IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.9511 of 2014 and
XOBJC No.95-CII of 2015 (O&M).
Date of Decision: 18.03.2016.

Shri Ram General Insurance Company Limited ....Appellant.

VERSUS

Sheela Devi and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Arun Sharma, Advocate for
Mr. T.K. Joshi, Advocate for the appellant.

Mr. Dheeraj Narula, Advocate for respondent No.1-cross objector.

Mr. Sandeep Kotla, Advocate for respondents No.2 and 3.

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<u>SNEH PRASHAR, J.</u>

<u>CM-11943-44-CII-2015 in/and</u>
<u>XOBJ-95-CII-2015</u>

There being delay of 56 days in filing the cross objections, an application under Section 5 of the Limitation Act for condonation of delay was filed by cross objector-respondent No.1.

Considering the averments made in the application, the delay is condoned.

The cross objections are taken on record, subject to all just exceptions.

C.Ms. stand disposed of.

Main Case

The present appeal was filed by the appellant-insurance company assailing the award dated 01.09.2014 passed by learned Motor Accident Claims Tribunal, Sirsa (for short, "the Tribunal") in MACT Case No.232 of 2013 awarding compensation to claimant-Sheela Devi (respondent No.1) on account of death of her son Hemant Kumar alias Hemu who lost his life in a vehicular accident.

Respondent No.1-Shella Devi also filed cross objections seeking enhancement of compensation on the ground that she had not been adequately compensated.

Precisely, the facts are that on 03.06.2011 Hemant Kumar alias Hemu (since deceased) and his brother Tarsem Kumar were going from village Jalalana to Sirsa to purchase goods for their shop. At about 11:00 a.m., after they reached village Chormar they went to the bus stop of the said village. Hemant Kumar was going ahead of Tarsem Singh. In the meantime, a Tata ACE Temporary No.HR-99HK-(Temp) 8950 (hereinafter referred to as "the offending vehicle") which was being driven rashly, negligently and in a high speed by respondent Mukesh alias Monu, came from the side of Sirsa and hit Hemant Kumar. Due to the impact, Hemant Kumar fell down, sustained serious injuries and died at the spot.

A First Information Report No.49 dated 03.06.2011 under Sections 279 and 304-A of the Indian Penal Code in respect of the accident was registered against respondent-Mukesh Kumar alias Monu at Police Station Odhan.

Claimant-Sheela Devi (mother of deceased Hemant Kumar) filed a petition invoking the provisions of Section 166 of the Motor Vehicles Act, 1988 (for short, "the Act of 1988") against driver, owner and insurer of the offending vehicle claiming compensation on account of death of her son. The petition was contested by the respondents. On the basis of the pleadings of the parties, issues were settled. Both the parties adduced evidence to discharge the onus of the issues on them. Considering the evidence available on record and the submissions made on behalf of the parties, the learned Tribunal partly accepted the petition and awarded compensation to the tune of Rs.7,45,000/- to the claimant alongwith interest at the rate of 7.5% per annum from the date of filing the petition till realization. Respondents No.1 to 3 were held jointly and severally liable for payment of the said compensation amount.

Feeling aggrieved by the award passed by the Tribunal, the appellant-insurance company filed the instant appeal and respondent No.1-claimant filed cross objections seeking enhancement of the compensation amount.

The submissions made by learned counsel for the parties have been heard and record perused.

Learned counsel for the appellant-insurance company argued that the deceased was 30 years old and was running a Kiryana shop in a village. He was self employed and was not in permanent service. Learned Tribunal erred in adding 50% of the actual income to the earnings of the deceased computing future prospects which could be allowed only in case of a person in permanent job. To support his argument, learned counsel relied upon ***Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) R.C.R. (Civil) 77.*** Learned counsel also contended that the multiplier of '16' based on the age of the deceased was also wrongly applied to the amount of loss of dependency assessed by learned Tribunal. The only claimant was mother of the deceased being his dependent and therefore, the multiplier should have been applied as per the age of the mother.

On the other hand, learned counsel for respondent No.1-cross objector (claimant) argued that the deceased was running a Kiryana shop and was earning Rs.10,000/- per month but learned Tribunal wrongly assessed his income as Rs.5,000/- per month. Although 50% of the actual income was added towards future prospects but the multiplier of '16' was wrongly applied as the deceased was 30 years old and the multiplier of '17' should have been applied. He also argued that the deceased was a divorcee, therefore, instead of deducting 50% of his income as his personal and living expenses, the deduction should have been 1/3rd on that count.

Finding that there was no substantive and reliable evidence to support the contention of the claimant that the deceased was earning Rs.10,000/- per month, learned Tribunal rightly assessed the income of the deceased as Rs.5,000/- per month and the finding warrants no intervention. Relying on ***Rajesh and others vs. Rajbir Singh and others, 2013(4) Law Herald (Supreme Court) 3006*** learned Tribunal added 50% of the annual income to the earnings of the deceased computing future prospects and there appears no reason to disturb the said finding.

Coming to the deduction towards personal and living expenses of the deceased, when admittedly he was a divorcee only his mother was his dependent who filed the claim petition. However, in view of the law laid down in ***Munna Lal Jain and another vs. Vipin Kumar Sharma and others, 2015(2) W.L.N. (SC) 113*** the multiplier had to be applied as per the age of the deceased. As observed by learned Tribunal in the award, in the postmortem report the age of the deceased was mentioned as 30 years. In view of the matter, '17' was the appropriate multiplier. Accordingly, the compensation payable to the respondent No.1-Sheela Devi (cross objector) is calculated as under:-

1.	Monthly income of the deceased (in Rupees)		Rs.5000/-
2.	Actual age of the deceased		30 years
3.	Increase in future income as per Rajesh and others' case (supra)		Rs.2500/-
4.	Annual dependency		1/2 of Rs.7500 x 12 = Rs.45,000/-
5.	Multiplier		17
6.	Total		Rs.7,65,000/-

In addition to the amount of Rs.7,65,000/- calculated towards dependency, a further amount of Rs.50,000/- is awarded to the claimant for loss of love and affection. The amount of Rs.25,000/- allowed as funeral expenses is adequate.

Accordingly, the appeal filed by the appellant-insurance company is dismissed whereas the cross objections filed by respondent No.1-claimant are partly allowed and the award dated 01.09.2014 passed by learned Tribunal is modified. Claimant-Sheela Devi is held entitled to enhanced compensation of Rs.95,000/- in addition to the amount of Rs.7,45,000/- already awarded by learned Tribunal. The enhanced amount of compensation shall be deposited by the respondents within 45 days from the date of receipt of certified copy of this judgment failing which claimant shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing the appeal till realization.

(SNEH PRASHAR)
JUDGE

18.03.2016.
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