

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.6415 of 2013

Date of decision:- May 09, 2017

SMT. POONAM AND OTHERS

....APPELLANTS..

VS.

MAHENDER KUMAR @ MAHENDRA SINGH AND ANOTHER

....RESPONDENTS..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Ashish Gupta, Advocate,
for the appellants.

Mr. Rajbir Singh, Advocate,
for respondent No.2-Insurance Company.

JASPAL SINGH, J.

Dissatisfied with the award dated 23.09.2013, passed by Motor Accident Claims Tribunal, Gurgaon (for brevity, "Tribunal") in MACT Case No.234 of 2012, captioned as "***Smt. Poonam and others v. Mahender Kumar @ Mahendra Singh and another***" under Section 166 of the Motor Vehicles Act, 1988 (for short, "Act"), whereby the claimants were awarded compensation to the tune of ₹11,77,000/-, out of which 50% deducted towards contributory negligence, which makes the remaining amount of compensation as ₹5,88,500/-; the appellants/claimants have preferred the instant appeal for enhancement thereof.

2. While holding that death of Rajender son of Pop Singh has occurred due to the accident, which took place on 10.10.2012 and further that the vehicle was duly insured with the insurance company, the driver-

cum-owner as well as insurance company were jointly and severally held liable to pay the awarded amount of compensation.

3. The ld. Tribunal on the basis of evidence adduced by the appellants-claimants assessed the income of deceased-Rajender to the tune of ₹8000/- per month and after having deducted 1/4th of the amount in consideration of the expenses which the deceased would have incurred towards maintaining himself had he been alive, annual dependency worked out to the tune of ₹72,000/- (6000x12). Since, Rajender was aged about 35 years at the time of his demise, multiplier of 16 was correctly applied.

3. However, the ld. tribunal has committed an error while not awarding just and proper compensation on account of funeral expenses and loss of consortium whereas nothing has been awarded on account of loss of love and affection. On account of loss of consortium, only a meagre sum of ₹10,000/- has been awarded whereas on account of funeral expenses only a sum of ₹10,000/- has been granted. The grant of the aforesaid amount(s) can be said to be unjust and inadequate especially in view of the guidelines laid down by Hon'ble Apex Court in case captioned as ***“Smt. Sarla Verma and others vs. Delhi Transport Corporation and another” 2009(3) RCR (Civil) 77*** which has subsequently been approved in case captioned as ***“Rajesh vs. Rajbir 2013 (3) RCR (Civil) 170***. As per the guidelines, the claimants are entitled for enhanced compensation on account of loss of consortium to the tune of ₹90,000/- in addition to the amount of ₹10,000/- already awarded. Claimants are also entitled to a sum of ₹25,000/- on account of funeral expenses as against a sum of ₹10,000/- already awarded by the ld. Tribunal i.e. ₹15,000/- more. Similarly, claimants are also entitled to a sum of ₹1,00,000/- on account of loss of love and affection. As such, the claimants

are entitled to enhanced compensation to the tune of ₹2,05,000/- i.e. an amount in addition to the compensation already awarded by the Id. Tribunal i.e. ₹5,88,500/- (after deducting 50% on account of contributory negligence) already awarded by the Id. Tribunal. Since, it is a case of contributory negligence, therefore, the appellants-claimants shall be entitled to 50% of the enhanced amount of ₹2,05,000/-only, which comes to ₹1,02,500/-. Accordingly, the impugned award stands modified.

7. As far as the findings regarding contributory negligence are concerned, the same do not call for any interference by this Court being absolutely in consonance with the evidence and legal proposition and contention raised in this regard is rejected.

8. In the light of what has been discussed above, appeal is partly allowed. Appellants-claimants shall be entitled to an amount of ₹1,02,500/- after deducting 50% of the enhanced amount i.e. ₹2,05,000/-, on account of contributory negligence. As per award, there is joint liability to pay the compensation upon respondents No. 1 and 2 yet the insurer i.e. insurance company-respondent No.2 is directed to pay the amount so enhanced within a period of two months from the date of receipt of certified copy of this order and on its failure to make the payment within stipulated period, it would entail interest @ ₹7.5% per annum from the date of filing of claim petition before the Tribunal till its actual realization.

8. No order as to costs.

May 09, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned:	Yes
Whether reportable:	Yes