advocate
for respondent No.3.

Ms. Vandana Malhotra, Advocate
for respondent No.6.

**CORAM:** **HON'BLE MR. JUSTICE SHEKHER DHAWAN**

1) Whether Reporters of the 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?

**SHEKHER DHAWAN, J.**

This order will dispose off above detailed three appeals by this single judgment, having arisen out of the same award dated 01.02.2013 passed by Motor Accident Claims Tribunal, Panchkula (hereinafter referred to as 'The Tribunal').

**FAO No.2367 of 2013 (O&M) against MACT Case No.88**

The relevant facts for the purpose of decision of the appeals that on 24.11.2009, the claimants along with

Gaurav Kumar, Salesh Kumar and Mahender Singh (since deceased) were travelling in the three-wheeler bearing registration No.HR-68-9133, which was being driven by respondent-Subhash Chand in a rash and negligent manner. The said three-wheeler struck against Mahindra Pickup bearing registration No.HR-68-9788, which was being driven by respondent-Jamil Mohammed in a rash and negligent manner. As a result of this accident, all the passengers travelling in the three-wheeler suffered injuries. The matter was reported to the police.

The respondents contested the claim petition. Respondents Jamil Mohd. and Mehar Deen (driver and owner of Mahindra Pickup) took the plea that the accident had taken place because of rash and negligent driving of Subhash Chand, who was driving three wheeler involved in the accident and false case was registered against them.

The respondent-Insurance Company took the plea that Mahindra Pickup bearing registration No.HR-68-9788 was being driven in violation of terms and conditions of insurance policy and Jamil Mohd. was not holding valid driving license. Respondent Subhash Chand and Smt. Saroj Bala (driver and owner of three wheeler No.HR-68-9133) contested the claim petition on the ground that the accident took place because of rash and negligent driving of Jamil Mohd. while driving Mahindra Pickup vehicle and false case was registered against Subhash. They are not liable to make any payment. Respondent Cholamandalm, Insurance Company (insurer of three wheeler) took the plea that Subhash Chand was not holding valid driving license. It was denied that insurer and deceased were travelling in the three wheeler and prayed that the claim petition be dismissed.

On these facts, 'The Tribunal' accepted the claim petition thereby awarding compensation to the claimants.

Being dis-satisfied with the amount of compensation awarded to the appellants, the present appeals were filed.

Mr. J.K. Chauhan, learned counsel for the appellants took the plea that 'The Tribunal' has not awarded 'just compensation' though it had come in evidence that Gaurav Kumar son of the complainant died in this accident, who was of the age of 22 years. He was working as mason. His income has taken to be ₹4,000/- per month whereas it should have been as ₹6,000/- per month. 'The Tribunal' has not taken into consideration the enhanced future earnings as claimants in this case are poor persons, deduction of 50% on account of self dependency was not to be made.

While arguing on this point, Ms.Vandana Malhotra, learned counsel for respondent No.6 took the plea that the claim petition was decided keeping in view the fact that the claimants are parents of the deceased. There was no proof of income of the deceased on the date of accident. 50% taken on account of self dependency as per law laid down by Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**, 2009(3) RCR 77. Even multiplier applied by 'The Tribunal' is on the higher side. So, the appeal is without any merit and the same be dismissed.

Having considered the rival contentions raised by learned counsel for the parties, this Court is of the considered view that Gaurav Kumar since deceased was student of 10+2 at the time of his death. He was of the age of 19 years as per post mortem report Ex.P-84. 'The Tribunal' has rightly returned the findings that there were two claimants i.e. Smt. Suman Rani mother of deceased and Krishan Lal father of the deceased. However, Krishan Lal cannot be considered as dependent as he must have been earning something and he cannot be considered to be dependent upon his earnings. Notional income of deceased was rightly taken to be ₹15,000/- per annum as the accident had taken place in November, 2009 and at that time Gaurav Kumar was not having independent source of income as Gaurav Kumar was student only. The multiplier was applied keeping in view the age of the parents. As per law laid down by Hon'ble Supreme Court in case of **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**(supra), 50% was rightly deducted on account of self dependency. The total compensation was rightly taken to be ₹1,35,000/-. However, 'The Tribunal' has not awarded any amount on account of enhanced future earnings though Gaurav Kumar was young boy of 10+2 student and with the passage of time, his income was bound to grow. As per law laid down by Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another (supra)**, 50% is to be added on account of enhanced future earnings. Apart from that the claimants entitled to receive a sum of ₹25,000/- on account of funeral expenses and compensation on account of love and affection for mother.

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|---|---|---|
| 1 | Total compensation | ₹1,35,000/- |
| 2 | Increase after making of addition of 50% on account of enhanced future earnings (₹1,35,000/-+₹67,500/-) | ₹2,02,500/- |
| 5 | Funeral Expenses | ₹25,000/- |
| 6 | Loss of consortium | ₹50,000/- |

| | | |
|---|---|---|
| 7 | Total<br>Less already awarded | ₹2,77,500/-<br>₹1,45,000/- |
| 8 | Enhanced compensation | ₹1,32,500/- |

The enhanced compensation shall be payable from the date of claim petition. The enhanced amount shall be payable within 45 days from today failing which the appellants shall also be entitled to receive interest @ 7.5% per annum from the date of claim petition till actual payment.

However, the remaining conditions regarding payment and liability to pay the amount of compensation by the Insurance Company shall remain unaltered.

The appeal is accordingly partly allowed.

