IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.5355 of 2008 (O&M).
Date of Decision: 02.03.2016.

Ruchi Kaushik and others ....Appellants.

VERSUS

Narender Kumar Sharma and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Rajesh Arora, Advocate for the appellants.

Mr. D.S. Patwalia, Sr. Advocate with
Mr. Gaurav Rana, Advocate for respondent No.2.

Ms. Madhu Sharma, Advocate for respondents No.3 and 7.

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

This appeal is directed against the award dated 17.09.2008 passed by Motor Accident Claims Tribunal, Gurgaon (for short, "the Tribunal") in MACT Petition No.63 of 2006 by virtue of which the petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short, "the Act of 1988") by the appellants-claimants was partly allowed with costs.

Precisely, the facts are that on 21.02.2006, Dinesh Kaushik (since deceased) alongwith his friends was travelling in maruti van bearing No.DL-9CJ-7379 for going to Delhi from Dadri. The van was being driven by Narender Kumar Sharma (respondent No.1). At about 1:30 a.m., when they reached in village Tilpata, Narender Kumar Sharma lost control over the vehicle and rammed into a stationary truck bearing registration No.HR-38H-8438 which was parked on its left side of the road but without the backlights or indicators on.

Dinesh Kaushik sustained serious and grievous injuries. He was taken to Kailash Hospital and Research Centre, Noida where he succumbed to the injuries on 26.02.2006. He was survived by widow and two minor children who filed a petition invoking the provisions of Section 166 of the Act of 1988 claiming compensation from driver, owner and insurer of the maruti van as well as driver, owner and insurer of the truck, who were all impleaded as respondents No.1 to 7. Learned Tribunal held drivers of both the vehicles equally liable for causing the accident. Assessing the income of the deceased and deducting 1/3rd of the income towards his personal and living expenses and further applying multiplier of '18' the dependency of the appellants was calculated as Rs.3,67,200/-. Allowing Rs.10,000/- towards funeral expenses and Rs.50,000/- as expenses incurred on treatment of the deceased a total amount of Rs.4,27,200/- was awarded as compensation to the claimants. Respondents No.1 to 3 being driver, owner and insurer of the maruti van and respondents No.4 to 7 driver, owners and insurer of the truck were held liable in the ratio of 50:50 for payment of the compensation amount.

Feeling unsatisfied, the appellants preferred the instant appeal.

The submissions made by Mr. Rajesh Arora, learned counsel for the appellants, Mr. D.S. Patwalia, learned senior counsel for respondent

No.2 and Ms. Madhu Sharma, learned counsel for respondents No.3 and 7 have been heard.

Learned counsel for the appellants-claimants argued that the deceased was employed as Head Guard with a Security Agency and was earning in high four figures. Learned Tribunal assessed his income as Rs.2528/- per month which is on extremely lower side. The deceased was just 27 years old at the time of accident but learned Tribunal failed to appreciate his future prospects. His salary would have increased manifold after he would have gained sufficient experience. The claimants have been deprived of love and affection of the deceased for their whole life but nothing has been awarded by learned Tribunal on that count. Claimant No.1 has lost a partner but no amount was awarded towards loss of consortium. The amount awarded as funeral expenses is also less.

On the other hand, learned counsel for the respondents pointed out that to prove the income of the deceased the claimants had examined PW2 B.S. Jakhar, Personal Assistant from the Security Agency where the deceased was working. He produced the relevant record and testified that the deceased was employed on contract basis. His basic pay was Rs.1099/- and total salary including all emoluments was Rs.2528/- at the time of his death. After making deductions towards EPF, ESI and LWF, his carry home salary was Rs.2338/- per month. It was on the basis of statement of PW2 that the income of the deceased was assessed by learned Tribunal.

Learned counsel for the appellants failed to controvert the arguments of learned counsel for respondents No.2, 3 and 7 as far as the salary being drawn by the deceased is concerned. Accordingly, the income of the deceased assessed by learned Tribunal needs no modification. The age of deceased Dinesh Kaushik, when he died in accident, was 27 years and the multiplier of 18 was rightly applied by the Tribunal. There were three dependents of the deceased namely his wife Ruchi Kaushik and sons Shubham and Sharwan. Deducting 1/3rd of his income towards his personal and living expenses, 2/3rd of his earnings was assessed as the amount spent for maintenance of the claimants. However, as per law laid down in ***Rajesh and others vs. Rajbir Singh and others, 2013(3) R.C.R. (Civil) 170*** there had to be an addition of 50% to the actual income of the deceased on account of future prospects, which the Tribunal failed to allow. Accordingly, the compensation payable to the appellants-claimants is calculated as under:-

1.	Monthly income (in Rupees)		Rs.2528/-
2.	Actual age of the deceased		27 years
3.	Increase in future income as per Rajesh and others' case (supra)		Rs.1264/-
4.	Annual dependency		2/3 of Rs.3792/- x 12 = Rs.30,336/-
5.	Multiplier		17
6.	Total		Rs.5,15,712/-

In addition to the amount of Rs.5,15,712/- calculated towards dependency, the amount of Rs.10,000/- awarded as funeral expenses is enhanced to Rs.25,000/-. An amount of Rs.1 lac is awarded to claimant No.1 towards loss of consortium. A further amount of Rs.1 lac is awarded to the appellants-claimants No.1 to 3 for loss of love and affection. The amount of Rs.50,000/- awarded towards expenses incurred on treatment of the deceased is adequate. In the above premise, the appellants-claimants are held entitled to compensation of Rs.7,90,712/- as indicated above.

Accordingly, the appeal filed by the appellants-claimants is partly allowed and the award dated 17.09.2008 passed by the Tribunal is modified. The enhanced compensation of Rs.3,63,512/- in addition to the amount of Rs.4,27,200/- already awarded by learned Tribunal shall be deposited by respondents No.3 and 7-insurance company within 45 days from the date of receipt of certified copy of this judgment failing which the appellants-claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum. The amount of compensation will be disbursed to the appellants-claimants in terms of shares/conditions incorporated in the award of the Tribunal.

(SNEH PRASHAR)
JUDGE

02.03.2016.
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