IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision : 31.08.2018

1. FAO No.1125 of 2000

Brij Mohan Sharma and another

.....Appellants

Versus

Pawan Kumar and others

.....Respondents

2. FAO No.1124 of 2000

Brij Mohan Sharma

.....Appellant

Versus

Pawan Kumar and others

.....Respondents

3. FAO No.1123 of 2000

Rajesh Sharma

.....Appellant

Versus

Pawan Kumar and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. Vipan Sharma, Advocate for
Mr. Surinder Mohan Sharma, Advocate
for the appellant(s).

Mr. Neeraj Khanna, Advocate
for the Insurance Company.

SUDIP AHLUWALIA, J. (ORAL)

These three appeals seek to challenge the Award dated 29th July, 1999 passed by the Motor Accident Claims Tribunal, Ambala (for short, 'the Tribunal') in MACT Case Nos.9, 10, 11 of 1994 arising

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out of a common accident. The appellant/claimant-Brij Mohan Sharma happens to be the husband of deceased Prem Kumari, who was killed in the said accident along with her minor daughter-Meenakshi, while going by a scooter which at the relevant time was being driven by appellant Rajesh Sharma. The accident was imputed to the rash and negligent driving of respondent Om Parkash who was driving the offending vehicle being truck No.HR-20A-9092.

2. The appellant Rajesh Sharma sustained injuries in the accident, while Brij Mohan Sharma, along with his minor son Master Tanuj sought compensation on account of the deaths of Prem Kumari and her minor daughter Meenakshi.

3. There is no controversy nor any challenge to the finding *qua* involvement of respondent-Om Parkash in the matter of rash and negligent driving leading to the accident which has been found to be proved by the Ld. Tribunal. That the offending vehicle was under coverage of a valid Insurance Policy by the respondent-National Insurance Company is also undisputed.

4. The appellants are nevertheless aggrieved that the compensations awarded to them are very meagre and have therefore sought enhancement of the same. Having heard the submissions of Ld. Counsel for the contesting sides and considered the citations relied upon by them, this Court now proceeds on to put on record the

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following observations regarding the compensation liable to be awarded to the appellants :-

5. **(A)** **<u>In FAO No.1125 of 2000</u>**

(i) The Ld. Tribunal had determined that nothing more than an income of Rs.2,000/- per annum could be considered in respect of deceased Prem Kumari who was admittedly a house wife as the claimants had been unable to show any cogent material/documents in support of the claim that she had any additional income by way of tailoring etc. Consequently, her annual income was assessed at Rs.24,000/-. Out of this 1/3rd of the assessed income was deducted towards the personal expenses of the deceased thereby leaving the net entitlement of the claimants at Rs.16,000/- per annum, and applying the multiplier of 16 to the same considering the victim's age at the relevant date (32 years) the total dependency loss was assessed at Rs.2,56,000/- to which an additional amount of Rs.2500/- was added towards funeral expenses, and the final admissible compensation was rounded off to Rs.2,60,000/- for both the claimants.

(ii) In the opinion of this Court the compensation so awarded does appear to be insufficient. The Court is inclined to follow the ratio laid down in ***'National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) R.C.R.(Civil) 1009'***, in which the Supreme Court held that in case of the deceased being "*self employed or on a*

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fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years".

(iii) Following the above ratio, it is clear that after considering the addition of future increase at 40% the net income of the deceased should have been assessed at Rs.2800/- per month instead of Rs.2000/- and the annual income would therefore come to Rs.33,600/- instead of Rs.24,000/- as determined by the Tribunal. However, the deduction towards personal expenses of the deceased would have to be at the rate of 1/3rd of her assessed income considering the number of her dependent family members, and not at 1/4th as stressed by Ld. Counsel for the appellant. Consequently, the net dependency loss per annum would come to Rs.22,400/- only. There is no dispute regarding the multiplier of 16 considering the age of the deceased. Consequently, the total dependency loss admissible to the appellants comes to Rs.3,58,400/-. In addition, an amount of Rs.70,000/-, by way of loss of consortium (Rs.40,000/-); for loss of estate (Rs.15,000/-); and funeral expenses (Rs.15,000/-) is also admissible to the claimants. The total admissible amount of compensation therefore comes to Rs.4,28,400/-. Out of this amount the share admissible to appellant Brij Mohan Sharma would be Rs.2,34,200/- as he alone is entitled to loss of consortium and the balance of Rs.1,94,200/- is the admissible share of appellant Tanuj, who is stated to have crossed the age of

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majority by now.

