IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. FAO-1016 of 2014 (O&M)
Date of decision: 20.11.2017

Nar Singh and others .... Appellants

Versus

ICICI Lombard Insurance Company Ltd. and another

..... Respondents

2. FAO-5821 of 2013 (O&M)

Suresh and others .... Appellants

Versus

ICICI Lombard Insurance Company Ltd. and another

..... Respondents

3. FAO-1968 of 2014 (O&M)

Maman and others .... Appellants

Versus

ICICI Lombard Insurance Company Ltd. and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Ravinder Malik, Advocate
for the appellants.

Ms. Vandana Malhotra, Advocate
for respondent No.1.

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Avneesh Jhingan, J.

These are three appeals filed against the award dated 04.04.2013 passed by Motor Accidents Claims Tribunal, Panipat (hereinafter referred to as the 'Tribunal'). The Tribunal decided MACT Case Nos.68, 69 and 70 of 2012.

The present appeals have been filed for enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') in case of death of Bala Devi wife of Nar Singh, Parwari wife of Phool Singh and Sarto wife of Arjun.

On the ill-fated day of 23.04.2010, there was a motor vehicular accident involving auto rickshaw bearing registration No. HR-67A-0242 and a truck bearing registration No. HR-42D-7897 (for short, 'the offending vehicle'). As a result of the accident, the above named three ladies lost their lives and other eight persons suffered injuries. FIR No.133 dated 23.04.2010 was registered at Police Station Ganaur, District Sonepat.

The claim petitions under Section 166 of the Act were filed by the legal heirs of the deceased.

The Tribunal after considering the material produced before it, awarded a sum of Rs.1,66,000/-, Rs.35,000/- and Rs.25,000/- along with interest @ 6% per annum to the legal heirs of deceased Bala Devi, Parwari and Sarto.

The present appeals have been filed for enhancement of the loss of dependancy and the amounts awarded under the conventional heads.

Learned counsel for the appellant in case of Bala Devi has argued that the deceased was 50 years old and survived by husband and three minor children. He further argued that she was a house maker. The income taken for calculation of dependency is on the very lower side. He further argued that only a sum of Rs.10,000/- has been awarded for funeral expenses. No amount has been awarded for loss of estate and loss of consortium.

Learned counsel for the appellant in case of Parwari has argued that the deceased was 65 years old and she was a house maker and survived by three sons. The Tribunal had just awarded Rs.35,000/- which includes Rs.5,000/- for transportation of body and last rites. He further contended that multiplier method should have been adopted and amount under the conventional heads should have been awarded.

Learned counsel for the appellant in case of Sarto Devi argued that the deceased was aged 65 years and survived by one son and one daughter. The Tribunal has just awarded a sum of Rs.25,000/- which includes Rs.5,000/- towards transportation of dead body and last rites. He submitted that the multiplier method should have been adopted and amount under the conventional heads should have been awarded.

Learned counsel for the Insurance Company defended the award and resisted any enhancement. She argued that keeping in view the age of the deceased, the Tribunal has awarded sufficient amount and there is no case made out for enhancement of the amount already awarded.

There is no dispute raised by the parties with regard to the involvement and rash and negligent driving of the offending vehicle.

This Court relying upon a decision of Hon'ble the Apex Court in case of Arun Kumar Aggarwal and another Versus National Insurance Company and others (2010-3) 159 PLR 428 (SC) in ***Paramjit Singh and another Versus Dilbagh Singh alias Bagga and others, Vol.CLXXII (2013-4) 329***, has held as under:

> *"15. After the decision in Lata Wadhwa's case (supra), the notional income of the housewife is estimated according to their age. The notional income of the housewife was taken to be Rs.3,000/- per month if she had been between the age group of 34 to 59 at the time of accident. The only riddle which is to be solved by us is as to whether 1/3rd cut should be applied on the notional income or not? The answer to this question is couched in the aforesaid extracted paragraph of the judgment of Lata Wadhwa's case (supra), as in that case, the Supreme Court was searching for a modest notional income of the housewife who was not earning an income but rendering multifarious services while managing all the chores of the family. Since it is a case where the Courts are confronted with the notional income of the housewife on account of her multifarious services which not only includes*

rearing the children but also performing all matrimonial obligations, in our considered view, the deduction of 1/3rd out of her notional income is not warranted."

In the above decision, it has been laid down that in case of death of house-wife, since it is the notional income which is to be taken into account as her services not only include rearing the children but also performance of all matrimonial obligations. In such circumstance, 1/3rd deduction is not warranted.

Since the contribution of a house wife cannot be under estimated and it is very difficult to equate her contribution in monetary terms. It would be appropriate if their notional income is taken as Rs.3,000/- per month.

The Hon'ble Apex Court in case of ***Sarla Verma*** which has now been approved by latest decision in ***National Insurance Company Ltd. vs. Pranay Sethi and Ors. in SLP (Civil) No.25590 of 2014 decided on 31.10.2017,*** has held that compensation for loss of dependency should be assessed by applying multiplier method and multiplier should be applied as per the age of the deceased.

In case of ***National Insurance Company Ltd.'s case (supra),*** it has been held that amount under the conventional heads are to be awarded i.e.Rs.15,000/- for loss of estate, Rs.15,000/- for funeral expenses and Rs.40,000/- for loss of consortium.

Keeping in view the facts of the case and the above said decisions, the compensation in all the three cases are recalculated as under :-

In case of Bala Devi in MACT Case No.68 of 2012

Annual notional income	*Rs.36,000/-*
Applying multiplier of 13	Rs.36,000x13=Rs.4,68,000/-

As per the ***National Insurance Company Ltd.'s case (supra),*** the amounts of Rs.15,000/- for loss of estate, Rs.15,000/- for funeral expenses and Rs.40,000/- for loss of consortium are to be awarded.

The award dated 04.04.2013 in MACT case No.68 of 2012 is modified to the extent that the amount awarded by the Tribunal of Rs.1,66,00/- is enhanced to Rs.5,38,000/-.

The claimants 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.

In case of Parwari in MACT Case No.69 of 2012

Annual notional income	*Rs.36,000/-*
Applying multiplier of 7	Rs.36,000x7=Rs.2,52,000/-

As per the ***National Insurance Company Ltd.'s case (supra),*** the amount of Rs.15,000/- for loss of estate and Rs.15,000/- for funeral expenses are awarded.

The award dated 04.04.2013 in MACT case No.69 of 2012 is modified to the extent that the amount awarded by the Tribunal of Rs.35,000/- is enhanced to Rs.2,82,000/-.

The claimants 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.

<u>In case of Sarto in MACT Case No.70 of 2012</u>

Annual notional income	*Rs.36,000/-*
Applying multiplier of 7	Rs.36,000x7=Rs.2,52,000/-

As per the ***<u>National Insurance Company Ltd.'s case (supra),</u>*** the amounts under the conventional heads are to be awarded i.e. Rs.15,000/- for loss of estate and Rs.15,000/- for funeral expenses

The award dated 04.04.2013 in MACT case No.70 of 2012 is modified to the extent that the amount awarded by the Tribunal of Rs.25,000/- is enhanced to Rs.2,82,000/-.

The claimants 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 appeals are partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

20.11.2017
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1.Whether the order is speaking/reasoned: Yes

2.Whether the order is reportable : Yes