IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.2595 of 2012 (O&M) and
XOBJC No.90-CII of 2012 (O&M).
Date of Decision: 16.02.2016.

ICICI Lombard General Insurance Company Ltd. ....Appellant.

VERSUS

Mohinder Singh Jawandha and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. R.M. Suri, Advocate with
Mr. Neeraj Khanna, Advocate, for the appellant.

Mr. A.G.S. Dhillon, Advocate
for respondents No.1 to 3/claimants-cross objectors.

Mr. F.S. Virk, Advocate for respondents No.4 and 5.

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SNEH PRASHAR, J.

This was an appeal filed by the appellant-insurance company assailing the award dated 31.10.2011 passed by Motor Accident Claims Tribunal, Patiala (for short, "the Tribunal") in MACT Case No.152T of 17.7.08 awarding compensation to legal heirs of deceased Harvinder Singh Jawandha who lost his life in a vehicular accident that took place on 14.04.2008.

The claimants-respondents No.1 to 3 filed cross objections seeking enhancement of compensation.

The relevant facts which require elaboration are as under:-

On 14.04.2008, Harvinder Singh Jawandha, a boy aged 19 years and a student of graduation, alongwith his uncle Darshan Singh had gone to village Sullar to meet their relative Gurdev Singh Cheema. On their way back, Darshan Singh was driving motorcycle bearing registration No.PB-11AD-7822 whereas Harvinder Singh Jawandha, who was ahead of Darshan Singh, was on motorcycle No.PB-11AA-1439. At about 1:30 p.m., when Harvinder Singh was approaching Gate No.2 of Moti Mahal, Upper Mall, Patiala, one Scorpio SUV, off-white coloured bearing registration No.PB-11(T)-AZ-4579 (hereinafter referred to as "the offending Scorpio") being driven in a rash and negligent manner came from their backside and after overtaking Darshan Singh went and struck with force into the motorcycle of Harvinder Singh. Due to the impact, the motorcycle of Harvinder Singh jumped and struck against a pillar of Gate No.2 of Moti Mahal where the guards were on duty and the offending Scorpio turned turtle on the road. Harvinder Singh sustained multiple grievous and serious injuries and died at the spot. The driver of the offending Scorpio managed to run away from the spot.

A First Information Report No.80 dated 14.04.2008 was registered on the statement of Darshan Singh.

The parents and minor sister of Harvinder Singh filed a petition invoking the provisions of Section 166 of the Motor Vehicles Act, 1988 (for short, "the Act of 1988") claiming compensation to the tune of Rs.50 lacs from the driver, owner and insurer of the offending Scorpio. Their claim was founded on the assertion that the accident was caused due to rash and negligent driving of the offending Scorpio by respondent- Jaspal Singh.

The claimants pleaded that Harvinder Singh (since deceased) aged 19 years had done his schooling from Punjab Public School, Nabha and was a student of graduation at the time of accident. He had cleared "TOFEL" and "IELTS". Having deposited all dues he had got admission overseas for further studies and had also been allowed immigration on student visa by the Australian Government. He had purchased tickets from Johal Air Travel Services, Patiala and was supposed to fly on 23.04.2008. He was an intelligent boy and would have earned 10000 dollars per month and would have spared more than 5000 dollars per month for the claimants.

The petition was contested by the respondents. In the joint written statement filed by respondents No.1 and 2 the occurrence of accident as pleaded by the claimants was denied. Respondent No.3 in its written statement denied its liability by asserting that the driver of the offending Scorpio was not holding a valid and effective driving licence at the time of accident and that the insured (owner) was not holding a valid registration certificate and fitness certificate of the vehicle. A plea that the deceased himself was driving the motorcycle rashly and negligently was also raised.

On the rival contentions of the parties, issues were settled. Both the parties adduced evidence to discharge the onus of the issue on each of them. Considering the evidence available on record and the submissions made on behalf of the parties, the Tribunal partly allowed the petition and awarded compensation to the tune of Rs.25,25,000/- to the claimants holding the respondents jointly and severally liable for payment of the compensation.

Feeling aggrieved by the award passed by the Tribunal, the appellant-insurance company filed the instant appeal and claimants-cross objectors have filed cross objections seeking enhancement of the compensation amount.

