

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

FAO-5236-2003

Date of decision: 28.09.2017

Asha Rani and another

.... Appellants

Versus

Vijay Kumar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Gagandeep Singh, Advocate for
Mr. Atul Lakhanpal, Advocate
for the appellants.

Mr. Paul S.Saini, Advocate
for the Insurance Company.

Avneesh Jhingan, J.

The present appeal has been filed against the award dated 17.12.2002 passed by Motor Accidents Claims Tribunal, Hisar (hereinafter referred to as the 'Tribunal') in a MACT Case No.68/67 of 2000.

This case was a burnt case and the record has been reconstructed from the salvaged record and the copies supplied by the counsel subject to just exception.

On 20.11.1999, Sunil Kumar, aged 24 years, was travelling in a Maruti car bearing registration No.HR-20A-9018. The said car was met with an accident with a tractor bearing registration No. PB-32A/6924. As a result of the accident, Sunil Kumar suffered grievous injuries and was taken to Civil Hospital, Hisar. From where, he was shifted to V.K.Neuro Care

Hospital, Hisar. He remained hospitalised from 20.11.1999 to 28.12.1999. He died on 28.12.1999.

The claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed by the mother and minor sister of the deceased.

The Tribunal after considering the witnesses and evidence, awarded a sum of Rs.2,35,152/- along with interest @ 9% per annum.

Aggrieved of the said award, the present appeal has been filed for enhancement of the compensation.

I have heard the learned counsel for the parties and have perused the paperbook with their able assistance.

There is no dispute on the facts of the case by either of the party. The only issue raised in the appeal is that the compensation awarded by the Tribunal needs to be enhanced.

Learned counsel for the appellant has argued that the deceased was 24 years of age at the time of the accident. He was a photographer and was running a studio. He argued that his earning was Rs.8,000/- per month. He has challenged the award stating that income of Rs.2700/- as assessed by the Tribunal is on the lower side. He has further argued that without any justifiable reason split multiplier has been applied. Further, it is contended that no compensation has been awarded under the conventional heads.

Learned counsel for the respondent defended the award and contended that deduction of self expenses of 1/3rd has been made whereas in case of unmarried person, 50% should have been made for the self

expenses. He could not raise any serious objection to awarding of compensation under the conventional heads.

The contention of learned counsel for the appellant with regard to the assessment of income made by the Tribunal cannot be accepted. Bald statement was made before the Tribunal with regard to the earning of the deceased. No substantial evidence was produced. Nothing was brought on record from which it could be established that he was running a studio. In such circumstances, the Tribunal has to rely upon guess work for assessing the income. In such circumstances, the income as assessed by the Tribunal is accepted.

The loss of dependency is to be calculated as per the settled law by the Hon'ble apex Court in case of **Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) R.C.R. (Civil) 77.**

In case of **Sarla Verma's case (supra)**, the Hon'ble Apex Court has held that in case the age of the deceased between 21 to 25 years, multiplier 18 has to be applied. It has further been held that in case of unmarried person a deduction of 50% for self expenses has to be made.

The Tribunal erred in applying the split multiplier on assumption that the deceased would have got married in near future and therefore, split multiplier was applied.

The Hon'ble Supreme Court in case of **Sh.K.R.Madhusudan and others vs. Administrative Officer and another, 2011 (4) SCC, 689** has held that the High Court should not have introduced the concept of split multiplier without disclosing any reasons therefore.

This Court itself in FAO No. 4615 of 2013 decided on 18.10.2016 in 'Giano Devi and Others Vs. Hariom and Others', following the decision of the Hon'ble Apex Court in Sri. K.R. Madhusudhan's case (supra) has held as under:-

*“The learned Tribunal has applied the split multiplier. The Tribunal has mentioned that since the deceased was going to retire beyond the age of 58 years i.e. the age of superannuation, so the actual loss of dependency has only been multiplied for a period of six years. This approach of the learned Tribunal is erroneous in view of the ratio of law laid down by Hon'ble Apex court in case **Sri. K.R. Madhusudhan and Others Vs. Administrative Officer and Another** (supra). So, the multiplier of 9 shall be applicable. Thus, the total loss of dependency comes to Rs.15,83,550/-”.*

This Court in decision dated 02.08.2013 in FAO No. 5452 of 2012 in case **the New India Assurance Company Ltd. Versus Kuldeep Singh and Others** following the case of Sarla Verma (supra) and case of Sri K.R. Madhusudhan had held as under:-

“Taking the point of split multiplier, firstly it has to be seen that the deceased was to retire within a period of two years and definitely his salary would have been converted into a pension, which would

