IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.2302 of 2014.
Date of Decision: 29.02.2016.

Madhu Sharma and another ....Appellants.

VERSUS

Jagir Singh and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Mukesh Kumar Bhatnagar, Advocate for the appellants.

Ms. Madhu Sharma, Advocate for respondent No.3.

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SNEH PRASHAR, J.

This appeal for enhancement of compensation is directed against the award dated 29.08.2013 passed by Motor Accident Claims Tribunal, Amritsar (for short, "the Tribunal") in MACT Case No.13817 of 2012 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 allowed with costs.

Precisely, the facts are that on 18.03.2012 at about 1:30 p.m., Rahul Sharma (since deceased) alongwith his mother Madhu Sharma were coming back to their house on motorcycle bearing registration No.PB-02AK-7836. The motorcycle was being driven by Rahul Sharma and Madhu Sharma was the pillion rider. When they reached near Waryam Singh Hospital, a bus bearing No.PB-02N-9507, being driven by respondent No.1

Jagir Singh rashly, negligently and without blowing horn came from their backside and struck against their motorcycle. Due to the collision, both of them fell down and the bus ran over the head of Rahul Sharma who died at the spot.

A First Information Report No.55 dated 18.03.2012 under Sections 279, 304-A and 427 of the Indian Penal Code in respect of the accident was registered at Police Station "E" Division, Amritsar on the basis of statement of Madhu Sharma.

Appellants-parents of deceased Rahul Sharma filed a petition invoking the provisions of Section 166 of the Act of 1988 claiming compensation from the respondents-driver, owner and insurer of the offending bus. The petition was contested by the respondent. Learned Tribunal held respondent No.1 liable for causing the accident. Assessing the income of the deceased as Rs.1,25,000/- per annum after deducting 50% of the income towards his personal and living expenses and further applying multiplier of '13' the dependency of the appellants was calculated as Rs.16,25,000/-. Allowing Rs.5,000/- towards funeral expenses and Rs.5,000/- towards loss of estate and loss of love and affection, an amount of Rs.16,35,000/- alongwith interest at the rate of 6% per annum from the date of institution of the claim petition till realization of the award amount was awarded as compensation to the claimants. Respondents No.1 to 3 being driver, owner and insurer of the offending bus were held liable jointly and severally for payment of the compensation.

Feeling unsatisfied, the appellants preferred the instant appeal.

The submissions made by Mr. Mukesh Kumar Bhatnagar, learned counsel for the appellants and Ms. Madhu Sharma, learned counsel for respondent No.3 have been heard and record perused.

Learned counsel for the appellants-claimants argued that the deceased passed B. Tech of Engineering in Electronic & Communication in first division from Punjab Technical University and was offered job at the package of Rs.4,33,000/- per annum with 20% annual performance bonus on the gross salary, but he could not join as he died due to the injuries sustained in the accident. The appointment letter was duly proved on record but learned Tribunal discarded the same and wrongly assessed the income as Rs.2,50,000/- per annum. Also, no addition was made for computing future prospects. Learned Tribunal erred in deducting 50% of the income towards personal and living expenses of the deceased and the multiplier of '13' was also wrongly applied as the deceased was aged 23 years. Moreover, the amount of compensation awarded under the heads of funeral expenses and loss of estate and loss of love and affection is inadequate. It was further argued by learned counsel that the interest was awarded at the rate of 6% per annum whereas it should have been awarded at the rate of 12% per annum.

On the other hand, learned counsel for the respondent-insurance company argued that the multiplier of '13' was rightly applied by learned Tribunal as per the age of the parents of the deceased. She relied upon ***New India Assurance Company Ltd. vs. Smt. Shanti Pathak and others 2007(3) RCR (Civil) 593***.

The deceased was a young boy aged 23 years. He was well qualified and as per deposition of his mother PW1 Madhu Sharma, he had been offered job on a salary of Rs.4,33,000/- per year. Dealing with the issue of income of the deceased, learned Tribunal held as under:-

> *"In my considered opinion, deceased had not joined the job, but had received an offer of appointment specifying his annual package as Rs.4.33 lakh. Unless and until a person is actually doing the job in the company, any offer of emoluments cannot be final and conclusive in itself. At the most, the appointment offer letter can be referred as one of the parameters to judge the possible income of deceased Rahul Sharma. It is a matter of common prudence that fresh graduates from local Engineering colleges are being offered jobs at a annual package ranging from Rs.2.5 lakh to Rs.3.5 lakh. But offer of Rs.4.33 Lakh shown in appointment letter Ex.P6 is on the much higher side. Consequently, it is held that keeping in view the B.Tech degree obtained by Rahul Sharma in Electronic and Communication Engineering, he would have been offered a job with annual package of Rs.2.5 lakh."*

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."

Accordingly, the income of Rs.2.5 lakh assessed by learned Tribunal calls for no intervention.

