IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO NO.1162 of 1998 (O&M) &
Cross Objections No.45-CII-1998
Date of Order:24.04.2018

Punjab State Electricity Board and another

..Appellants

Versus

Ajmer Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. A.S.Virk, Advocate, for
Mr. P.S.Thiara, Advocate,
for the appellants (in FAO NO.1162 of 1998)

Ms. Jyoti Sareen, Advocate,
for Cross Objector/respondent.

Mr. Neeraj Khanna, Advocate, for
Mr. D.P.Gupta, Advocate,
for respondent no.6-Insurance Company

ANIL KSHETARPAL, J(Oral)

This judgment shall dispose of FAO NO.1162 of 1998 and Cross-objections No.45-CII of 1998,filed by the claimants.

In the considered opinion of this court, appeal filed by the Punjab State electricity Board is wholly misconceived as the learned Tribunal has found that the vehicle was having a valid insurance and it was being driven by a driver who was having proper driving licence. The court has ordered that the liability shall be jointly and severely. This appeal appears to have been filed under an impression that the liability is to be exclusively of the Insurance Company. In case of vehicle being insured, the owner is entitled to be reimbursed by the Insurance Company. Hence, normally the order passed is that the liability shall be joint and several.

Now let us deal with the cross-objections.

Late Sh. Bhag Singh, who was aged 38 years, working as a Paledar (workman who lifts articles having more weight) with the Food Corporation of India, died in a motor vehicular accident, which took place on 10.08.1995. Learned Motor Accident Claims Tribunal (hereinafter referred to as the "Tribunal") assessed the income at Rs.1500/- per month and deducted Rs.300/- towards own expenses and thus worked out dependency at Rs.1200/- per month and the Tribunal applied multiplier of 16 keeping in view the age of the deceased as 38 and awarded a sum of Rs.1,92,000/-.

Learned counsel for the cross-objector-claimants submitted that the claimants had proved the income of the deceased at Rs.3000/- per month on average basis. Counsel has submitted that Kapoor Singh, Secretary of the Paledar Union was produced as a witness, who had brought his register, through which payment was being disbursed to the Paledars, who were members of the Union and from a perusal of the aforesaid register, it is clear that Bhag Singh was earning Rs.3,000/- per month on average basis. She has further submitted that another co-worker has been examined, who has also stated that the income of the deceased was Rs.3000/- per month. Learned counsel has further submitted that the learned Tribunal without giving any justifiable reason has chosen to assess the income at Rs.1500/- per month.

A careful reading of the award passed by the learend Tribunal, establishes that certain cuttings were found in the register and learned Tribunal has taken note of the fact that Kapoor Singh nowhere stated that Bhag Singh, the deceased, was earning Rs.3000/- per month on average basis. Still further it is also known fact that these paledars do not get work throughout the year. Work of loading and unloading of the foodgrains is available in the Food Corporation of India only on seasonal basis.

Taking into consideration these facts, the income of the deceased is assessed at Rs.2000/- per month. Deceased has left behind 4 dependents. Learned Tribunal has applied a cut of 1/5th, whereas it should be according to the judgment passed by the Hon'ble Supreme Court in ***Smt. Sarla Verma and others v. Delhi Transport Corporation and another, (2009) 6 SCC 121***, 1/4th. Learned Tribunal has not awarded any amount under the conventional heads i.e. loss of estate, loss of consortium and funeral expenses. As per the judgment by a Constitution Bench of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited v. Pranay Sethi and others, JT 2017(10) SC 450***, Rs.70,000/- in all is to be granted under the conventional heads. Under the head "Future Prospects", looking at the age of the deceased, claimants are entitled to 40% increase. In the claim petition, claimants have stated that the age of the deceased was about 40 years. Although, in the post mortem report, the age of the deceased is recorded as 42, however, respondents have not lead any evidence to prove that the age of the deceased was 42 years.

In view of the aforesaid, the amount is re-worked as under:-

Heads	***Compensation awarded by MACT***	***Compensation awarded by High Court***
Monthly Income assessed	Rs.1500/- per month	Rs.2000/- per month
(-) Deduction	Rs. 300/- per month (1/5th) Rs.1200/- per month	Rs. 500/- per month (1/4th) Rs.1500/- per month
Add Future Prospects 40% Total Income per month	NIL	Rs.600/- (Rs.1500+600=2100)
Annual dependency	NIL	Rs.2100x12=25200/-
Total dependency	Rs.1200x16=1,92,000/-	Rs.25200x15=3,78,000/-

Heads	***Compensation awarded by MACT***	***Compensation awarded by High Court***
Conventional Heads -Loss of estate -Funeral Expenses -Consortium	NIL	Rs.15000/- Rs.15000/- Rs.40000/- Total= 70,000/-
Total amount of compensation	Rs.1,92,000/-	Rs.378000+70000= Rs.4,48,000/-
Compensation Awarded by the High Court	: Rs.4,48,000-00	
(-)Compensation Awarded by the **MACT**	: Rs.1,92,000-00	
Enhanced Compensation	: Rs.2,56,000-00	

Note:- An arithmetical mistake has occurred in the order passed by the learned Motor Accident Claims Tribunal. As per correct calculation, it should be 1200x12x16=2,30,400/-. But the learned Motor Accident Claims Tribunal had wrongly multiplied monthly dependency with multiplier i.e. 1200X16, which comes to Rs.19,200/- but the learned Tribunal wrote it as Rs.1,92,000/-.

In view of the above, the FAO No.1162 of 1998 and Cross Objection No.45-CII of 1998 are disposed of accordingly.

The enhanced amount i.e. Rs.2,56,000/- shall carry interest @ 7.5% from the date of filing of the claim petition till its realization.

April 24, 2018 **(ANIL KSHETARPAL)**
nt **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No