(B) <u>In FAO No.1124 of 2000</u>

(i) The Tribunal has awarded a composite amount of Rs.50,000/- to the claimants/appellants on the premise that the deceased was a minor girl of 7 years and therefore certainly had no income of her own. The appellants have however relied upon the decisions of the Hon'ble Supreme Court in ***'Kishan Gopal and another vs. Lala and others, 2013(4) R.C.R.(Civil) 276'*** and ***'Lata Wadhwa vs. State of Bihar, 2001(4) R.C.R.(Civil) 673'*** in which cases even in respect of minor children the prospects of their generating income on growing up and consequently contributing to the family from the same was considered and approved. In *Lata Wadhwa's case* (supra) while originally compensation at a flat rate of Rs.50,000/- for each deceased child in the age bracket of 5 to 10 years was granted, the Supreme Court raised it threefold to Rs.1,50,000/- each. In addition, it was determined that contribution of the children in future from their income was assessable at Rs.24,000/- per annum. In *Kishan Gopal's case* (supra) where the deceased child was aged 10 years, his notional income was assessed at Rs.30,000/- per annum in view of the fact that he was assisting his parents in their agricultural occupation. In the present case, however, the appellant/father of the deceased happens to be a Government Employee and the mother (since deceased) was

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otherwise a housewife. So, there is no scope of parity with the ratio in *Kishan Gopal's case* (supra) since undoubtedly the deceased child could not have been in a position to help her parents professionally in the occupations they were engaged in. The similar assessment of the children's notional income/contribution as made in *Lata Wadhwa's case* (supra) is also inapplicable in the present case since the deceased children in the said case were all employees of Tata Iron and Steel Company which had its policy of giving employment to the children of their employees, and thereby there was a virtual assurance of generation of future income. In the totality of the circumstances therefore in the present case, it is held that the notional income of the deceased need not be assessed at more than what was the prescribed notional income at the time of accident in the year 1994, which happen to be Rs.15,000/- per annum in terms of Schedule II attached to the Section 163(a) of the Motor Vehicles Act. Out of this amount also 1/3rd was deductible towards the personal expenses of the deceased. Consequently, the actual dependency loss would come to Rs.10,000/- per annum and applying the multiplier of 15 to the same as was done in *Lata Wadhwa's case* (supra) the total entitlement on this account comes to Rs.1,50,000/- plus funeral expenses (Rs.15,000/-), and loss of estate (Rs.15,000/-), totalling Rs.1,80,000/-.

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(C) <u>In FAO No.1123 of 2000</u>

(i) In this matter the victim happens to be the scooter driver who sustained injuries and claims to have been rendered physically handicapped following the mishap. However, no convincing medical evidence to show any permanent disability was led before the Tribunal. The compensation awarded to him was quantified at Rs.15,000/- in all. But it is undisputed that the claimant had remained hospitalized for 7 days and therefore necessarily had to meet incidental expenses such as transportation, special diet etc., apart from the routine treatment related expenses. In addition he had also to undergo tremendous pain, suffering and agony both physical and mental, apart from having lost out on his job related income for the period of his treatment till he was in a position to resume his work at a later stage. In the totality of these circumstances, the Court is therefore inclined to enhance the compensation awarded to this appellant to a limit of Rs.25,000/- only in place of Rs.15,000/- as assessed by the Ld. Tribunal.

6. With the above observations, the present appeals are disposed off.

7. The compensation amount thus determined by this Court shall be paid by the respondents after making adjustments for any amount(s) already paid, and the interest liability of the respondents

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shall be subject to the same terms & conditions as determined by the Ld. Tribunal.

(SUDIP AHLUWALIA)
JUDGE

August 31, 2018
Dpr

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

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