IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.4691 of 2014.
Date of Decision: 17.03.2016.

Raj Kumar ....Appellant.

VERSUS

Arjun Kumar and others ....Respondents.

***

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Dinesh Nagar, Advocate for the appellant.

Mr. Sandeep Suri, Advocate for respondent No.4.

***

SNEH PRASHAR, J.

Appellant-Raj Kumar filed this appeal seeking enhancement of compensation awarded to him vide the award dated 04.02.2014 passed by learned Motor Accident Claims Tribunal, Chandigarh (for short, "the Tribunal") in MACT Petition No.691 of 04.03.2011/03.02.2014.

A petition invoking the provisions of Section 163-A of the Motor Vehicles Act, 1988 (for short, "the Act of 1988") was filed by appellant-Raj Kumar claiming compensation on account of death of his father Piare Lal in a motor accident caused by Arjun Kumar-respondent No.1 while driving Truck/Tempo bearing registration No.HP-67-5657 (hereinafter referred to as the "offending Truck") rashly, negligently and in a high speed. The driver, owners and insurer were impleaded as respondents No.1 to 4. They contested the petition raising various objections but after trial learned Tribunal allowed the petition with costs of Rs.2000/- and awarded a sum of Rs.1,27,000/- as compensation to the claimant-appellant.

Feeling unsatisfied with the award, the appellant preferred the instant appeal.

The submissions made by Mr. Dinesh Nagar, learned counsel for the appellant and Sandeep Suri, learned counsel for respondent No.4 have been heard and record perused.

The only grievance of the appellant is that as per the note given at the bottom of the Second Schedule the amount of compensation so arrived at in case of a fatal accident claims under Section 163-A of the Act of 1988 is to be reduced by 1/3rd in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. Deviating from the said provision, learned Tribunal wrongly deducted 1/2 of the amount towards personal and living expenses of the deceased.

On the other hand, learned counsel for respondent No.4 argued that when the award is to be modified in the light of provisions of the Second Schedule the error committed by learned Tribunal in allowing Rs.25,000/- towards funeral expenses should also be corrected.

Section 163-A of the Act of 1988 is a special provision for payment of compensation on structured formula basis. It postulates that notwithstanding anything contained in the Act of 1988 or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Since the compensation was claimed under Section 163-A of the Act of 1988 the deduction towards personal and living expenses of the deceased as per the note given under the Second Schedule had to be 1/3rd and not 1/2. Learned Tribunal assessed the income of the deceased as Rs.3400/- per month. The age of the deceased was above 60 years, therefore, the multiplier of '5' applied by learned Tribunal is appropriate. Accordingly, the amount comes to Rs.2,04,000/-.

Deducting 1/3rd in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive, the amount comes to Rs.1,36,000/-. In addition to the above, the claimant will be entitled to Rs.2000/- towards funeral expenses and Rs.2500/- as loss of estate and not Rs.25,000/- as awarded by learned Tribunal.

Last but not the least, learned Tribunal allowed interest at the rate of 6% per annum which appears to be on the lower side and accordingly, the claimant shall be entitled to interest at the rate of 7.5% per annum from the date of petition till realization of the amount already paid by the insurance company.

Accordingly, the appeal filed by the appellant-claimant is partly allowed and the award dated 04.02.2014 passed by learned Tribunal is modified. The enhanced amount of compensation i.e. Rs.13,500/- shall be deposited by respondent No.4- insurance company within 45 days from the date of receipt of certified copy of this judgment failing which the appellant-claimant shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum.

(SNEH PRASHAR)
JUDGE

17.03.2016.
jitender