Regarding applying of suitable multiplier, in ***Reshma Kumari and others vs. Madan Mohan and another 2013(2) RCR (Civil) 660***, Full Bench of Hon'ble Supreme Court has held as under:-

"33. We have already noticed the table prepared in Sarla Verma for the selection of multiplier. The table has been prepared in Sarla Verma having regard to the three decisions of this Court, namely, Susamma Thomas, Trilok Chandra and Charlie for the claims made under Section 166 of the 1988 Act. The Court said that multiplier shown in Column (4) of the table must be used having regard to the age of the deceased. Perhaps the biggest advantage by employing the table prepared in Sarla Verma is that the uniformity and consistency in selection of the multiplier can be achieved. The assessment of extent of dependency depends on examination of the unique situation of the individual case. Valuing the dependency or the multiplicand is to some extent an arithmetical exercise. The multiplicand is normally based on the net annual value of the dependency on the date of the deceased's death. Once the net annual loss (multiplicand) is assessed, taking into account the age of the deceased, such amount is to be multiplied by a 'multiplier' to arrive at the loss of dependency. In Sarla Verma, this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section

166. It has been rightly stated in Sarla Verma that claimants in case of death claim for the purposes of compensation must establish (a) age of the deceased; (b) income of the deceased; and (c) the number of dependants. To arrive at the loss of dependency, the Tribunal must consider (i) additions/ deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in Sarla Verma.

In the end, the conclusions were drawn as under:-

"In what we have discussed above, we sum up our conclusions as follows:
(i) In the applications for compensation made under Section 166 of the 1988 Act in death cases where the age of the deceased is 15 years and above, the Claims Tribunals shall select the multiplier as indicated in Column (4) of the table prepared in Sarla Verma read with para 42 of that judgment.
(ii) In cases where the age of the deceased is upto 15 years, irrespective of the Section 166 or Section 163A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in Sarla Verma should be followed.
(iii) As a result of the above, while considering the claim applications made under Section 166 in death cases where the age of the deceased is above 15 years, there is no necessity for the Claims Tribunals to seek guidance or for placing reliance on the Second Schedule in the 1988 Act.

(iv) The Claims Tribunals shall follow the steps and guidelines stated in para 19 of Sarla Verma for determination of compensation in cases of death.

(v) While making addition to income for future prospects, the Tribunals shall follow paragraph 24 of the Judgment in Sarla Verma. (vi) Insofar as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards prescribed in paragraphs 30, 31 and 32 of the judgment in Sarla Verma subject to the observations made by us in para 38 above.

(vii) The above propositions mutatis mutandis shall apply to all pending matters where above aspects are under consideration."

A similar view has been taken by Hon'ble Supreme Court in ***Amrit Bhanu Shali and others vs. National Insurance Co. Ltd. and others 2012 ACJ 2002***. In ***Munna Lal Jain and anr. vs. Vipin Kumar Sharma and others (2015) 6 SCC 347*** following Reshma Kumari's case it has been held as under:-

"The remaining question is only on multiplier. The High Court following Santosh Devi (supra), has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependants or that of the deceased, has been hanging fire for sometime; but that has been given a quietus by another three-Judge Bench decision in Reshma Kumari (supra). It was held that the multiplier is to be used with reference to the age of the deceased. One reason appears to be that there is certainty with regard to the age of the deceased but as far as that of dependants is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average, etc., is to be taken."

In the present case, the deceased was 23 years of age when he died during the accident. The Motor Vehicles Act, being a beneficial legislation, this Court relies on Munna Lal Jain's case (supra), which is subsequent to the case law cited by learned counsel for the respondent-Insurance Company in Smt. Shanti Pathak's case (supra). Taking into consideration the age of the deceased, the learned Tribunal should have applied the multiplier of '18' instead of '13'. Deducting 50% of the income of the deceased towards his personal and living expenses, 1/2 of his earnings was assessed as the amount spent for maintenance of the claimants. Apparently, no addition was made for computing future prospects of the deceased. 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.	Annual income (in Rupees)		Rs.2,50,000/-
2.	Actual age of the deceased		23 years
3.	Increase in future income as per Rajesh and others' case (supra)		Rs.1,25,000/-
4.	Dependency		1/2 of Rs.3,75,000/- = Rs.1,87,500/-
5.	Multiplier		18
6.	Total		Rs.33,75,000/-

In addition to the amount of Rs.33,75,000/- calculated towards dependency, the amount of Rs.5,000/- awarded under the funeral expenses is enhanced to Rs.25,000/- and Rs.5,000/- awarded towards loss of estate and loss of love and affection is enhanced to Rs.50,000/-. In the above premise, the appellants-claimants are held entitled to compensation of Rs.34,50,000/- as indicated above. The rate of interest allowed by learned Tribunal shall remain the same.

Accordingly, the appeal filed by the appellants-claimants is partly allowed and the award dated 29.08.2013 passed by the Tribunal is modified. The appellants-claimants are held entitled to enhanced compensation of Rs.18,15,000/- in addition to the amount of Rs.16,35,000/- awarded by the Tribunal. The enhanced amount of compensation shall be deposited by respondent No.3- 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.

(SNEH PRASHAR)
JUDGE

29.02.2016.
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