

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

FAO-5126-2013 (O&M)

Date of decision: 2.5.2016

Oriental Insurance Company Ltd.

...Appellants

Versus

Kamlesh Devi and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Eklavya K.Darshi, Advocate for the appellant

Mr.Vikrant Rana, Advocate for respondents No.1 to 3

Mr.Mohit, Advocate for

Mr.RA Sheoran, Advocate for respondents No.4 and 5

SNEH PRASHAR, J.

Challenge in the present appeal is to the award dated 23.7.2013 passed by learned Motor Accident Claims Tribunal, Bhiwani (for short 'the Tribunal') passed in MACT petition No.77 of 2012, vide which a sum of Rs.11.81,864/- was allowed to the claimant-respondents No.1 to 3 and the appellant was held liable for payment of compensation.

The submissions made by Mr.Eklavya K.Darshi, Advocate representing the appellants, Mr.Vikrant Rana, Advocate for respondents No.1 to 3 and Mr.Mohit, Advocate for respondents No.4 and 5 have been heard and record perused.

Learned counsel for the appellants submits that the deceased was a government employee and after his death, his wife is getting full salary as financial assistance, therefore, there was no loss of income. He

also submitted that no deduction in the income on account personal and living expenses of the deceased was made by learned Tribunal.

Controverting the arguments of learned counsel for the appellant- Insurance Company, learned counsel for the claimants respondents No.1 to 3 submitted that there are two marriageable daughters of the deceased, but, no amount has been awarded under the loss of love and affection to them, whereas a consolidated amount of Rs.20,000/- was allowed on account of loss of consortium, loss of estate and funeral expenses, which is on the lower side.

The deceased was working as Dairy Extension Worker in the office of Assistant Director, Murraha Bull Station Bhiwani and was getting salary of Rs.23320/- per month. He died two years prior to his retirement. As per salary certificate, his total salary was Rs.23320/- per month. In her cross examination, PW1 Kamlesh Devi stated that she is getting full salary of the deceased from the department, which will continue till the date of retirement of the deceased i.e. upto 31.12.2014. Thereafter, the widow of the deceased will get only family pension, which will not be equivalent to the pension i.e. half of the salary, which the deceased would have earned as pension. Perusal of the award reveals that no deduction towards personal and living expenses of the deceased was made by learned Tribunal. There being three dependents namely widow and two daughters, following the law laid down in **Sarla Verma and others vs. DTC and another 2009 ACJ 1298**, deduction of 1/3rd towards personal and living expenses had to be made. The multiplier of 9 has rightly been applied by learned Tribunal.

Further on account of loss of consortium, loss of estate and funeral expenses a consolidated amount of Rs.20,000/- was allowed. Needless to say that the above heads of compensation are distinct and different and cannot be clubbed together. Moreover, the claimants are the widow and her two daughters of marriageable age. No amount was allowed to the daughters on account of loss of love and affection. Compensation under the said conventional heads is awarded as under against which the amount of Rs.20,000/- already awarded will be adjusted:-

1	For loss of consortium to the widow	Rs.1,00,000/-
2	For loss of love, care and guidance to both the daughters in equal shares	Rs.1,00,000/-
3	Loss of Estate	Rs.50,000/-
3	Funeral and last rite expenses	Rs.25,000/-

Accordingly, the total compensation comes to Rs.11,14,520/- (11660/- (monthly pension) x 12 – 1/3rd (deduction towards personal and living expenses of the deceased) x 9 (multiplier) + 2,75,000 (the amount awarded under the conventional heads). The balance amount i.e. Rs.11,81,864 -11,64,520 = 67344/-, if already paid, shall not be recovered from the claimants, because there are two marriageable daughters and the deceased was serving in the Indian Army.

In view of the above, the present appeal is partly allowed.

2.5.2016
gsv

(SNEH PRASHAR)
JUDGE