The submissions made by Mr. R.M. Suri, learned counsel for the appellant, Mr. A.G.S. Dhillon, learned counsel for respondents No.1 to 3-cross objectors and Mr. F.S. Virk, learned counsel for respondents No.4 and 5 have been heard and record perused.

The main grouse of learned counsel for the appellant-insurance company is that the deceased was admittedly 19 years old and was a graduation student. He was unemployed. He had no personal or independent income and even for payment of his school fee etc. was dependent on his father. Still learned Tribunal assessed the monthly income of the deceased as Rs.30,000/- per month and deducting half on account of personal living expenses the amount of dependency was taken as Rs.15,000/- per month i.e. Rs.1,80,000/- per annum. Learned counsel urged that even if it is accepted for the sake of argument that the deceased wanted to go abroad for further studies, his plan was still in pipeline and merely based on the speculations that he would have worked in a foreign country and earned in dollars. When he was still here and was not engaged in any work, his income could not have been assessed as Rs.30,000/- per month. Relying on ***Radhakrishna***

and another vs. Gokul and others, 2014(1) RCR (Civil) 1, learned counsel contended that in the said case the age of the deceased was 19 years and he was a student of engineering college. The age of his father and mother was 45 and 42 years respectively. Considering all aspects, the Apex Court came to the conclusion that the ends of justice will be served by awarding a lump sum compensation of Rs.7 lacs to the appellants. It was also asserted by learned counsel that in case of non earning person the income for calculating compensation as per the Second Schedule to the Act of 1988 is to be taken as Rs.15,000/- per annum.

The arguments of learned counsel for the appellant were controverted by learned counsel for the claimants-cross objectors. He submitted that the deceased was a student of Punjab Public School, Nabha which is a reputed school. He was captain of the school athletics team and was member of school football and cricket team. He had represented the school in national athletics championship. He had also cleared "IELTS" examination for going abroad for studies. The Australian Government had already allowed him study visa where he had taken admission in diploma in Hospitality Management. For all the said reasons, he had a bright future and would have earned atleast 10000 dollars per month after his studies. Otherwise also, the deceased used to help his father in agriculture pursuits and used to earn Rs.50,000/- per month and that amount should have been assessed as his income by learned Tribunal. Learned counsel contended that instead of deducting half of the annual income towards personal living expenses of the deceased the deduction should be 1/3rd since the deceased was a brilliant student and was a teetotaler. He was fit, healthy, intelligent and well educated. The multiplier of '14' applied by learned Tribunal considering the age of the father is inappropriate as the multiplier should have been applied considering the age of the deceased. Also nothing was awarded towards future prospects, loss of estate and funeral expenses.

Indeed, deceased Harvinder Singh was 19 years old and was a student of Punjab Public School when he met with the accident and lost his life. To prove that the deceased was a brilliant child and had a bright future the claimants tendered in evidence his ICSF certificate according to which he had passed 12th class in 'B' grade. Ex.C9 is the passport of the deceased and as per letter Ex.C10 the Australian Government had approved student visa for him. It was alleged that he was to take flight for Hong Kong for further studies on 24.04.2008 as per the reservation ticket Ex.C13. From the said facts, it can also be inferred that he being financed by his father was to still spend lot of money on his studies before he would have become capable of earning independently.

Assessment of compensation though involves certain hypothetical considerations but nevertheless should be objective. No evidence worth in its name was produced by the claimants to prove that the deceased on having completed the course he had applied for in Australia, he would have been allowed work permit and would have earned 10000 dollars per month or on his return to India he would have become capable of earning Rs.30,000/- per month. Stretching the imagination so long would not be appropriate.

In ***__2010(4) R.C.R. (C) 917, Arvind Kumar Mishra vs. New India Assurance Co. Ltd.__*** the age of the victim was 25 years. He was a student of Bachelor of Engineering (Mechanical). He suffered grievous injuries in a roadside accident. The multiple injuries led to 70% permanent disablement. Considering the facts that he had been rendered incapacitated; the career ahead of him had been dashed forever; he was now in a physical condition which requires domestic help throughout life; and he had been deprived of pecuniary benefits which he could have reasonably acquired, the Apex Court adopted the following method for calculating adequate compensation:-

