

Sr. No. 113

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

**FAO No.5313 of 2017
Decided on:08.08.2017**

New India Assurance Co. Ltd.

.....Appellant

versus

Guddi and others

.....Respondents

FAO No. 5319 of 2017

New India Assurance Co. Ltd.

.....Appellant

versus

Sarojani and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

**Present: Mr. S.S.Sidhu, Advocate
for the appellant.**

Rajbir Sehrawat, J.(Oral)

This order shall dispose of two appeals i.e.FAO Nos. 5313 & 5319 of 2017 filed by the Insurance Company challenging the award passed by the Motor Accidents Claim Tribunal, Panipat(for short, 'the MACT'). The two claim petitions from which present appeals are arising involve the same accident that occurred on 24.03 .2016.

The brief facts of the case are that on 24.03.2016 deceased Manvinder @ Malvinder and Vipin were going to village Pasina on motor cycle bearing Registration No. HR06U-8072. When they reached near canal bridge near village Sewah their motor cycle suddently broke down and Manvinder and Vipin started checking the same. In the mean time, the

offending vehicle, a Swift desire car bearing Registration No. HR-70R-0060 came from the side of village Dahar and hit the deceased Manvinder and Vipin. The swift car was being driven at a very high speed and in a very rash and negligent manner. As a result of hitting, Vipin died at the spot and Manvinder died during the treatment.

Due to death of Manvinder his wife Guddi, minor daughter Neelam and minor son Prem alongwith mother of the deceased Kanti Devi filed claim petition, out of which the present FAO No. 5313 of 2017 has arisen. On account of death of Vipin his mother Sarojani filed another claim petition, out of which another appeal bearing FAO No. 5319 of 2017 has arisen.

Parties led their respective evidences in the claim petitions.

After appreciating the pleadings and evidences led by the parties the MACT awarded ₹ 15,84,000/- as compensation to the dependents of Manvinder and granted ₹12,56,200/- on account of death of Vipin.

During the trial, MACT had held that although the deceased were claimed to have been working in the Goel Spinning Mill, however, no concrete evidence could be led to substantiate this claim. Therefore, the Tribunal has taken their income to be ₹ 7600/- per month. The company has challenged these awards by way of present appeals.

While raising his arguments, learned counsel for the appellants restricted his argument only on one point, that the compensation on account of future prospects should not have been granted by the Motor Accidents Claim Tribunal because the matter of grant of compensation for future prospects to the dependents of a deceased who was self employed has been referred to a larger bench of the Hon'ble Supreme Court. Therefore, it is the

argument of learned counsel for the appellant that compensation on this account could not have been granted by the Motor Accidents Claim Tribunal.

A perusal of the award passed by the MACT shows that this point has already been considered by the MACT. The Tribunal has not accepted this argument of the Insurance Company on the basis of two judgments of the Hon'ble Supreme Court rendered in ***Rajesh and others vs. Rajbir Singh and others, 2013(3) RCR(Civil) 170 and Smt. Neeta wife of Kallappa Kadolkar and others vs. The Div. Manager, MSRTC, Kolhapur, 2015(1) RCR(Civil) 625(SC)***. There does not appear to be any illegality in the conclusion arrived at by the Tribunal in this regard.

Otherwise, also since the provision of compensation on account of accidents to the dependents of the deceased is to help the family in distress and to compensate them on account of loss which they have suffered. Therefore, the matter can not be indefinitely deferred for decision on the ground that some reference has been made to a larger bench. Nor can the relief be declined to the claimants for the reason that point of compensation on account of future prospects has been referred to the larger bench. This Court has already held in FAO No. 8067 of 2014 that a right which is otherwise available to the party as per the existing law can not be denied for the reason that some reference has been made on that point to a larger bench for re-consideration. The relevant paragraph is reproduced hereinbelow:-

"After considering the rival submissions of the counsels of the parties, this court is of the view that although the point of future prospects has been referred to the larger bench of the Hon'ble Supreme Court, however, till the larger bench takes a contrary view; the

judgment of the Hon'ble Supreme Court which holds the field as of today; is binding precedent for this court. The point as decided by the larger bench of the Supreme Court shall hold the field only after and as and when it is pronounced by the Hon'ble Supreme Court. The otherwise available right of a party before the Court can not be denied by this Court only for the reason that the Hon'ble Supreme Court has kept the point qua that right for reconsideration. Keeping a point for reconsideration does not, by implication, over-rules the existing judgment/precedent on that point. Therefore, the amount of compensation on account of future prospects cannot be denied to the claimants in this case on the ground that the matter has been referred to the larger bench."

In view of the above legal situation and rights of the claimants to be governed by the law, as it currently exists, the plea of the insurance company that the claimants are not entitled to the compensation on account of future prospects; can not be accepted.

No other point was argued by the counsel for the insurance company.

In view of the above, both the appeals i.e.FAO Nos. 5313 & 5319 of 2017 are dismissed.

8th August, 2017

Shivani Kaushik

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No