

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

FAO No.2937 of 2002 (O&M)

Date of Decision.05.07.2017

Smt. Luxmi Sharma and othersAppellants

Vs

Sh. Sham Lal and othersRespondents

2. FAO No.2938 of 2002 (O&M)

Smt. Nirmal Devi and anotherAppellants

Vs

Sh. Sham Lal and othersRespondents

3. FAO No.2939 of 2002 (O&M)

Randeep Sharma and anotherAppellants

Vs

Sh. Sham Lal and othersRespondents

4. FAO No.2940 of 2002 (O&M)

Randeep Sharma and anotherAppellants

Vs

Sh. Sham Lal and othersRespondents

Present: Mr. Ashwani Arora, Advocate
for the appellant(s).

Mr. Atul Gaur, Advocate for
Mr. Sumeet Goel, Advocate
for the insurance company.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

C.M. No.16372-CII of 2016 in FAO No.2937 of 2002

C.M. No.16364-CII of 2016 in FAO No.2939 of 2002

C.M. No.16374-CII of 2016 in FAO No.2940 of 2002

C.M. No.16361-CII of 2016 in FAO No.2938 of 2002

There are applications moved by the claimants under Order 6 Rule 17 read with Section 151 of Code of Civil Procedure for seeking amendment of the petition stated to have been filed under Section 163-A of the Motor Vehicles Act into Section 166 of the Motor Vehicles Act on the premise that the income of the deceased was much more than the minimum prescribed in the Schedule under Section 163-A of the Motor Vehicles Act.

Notice of these applications had already been issued to the counsel representing the insurance company. Mr. Atul Gaur, Advocate appearing on behalf of Mr. Sumeet Goel, Advocate submits that such type of applications are not maintainable, in view of the ratio decidendi culled out by the Hon'ble Supreme Court in **Deepal Girishbahi Soni and others Vs. United India Insurance Co. Ltd. Baroda 2004(2) RCR (Civil) 466**, on the premise that Section 163-A which has an overriding effect provides for special provisions as to payment of compensation on the structured formula basis.

I have heard learned counsel for the parties and appraised the paper book. In view of the ratio decidendi culled out in paragraph 41 of the judgment cited supra, which reads as under, the applications for converting the petition from Section 163-A to Section 166 of the Motor Vehicles Act are not sustainable and hereby dismissed.

“41. Section 163-A which has been overriding effect provides for special provisions as to payment of compensation on structured formula basis. Sub-section (1) of Section 163-A contains non-obstante clause in terms whereof the owner of the motor vehicle or the authorized insurer is 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. Sub-section (2) of Section 163-A is in pari materia with sub-section (3) of Section 140 of the Act.

Main cases

On merits, Mr. Ashwani Arora, learned counsel appearing on behalf of the claimants-appellants submits that in an accident held on 03.05.2000 at about 11 PM, Durga Partap, Dhatri Devi, Bal Krishan and Swarup Chand (all deceased) along with one Luxmi and other occupants were going from Garoroo to Haridwar in a jeep bearing registration No.HR-01-H-9875, being driven rashly and negligently, met with an accident, resultantly causing serious injuries to Durga Partap, Dhatri Devi, Bal Krishan and Swarup Chand. The claim petitions had been filed on behalf of legal representatives of Swarup Chand Sharma in MACT Case Nos.293 and 297 of 2000 for the death of father and mother respectively, legal representatives of Bal Kishan Sharma in MACT Case No.296 of 2000, legal representatives of Durga Partap Sharma in MACT Case No.329 of 2000, Bal Krishan Sharma is represented by legal representatives namely Luxmi Sharma, Moti Ram Sharma and Shiv Kumar Sharma in MACT Case No.296 of 2000.

In FAO No.2937 of 2002 (MACT Case No.296/2000), the deceased-Bal Krishan Sharma was aged 75 years at the time of accident. He was stated to be engaged in the business of Ayurvedic Doctor and was earning ₹3500/- per month. His qualification certificate was exhibited as Ex.P7. He was also doing some other business and was earning ₹5000/- per month. However, the Tribunal awarded a sum of ₹50,000/- as

compensation which is too less, as by taking the income of the deceased as ₹5000/-, the yearly income comes to ₹60,000/- i.e. beyond the structural formula as envisaged under Section 163-A of the Motor Vehicles Act and by applying the multiplier of 5, the compensation would have been ₹1,80,000/-. In this backdrop of the matter, the application for converting the petition from Section 163-A to 166 had also been filed.

As regards the appeal bearing No.2938 of 2002 (MACT Case No.329 of 2000), the appellants are widow and son of Durga Partap Sharma, who at the time of the accident was stated to be 49 years of age and was working in the Irrigation Department at a monthly salary of ₹4223/- and therefore, the compensation awarded at ₹2,88,000/-, by taking the monthly dependency at ₹3000/- per month is on lower side, owing to the salary certificate. The Tribunal adopted a multiplier of 8 whereas in the age group of 46 to 50 years, a multiplier of 13 is to be applied, therefore, the compensation awarded is on lower side whereas it should not have been less than ₹4,90,000/-.

