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

**FAO No.430 of 2016 (O&M)
Date of decision:25.01.2016**

The Oriental Insurance Company Ltd. ... Appellant

Vs.

Smt. Rajni and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. S.S.Sidhu, Advocate
for the appellant.

Mr. J.S.Saneta, Advocate
for the caveator/respondents.

<u>AMIT RAWAL J. (Oral)</u>

The appellant – Oriental Insurance Company Limited is aggrieved of the findings rendered by the Motor Accident Claims Tribunal (for short 'MACT') in MACT Case No.113 of 2012 titled as Smt. Rajni and others vs. Satish Kumar and others, whereby, on account of death of late Des Raj aged 34 years, the compensation to the tune of ₹29,17,032/-, has been awarded.

Mr. S.S.Sidhu, learned counsel for the appellant submits that MACT has committed illegality and perversity in awarding 50% future prospects by taking the income of deceased ₹12463/- + ₹6331=18694/- per month. He further submits that as per site plan produced on record, it was a case of contributory negligence, therefore, Insurance Company ought not to have burdened with entire amount of compensation, in essence, could not have indemnified the Insurer of with the entire liability. In the absence of determination of contributory negligence, the Award is not sustainable in the eyes of law, thus, there is illegality and perversity in the findings rendered by MACT.

Notice of motion.

On asking of the Court Mr. J.S.Saneta, Advocate accepts notice on behalf of the caveator/respondents and submits that an FIR has been registered against the driver of the car insured with the Insurance Company and not against Des Raj (since deceased), therefore, it is not a case of contributory negligence. Moreover, the future prospects can always be looked into by the MACT, thus, there is no illegality and perversity in the Award.

I have heard learned counsel for the parties and appraised the paper book.

The learned MACT while assessing compensation has drawn the following Heads of Claims which read thus:-

Sr. No.	***Heads of Claim***	
	Income	₹12463/- per month
	50% to be added as future prospects	₹12463+ ₹6331 = 18694/-
	¼ deducted as personal expenses of the deceased	₹18694 - ₹4673 =14021/-
	Compensation after applying multiplier of 16.	₹14021x12x16= ₹26,92,032/-

Sr. No.	*Heads of Claim*	
	Loss of consortium	₹1,00,000/-
	Loss of love & affection, care and guidance for minor children	₹ 1,00,000/-
	Transportation and funeral expenses	₹25,000/-
	Total compensation awarded.	₹29,17,032/-

Future prospects have been taken into consideration as income of deceased Des Raj was assessed as ₹12,463/-. Future prospects was assessed only 50% since deceased was 34 years old, therefore, no fault can be found by applying multiplier of 16. Since FIR has been registered against the driver of the car which is insured with the Insurance Company, thus, it is not a case of contributory negligence. Insurance Company has failed to discharge the onus vis-a-vis contributory negligence by leading any evidence in this regard.

In my view, no error of law arises in upsetting the well reasoned Award. The same is perfect and justified.

There is no merit in the aforementioned appeal.

The appeal is, accordingly, dismissed.

(AMIT RAWAL)
JUDGE

January 25, 2016
savita