> *"On completion of Bachelor of Engineering (Mechanical) from the prestigious institute like BIT, it can be reasonably assumed that he would have got a good job. The appellant has stated in his evidence that in the campus interview he was selected by Tata as well as Reliance Industries and was offered pay package of Rs.3,50,000 per annum. Even if that is not accepted for want of any evidence in support thereof, there would not have been any difficulty for him in getting some decent job in the private sector. Had he decided to join government service and got selected, he would have been put in the pay scale for Assistant Engineer and would have at least earned Rs.60,000 per annum. Wherever he joined, he had a fair chance of some promotion and remote chance of some high position. But uncertainties of life cannot be ignored taking relevant factors into consideration. In our opinion, it is fair and reasonable to assess his future earnings at Rs.60,000 per annum taking the salary and allowances payable to an Assistant Engineer in public employment as the*

> *basis. Since he suffered 70% permanent disability, the future earnings may be discounted by 30% and, accordingly, we estimate upon the facts that the multiplicand should be Rs.42,000 per annum.*
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> *The appellant at the time of accident was about 25 years. As per the decision of this Court in Sarla Verma* v. DTC *the operative multiplier would be 18. The loss of future earnings by multiplying the multiplicand of Rs. 42,000 by a multiplier of 18 comes to Rs.7,56,000. The damages to compensate the appellant towards loss of future earnings, in our considered judgment, must be Rs.7,56,000. The Tribunal awarded him Rs.1,50,000 towards treatment including the medical expenses. The same is maintained as it is and, accordingly, the total amount of compensation to which the appellant is entitled is Rs.9,06,000."*

In the instant case, the deceased was 19 years old and was a graduation student. Even if he would have continued with his plan to go abroad for further studies, at the most it can be assumed that he would have got a good job on his return to India thereafter. Admittedly, he had no work permit for working abroad. Therefore, his earnings have to be calculated as could have been raised working in India. No doubt, the Second Schedule to the Act of 1988 provides that in case of non earning person the notional income is to be taken as Rs.15,000/- per annum but in exceptional cases there could be deviation from the structured formula provided in the Second Schedule. Applying the same yardstick as in *Arvind Kumar Mishra's* case (supra) it will be fair and reasonable to assess the future earnings of the deceased at Rs.60,000/- per annum.

Coming to the next issue of deduction towards personal and living expenses, it was held in ***Sarla Verma and others vs. Delhi Transport Corporation, 2009(3) R.C.R. (Civil) 77*** as under:-

> *"Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.*
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> *Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."*

In the case in hand, father of the deceased is aged 45 years. As pleaded by the claimants, the deceased used to help his father in agriculture pursuits which means that his father is an agriculturist and is having independent income. Claimant No.3 Jaspreet Kaur, minor sister of the deceased, was not his dependent but is the dependent of her father. As such, even if the deceased is survived by parents and a sibling, only the mother is to be considered as a dependent of the deceased and 50% of the annual income is to be deducted towards personal and living expenses of the deceased. Accordingly, the amount comes to Rs.30,000/- per annum. As per the decision of ***Munna Lal Jain and another vs. Vipin Kumar Sharma and others, 2015(2) W.L.N. (SC) 113*** the operative multiplier would be '18'. Perusal of the award shows that no amount has been awarded to the claimants towards addition of future prospects. As the age of the deceased was 19 years, claimants are entitled to increase in the income of the deceased by 50%. Accordingly, the compensation payable to the claimants is calculated as under:-

1.	Annual income (in Rupees)		Rs.60,000/-
2.	Actual age of the deceased		19 years
3.	Increase in future income		Rs.30,000/-
4.	Dependency		1/2 of Rs.90,000 = Rs.45,000/-
5.	Multiplier		18
6.	Total		Rs.8,10,000/-

In addition to the amount of Rs.8,10,000/- calculated towards dependency, the amount of Rs.5000/- awarded under the head of loss of estate and funeral expenses is enhanced to Rs.25,000/-. A further amount of Rs.1 lac is awarded to claimant No.2 towards loss of love and affection. In the above premise, the claimants are held entitled to compensation of Rs.9,35,000/- as indicated above.

Accordingly, the award dated 31.10.2011 passed by the Tribunal is modified. The appeal filed by appellant-insurance company is partly allowed and the cross objections filed by claimants Mohinder Singh and others are dismissed.

(SNEH PRASHAR)
JUDGE

16.02.2016.
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