*have been about ½ of the same. However, the multiplier system does not call for taking of different annual dependencies of two different periods. The judgment in **Smt. Sarla Verma's case supra** makes no distinction in this regard. It has been made clear in the following paragraph of **Sri K.R.Madhusudhan's case supra**:-*

“In view of this evidence the Tribunal should have considered the prospect of future income while computing compensation but the Tribunal has not done that. In the appeal, which was filed by the appellants before the High Court, the High Court instead of maintaining the amount of compensation, granted by the Tribunal, reduced the same. In doing so, the High Court had not given any reason. The High Court introduced the concept of split multiplier and departed from the multiplier used by the Tribunal without disclosing any reason therefore. The High Court has also not considered the clear and corroborative evidence about the prospect of future increment of the deceased. When the age of the deceased is between 51 and 55 years the multiplier is 11, which is specified in the II Column in the II Schedule in the Motor Vehicles

Act, and the Tribunal has not committed any error by accepting the said multiplier. This Court also fails to appreciate why the High Court chose to apply the multiplier of 6”

Further this Court in decision dated 19.03.2015 in **FAO No. 1837 of 2015 (O&M) United India Insurance Company Ltd. Vs. Parveen and Others** following the decision of the Hon'ble Apex Court in **“Reshma Kumari and Others Vs. Madan Mohan and another”, 2013(9) SCC 65** and the decision of the Hon'ble Apex Court in **Sarla Verma's** case (supra) had not applied the split multiplier.

Keeping in view the decision of the Hon'ble Apex Court and the consistent view taken by this Court, I do not find any reason to apply split multiplier in the present case.

It was not appropriate for the Tribunal but to introduce the split multiplier and even the reason given that after marriage, he would not have been been able to contribute the same amount is on assumption only. Further, since he was an unmarried boy, the deductions for self expenses should have been made at the rate of 50%. In case, it was being assumed that he would be getting married in near future, deduction for self expenses should have been also taken care. Any assumption raised should be taken to its logical end. Instead of applying the method which give rise to so many complications, it would be appropriate, if the multiplier method has held by the Hon'ble Apex Court in various cases should be applied.

In the present case, the Tribunal has not mentioned any

justifiable reason in applying the split multiplier. In such circumstances, multiplier of 18 is applied. Loss of dependency is recalculated as under :-

<i>Income</i>	<i>Rs.2700/-</i>
<i>Annual income</i>	<i>Rs.2700x12=Rs.32,400/-</i>
<i>50% deduction for self expenses</i>	<i>Rs.16,200/-</i>
<i>Dependency</i>	<i>Rs.16,200/-</i>
<i>Applying multiplier of 18</i>	<i>Rs.16,200/-x18=Rs.2,91,600/-</i>

The Tribunal has only awarded a sum of Rs.55,152/-for medical expenses. This amount is only with regard to the bills which was produced before the Tribunal. At this stage, it may be mentioned that the widow lady whose son was on death bed cannot be expected to maintain the accounts in such the period. The medical expenses awarded are enhanced to Rs.80,000/-

The Hon'ble the Apex Court in **Asha Verman and others Vs. Maharaj Singh and others, 2015(4) SCC (Civil) 767**, held that the compensation should be awarded under the conventional heads. The amount awarded by the Tribunal is enhanced as per table below :-

<i>Sr.No.</i>	<i>Heads</i>	<i>Amount earlier awarded by the Tribunal</i>	<i>Now awarded</i>
<i>1</i>	<i>Loss of dependency</i>	<i>Rs.1,74,000/-</i>	<i>Rs.2,91,600/-</i>
<i>2</i>	<i>Medical expenses</i>	<i>Rs.55,152/-</i>	<i>Rs.80,000/-</i>
<i>3</i>	<i>Funeral expenses</i>	<i>Rs.6,000/-</i>	<i>Rs.15,000/-</i>
<i>4</i>	<i>Loss of love and affection</i>	<i>Not awarded</i>	<i>Rs.50,000/-</i>
<i>5</i>	<i>Transportation of the body</i>	<i>Not awarded</i>	<i>Rs.5,000/-</i>
	Total	Rs.2,35,152/-	Rs.4,41,600/-

The award dated 17.12.2002 is modified to the extent that the amount awarded by the Tribunal of Rs.2,35,152/- awarded is enhanced to Rs.4,41,600/-.

The claimant shall be entitled to enhanced amount along with interest @ 6% per annum from the date of filing the claim petition till the realisation of the amount.

The appeal is partly allowed and is disposed of accordingly.

(AVNEESH JHINGAN)
JUDGE

28.09.2017
anju

1. Whether the order is speaking/reasoned: Yes
2. Whether the order is reportable : Yes