In other two remaining cases i.e. FAO No.2939 and 2940 of 2002, he submits that the compensation of ₹5,04,000/- and ₹3,84,000/- respectively had been awarded to the legal representatives of deceased, who were under the age group of 50-55 years. In FAO No.2939 of 2002, the deceased was drawing a salary of ₹11,297/- per month but the monthly dependency was assessed at ₹7000/- per month by the Tribunal which is on lower side and a multiplier of 6 has been applied whereas it should have been 11, therefore, the appellants are entitled to a compensation of ₹9,50,000/-.

In FAO No.2940 of 2002, the deceased Swarup Chand was

aged 54 years. He was working in Education Department and was drawing a monthly salary of ₹13,079/-. The Tribunal took the monthly dependency at ₹8000/- and applied a multiplier of 4 only whereas it should have been 11, therefore, the compensation awarded at ₹3,84,000/- is on lesser side.

Mr. Atul Gaur, Advocate for Mr. Sumeet Goel, Advocate learned counsel appearing for the insurance company submits that no doubt, the compensation awarded in FAO Nos.2939 and 2940 of 2002 to the tune of ₹5,04,000/- and ₹3,84,000/- respectively in the petitions filed under Section 163-A of the Motor Vehicles Act is on higher side, as the income of the deceased cannot be taken more than ₹40,000/- per annum. Though the insurance company ought to have filed the appeal but having failed to do so, there is no scope and chance of enhancement of the compensation.

As regards the other two cases, he submits that the awards passed by the Tribunal are just and fair and there is no scope for enhancement.

I have heard learned counsel for the parties, appraised the paper book and of the view that as far as the appeals in FAO Nos.2939 and 2940 of 2002 are concerned, there is no scope for enhancement of compensation in a petition filed under Section 163-A of the Motor Vehicles Act, owing to the income to be prescribed as maximum ₹40,000/- per annum. However, the Tribunal took the income more than ₹40,000/- per annum and awarded the compensation by applying the multiplier as indicated above. There is no scope for enhancement, thus, the appeals in FAO Nos.2939 and 2940 of 2002 are hereby dismissed.

As regards the appeals in FAO Nos.2937 and 2938 of 2002, I

am of the view that the Tribunal should have taken the maximum income as

₹40,000/- per annum. In FAO No.2937 of 2002, a lump sum amount of ₹50,000/- has been awarded without applying the formula prescribed in Schedule II whereas in FAO No.2938 of 2002 a multiplier of 8 has been applied whereas it should have been 13 as the deceased was aged 49 years.

Resultantly, the compensation in the aforementioned cases is enhanced and the various heads of claim are tabulated as under:-

FAO No.2937 of 2009

FATAL ACCIDENT			
Age	75 years		
Occupation	Ayurvedic Doctor		
Claimants	Widow and two children		
	Heads of claim	Tribunal	High Court
Sl. No.		Amount (Rs)	Amount (Rs.)
1	Income		40,000 p.a.
2	Add, % of increase		
3	Less, Deduction 1/3 rd		26666
4	Multiplicand (annualized by multiplying 12)		
5	Multiplier	--	5
6	Loss of dependence		1,33,333
7	Medical Expenses & Transportation		
8	Loss of Consortium		5000
9	Loss of love and affection	--	--
10	Loss to estate	--	2500
11	Funeral expenses	--	2000
	Total	50,000	1,42,833

FAO No.2938 of 2002

FATAL ACCIDENT			
Age	49 years		
Occupation	Working in Irrigation Department		
Claimants	Widow and minor son		
	Heads of claim	Tribunal	High Court

FATAL ACCIDENT			
Sl. No.		Amount (Rs)	Amount (Rs.)
1	Income	4223	40,000 p.a.
2	Add, % of increase		
3	Less, Deduction	3000	26666
4	Multiplicand (annualized by multiplying 12)	36,000	
5	Multiplier	8	13
6	Loss of dependence		3,46,658
7	Medical Expenses & Transportation		
8	Loss of Consortium		5000
9	Loss of love and affection	--	--
10	Loss to estate	--	2500
11	Funeral expenses	--	2000
	Total	2,88,000	3,56,158

The total amount of compensation payable in FAO Nos.2937 and 2938 of 2002 shall be ₹1,42,833/- and ₹3,56,158/- respectively. The amount in excess over what has already been awarded by the Tribunal shall also attract interest @6% from the date of filing of the appeals till the date of realization. The enhanced amount shall be distributed equally amongst the claimants. The liability shall remain the same as fixed by the Tribunal.

The awards passed by the Tribunal are modified and the appeals in FAO Nos.2937 and 2938 are allowed to the above extent.

(AMIT RAWAL)

JUDGE

July 05, 2017

Pankaj*

Whether reasoned/speaking Yes

Whether reportable No