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

FAO-4982-2013 (O&M)
(MACT case No.5 of 2012)
Date of decision:8.2.2017

Shri Ram General Insurance Company Ltd. ...Appellant

Versus

Tanisha and others ...Respondents

FAO-2042-2013

Tanisha and others ...Appellants

Versus

Lakhwinder Singh and others ...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Arun Sharma, Advocate for
Mr.TK Joshi, Advocate for the Insurance Company

Mr.Vinod K.Kanwal, Advocate for
Mr.Ashit Malik, Advocate for the claimants

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SNEH PRASHAR, J.

CM-21168-69-CII-2013

The applications under Section 5 of the Limitation Act have been filed for condonation of delay of 26 days in refiling and 125 days in filing the appeal.

Despite sufficient opportunity, no reply has been filed by the respondents.

For the reasons enumerated in the applications, the same are allowed and the delay is condoned subject to all just exceptions.

FAO-4982-2013 (O&M)

The above captioned two appeals one FAO-2042-2013 filed by claimants Tanish and others and the other FAO-4982-2013 filed by the Insurance Company are directed against the award dated 7.1.2013 passed by Motor Accident Claims Tribunal, Panipat (hereinafter referred to as 'the Tribunal') in MACT case No. 05 of 2012, vide which a sum of Rs.9,21,600/- was allowed as compensation to the claimants on account of death of Sant Singh in a motor vehicular accident that took place on 1.12.2011.

The submissions made by Mr.Arun Sharma, Advocate representing the Insurance Company and Mr.Vinod K.Kanwal, Advocate for the claimants have been considered.

The only point raised during arguments by learned counsel for the Insurance company is that since deceased was not in a permanent employment, therefore, learned Tribunal erred by making addition to the actual income assessed computing future prospects of the deceased.

On the other hand, learned counsel for the claimants submits that in view of the law laid down in **Rajesh and others vs. Rajbir Singh and others (2013) 9 SCC 54**, the claimants are entitled to 50% increase in income of the deceased computing future prospects, whereas, learned Tribunal awarded only 30% increase in the income. Nothing was awarded on account of loss of love, care and guidance to the children. Only a meager amount i.e. Rs.7000/- for loss of consortium and Rs.10,000/- for funeral expenses was allowed. Also no amount was awarded towards loss of love and affection to the parents.

Admittedly, Sant Singh died due to the injuries suffered by him in a road side accident. He was 26 years of age at the time of death. There being no substantive evidence of income and treating the deceased to be a unskilled labour, learned Tribunal assessed the income of the deceased as Rs.4500/- per month, which appears appropriate.

There is no force in the argument raised by learned counsel for the Insurance Company that no amount was to be added to the actual income assessed computing future prospects of the deceased. In para No.11 of **Rajesh and others' case (supra),** the Hon'ble Supreme Court has held as under:

> "11. Since, the Court in Santosh Devi's case (supra) actually intended to follow the principle in the case of salaried persons as laid in Sarla Verma's case (supra) and to make it applicable also to the self employed and person on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self employed or persons of fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years."

Thus applying the aforesaid law and in view the age of the deceased, addition in actual income towards computing future prospects is increased from 30% to 50%. The deceased left behind a family consisting five members i.e. widow, two minor girls and parents. Thus, the deduction of $1/4^{th}$ towards living and personal expenses of the deceased has rightly been made by learned Tribunal.

The deceased was the sole bread earner of the family and his untimely death was not only a mental shock to the family members but it also abruptly snatched the only financial source of their maintenance. Considering the fact that there are two minor daughters, in my considered opinion the ends of justice would be met, if an amount of Rs.One lac for loss of love, care and guidance to the children in equal shares is awarded. The amount awarded towards loss of consortium to the wife appears to be on the lower side and the same is enhanced from Rs.7,000/- to Rs. One Lac. The amount awarded towards funeral expenses is also enhanced from Rs.10,000/- to Rs.25,000/-. As nothing was awarded to the mother of the deceased towards loss of love and affection, a sum of Rs.50,000/- is allowed to her.

Accordingly, the total compensation comes to Rs.13,14,750/- (4500 (monthly income) +50% (addition towards computing future prospects) - $1/4^{th}$ (deduction on account of personal and living expenses of the deceased) x 12 x 17 (multiplier) + 2,82,000 (under conventional heads including the amount already awarded). The enhanced amount of Rs. 3,93,150/- (13,14,750 – 9,21,600) shall be paid to the claimants within 45 days from the date of receipt of the certified copy of this judgment, failing which, it shall carry interest @ 7.5 % per annum from the date of filing of the appeal, till its realisation.

Appeal bearing FAO-4982-2013 filed by the Insurance Company is dismissed whereas FAO-2042 -2013 filed by the claimants is partly allowed and the impugned award is modified as indicated above.

8.2.2017 **(SNEH PRASHAR)**
gsv **JUDGE**

Whether speaking / reasoned? Yes / No

Whether reportable? Yes / No