**FAO No.3399 of 2013(O&M) against MACT Case No.89**

At the time of arguments, Mr. Randeep Singh, learned counsel for the appellants took the plea that 'The Tribunal' has not awarded 'just compensation' because income of Mahender Singh (since deceased) has not been taken correctly. The said Mahender Singh was hale and hearty and was doing agriculture and animal husbandry work and he used to sell milk of ₹10,000/- per month in a cooperative diary in his village. The deceased was earning ₹15,000/- per month from his occupation. For that purpose, appellant got examined Faquir Chand, Secretary from Ropar District Cooperative Milk Producers Union Limited, Village

Bijanpur, who appeared as PW-12 and made statement on the basis of the record. 'The Tribunal' had just taken the income of the deceased to be ₹7,000/- per month. As per copy of jamabandi for the year 2007-08 Ex.PX, he was owning 03 acres of agriculture land. 'The Tribunal' has also fell in error while making deduction of 1/4$^{th}$ on account of self dependency whereas actual dependency was not more that 1/10$^{th}$ of the salary and that should have been taken as 1/10$^{th}$ instead of 1/4$^{th}$. 'The Tribunal' has not awarded any amount on account of loss of enhanced future earnings. Minimum amount on account of funeral expenses and consortium was not awarded and the amount of compensation be suitably enhanced.

While arguing on this point, Ms. Vandana Malhotra, learned counsel for the respondent-Insurance Company took the plea that income of deceased was not proved in any way and 'The Tribunal' has taken agriculture income correctly rather the same is on the higher side. Mahender Singh was not having any fixed income so there is no question of keeping in view the enhanced future earnings and that too at the age of 50.

Having considered the rival contentions, this Court is of the considered view that there was no documentary evidence to establish the income of the deceased. However, keeping in view jamabandi Ex.PX and oral evidence available on file, the Tribunal has rightly taken the income of the deceased to be ₹7,000/- per month. 'The Tribunal' has rightly appreciated the oral evidence. During August, 2009, the claimant was paid about ₹2,000/- only and in September, 2009, he was paid ₹6500/- and 'The Tribunal' observed that Mahender Singh might have been doing the work of collecting milk from different people and supplying the same to Ropar District Cooperative Milk Producers Union Limited, Village Bijanpur. As such, the income has been rightly taken to be ₹7,000/- per month. 1/4$^{th}$ has been rightly deducted on account of self dependency as there were four claimants. Keeping in view the number of claimants as per law laid down by Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**, 2009(3) RCR 77, the multiplier has also been rightly applied by 'The Tribunal' as Mahender Singh was of the age of 50 years. Nothing was to be added on account of enhanced future earnings as per law laid down by Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another** (supra). However, 'The Tribunal' has not awarded adequate amount on account of conventional heads i.e. funeral expenses, loss of consortium and love and affection. The amount on account of funeral expenses enhanced from ₹5,000/- to ₹25,000/- and on account of loss of consortium from ₹10,000/- to ₹1,00,000/- (as one of the claimants is widow of the deceased) and sum of ₹1,00,000/- on account of love and affection to the children of the deceased, who are claimants in this case. That way, the enhanced compensation comes to ₹2,10,000/-.

The enhanced compensation shall be payable from the date of claim petition. The enhanced amount shall be payable within 45 days from today failing which the appellants shall also be entitled to receive interest @ 7.5% per annum from the date of claim petition till actual payment.

However, the remaining conditions regarding payment and liability to pay the amount of compensation by the Insurance Company shall remain unaltered.

The appeal is accordingly partly allowed.

**FAO No.3597 of 2013(O&M) against MACT Case No.83**

Mr. Chander Shekher, learned counsel for the appellant took the plea that 'The Tribunal' has not awarded 'just compensation' although the claimant was of the age of 30 years and skilled worker. He had suffered 20% disability. He remained as indoor patient and remained on bed for three months. Nothing has been awarded on account of loss of earnings for the period when he remained on bed and loss of future earnings and pain and suffering. His wife had to leave the job because of this accident. So, the compensation be enhanced suitably.

While arguing on this point, Ms. Vandana Malhotra, learned counsel for the Insurance Company took the plea that there is nothing available on the file by way of evidence that wife of the deceased had to leave job because of this accident. The disability was 20% qua lower limb only. The medical expenses have already been reimbursed to the appellant. So, the appeal is without any merit and the same be dismissed.

Having considered the rival contentions raised by learned counsel for the parties, this Court is of the view that the Tribunal recorded the finding on the basis of discharge and follow up card Ex.P-1 issued by PGI, Chandigarh that Dinesh Kumar had to remain as indoor patient from 24.11.2009 till 02.012.2009. He had suffered 20% disability as per disability certificate Ex.P-83 proved on the basis of statement of PW-4 Dr. Umesh Modi but it was made clear that said disability was qua lower limb only and not whole body. It had also come in the statement of PW-6 Narinder Kumar, H.R. Incharge, Jai Parwati Forge Limited, Bhagwanpur where claimant Dinesh Kumar was working and he was paid the salary for the leave period. The medical expenses incurred by the appellant has already been reimbursed by 'The Tribunal'. However, the appellant has not been adequately compensated on account of pain and suffering, loss of enjoyment of life, loss of earning for the period when he remained on bed and loss of future earnings because of 20% disability and the appellant has certainly entitled to seek enhancement under those heads. Lump sum amount of ₹ 01 lac is enhanced on account of pain and suffering and loss of love and affection.

The enhanced compensation shall be payable from the date of claim petition. The enhanced amount shall be payable within 45 days from today failing which the appellants shall also be entitled to receive interest @ 7.5% per annum from the date of claim petition till actual payment.

However, the remaining conditions regarding payment and liability to pay the amount of compensation by the Insurance Company shall remain unaltered.

The appeal is accordingly partly allowed.

**(SHEKHER DHAWAN)**
**JUDGE**

**May 25, 2015**
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