IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

216 **FAO-6015-2014 (O&M)**

Date of Decision:18.01.2018

Smt. Sushila and others **.....Appellants**

Versus

Ram Saroop and others **.....Respondents**

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

Present: Mr. Pankaj Middha, Advocate, for the appellants.

Mr. Sanjeev Kodan, Advocate, for respondent No.3.

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HARI PAL VERMA, J.(Oral)

The appellants-claimants have filed the present appeal seeking enhancement of compensation against the award dated 08.11.2013 passed by the learned Motor Accidents Claims Tribunal, Jind (for short "the MACT").

The claimants have filed the claim-petition under Section 166 of the Motor Vehicles Act, 1988 on account of death of Dharam Pal, husband of claimant No.1, father of claimant Nos.2 to 4 and son of claimant No.5. There is no serious dispute about the facts. The deceased-Dharam Pal was 38 years of age and was a truck-trolla driver. He died in the motor vehicular accident, which took place on 14.10.2012. The claimants have claimed compensation by considering the income of the deceased as ₹23,500/- per month, which includes (i.e. ₹20,000/- salary + ₹100/- per day on account of diet money + ₹500/- as medical allowance for each month).

This income has been claimed on the basis of the statement of PW3 Ramesh Kumar with whom the deceased was serving as a driver on his eighteen wheel truck trolla. The deceased was receiving the aforesaid salary and he was employed by PW3 Ramesh Kumar about six months back and prior to that he was employed with Om Logistics Transport Company. Taking into consideration the income of the deceased as ₹6,500/- per month and his age as 38 years, the learned MACT has awarded an amount of ₹10,27,500/- as compensation along with interest @ 7.5% per annum on account of death of deceased Dharam Pal. The said amount includes ₹1 lac towards loss of consortium, love and affection to the widow claimant Sushila, ₹25,000/- towards loss of care and guidance for the minor children and an amount of ₹25,000/- on account of funeral expenses.

Dissatisfied with the aforesaid compensation, the claimants have filed the present appeal seeking enhancement of compensation.

Learned counsel for the appellants has argued that the learned MACT has wrongly assessed the compensation by considering the income of the deceased as ₹6,500/- per month, despite the fact that PW3 Ramesh Kumar with whom the deceased was working as a driver has stated that the deceased was drawing a salary of ₹23,500/- per month (as detailed above). He has not questioned the applicability of the multiplier and his argument is that the income of the deceased should be assessed on the basis of statement made by PW3-Ramesh Kumar. He further argued that as PW3 has stated in his statement that the deceased was drawing ₹23,500/- per month salary and merely for the reason that he (PW3) was not maintaining any record, is no ground to dis-entitle the claimants from compensation from the income as described by PW3 Ramesh Kumar.

In this regard, learned counsel for the appellants has placed reliance upon the judgment of the Hon'ble Supreme Court in **Jaya Biswal and others Versus Branch Manager, IFFCO Tokio General Insurance Company Limited and another, 2016 (1) R.C.R. (Civil) 1003** and judgment of this Court in FAO No.4695 of 2013 (**Smt. Lalita Rani and others Versus Vishwajit Singh Minhas and another),** decided on 22.11.2017.

Learned counsel for the appellants has further argued that in case of death of a truck driver during the course of employment when question regarding the wages of such a driver is to be decided and the employer has failed to maintain the wages roll, the deceased is entitled to compensation on the basis of statement made by his employer which is made orally. He states that accordingly income of the deceased has wrongly been assessed and a higher income was required to be assessed while computing the compensation on account of death of deceased Dharam Pal.

On the other hand, learned counsel for respondent-Insurance Company has argued that taking into consideration the nature of duty performed by the deceased driver and treating him a skilled worker, the principal of minimum wages was required to be applied. As per Notification issued by the State Government for the relevant period, salary of a skilled worker was around ₹5,100/- per month only. Therefore, the compensation already awarded to the deceased was still on the higher side and the claimants are not entitled for the compensation under the heads of loss of consortium, loss of love and affection, loss of estate and funeral expenses etc. and their case is required to be considered in conformity with the case of **National Insurance Company Limited Versus Pranay Sethi**

<u>and others</u>, 2017 (4) R.C.R (Civil) 1009.

I have heard the learned counsel for the parties.

The claimants have examined PW3 Ramesh Kumar as the only witness, who is stated to be the employer of the deceased. Though, this witness has stated that the deceased was drawing a monthly salary of ₹23,500/- (₹20,000/- per month and ₹100/- per day on account of diet + ₹500/- per month as medical allowance) but no such record has been produced by the witness. Even otherwise, the deceased had started working with PW3 Ramesh Kumar only six month prior to the date of accident. But no efforts have been made by the claimants to examine the previous employer with whom the deceased was earlier working for the considerate period. There is no dispute that in view of **<u>Jaya Biswal's case (supra)</u>**, under the Payment of Wages Act, 1936, onus is on the employer to maintain a register and record of wages and Section 13A of the said Act requires him to maintain a record and given the duty to such employer. The deceased was a driver. Therefore, his wages have been taken into consideration the wages of a skilled worker. As on date when the accident took place, minimum wages for a skilled worker was around ₹5,100/- per month. Since the appellants have not produced the employer with whom the deceased was earlier working and in the absence of any other relevant record, except the bald statement of PW3 Ramesh Kumar, this Court finds that the income of the deceased has rightly been assessed @ ₹6,500/- per month. But as held in **<u>Pranay Sethi's case (supra)</u>**, learned MACT has not awarded compensation under the head of future prospects, this Court finds that the claimants are entitled for an amount of 40% towards future prospects, the deceased being below 40 years of age. At the same time, the awarded amount of ₹1 lac towards consortium, love and affection to the widow claimant Sushila, ₹25,000/- towards loss of care and guidance for the minor children and an amount of ₹25,000/- on account of funeral expenses required to be modified. As held in the case of **Pranay Sethi's case (supra)**, the claimants are held entitled for an amount of ₹70,000/- (i.e., ₹40,000/- on account of loss of consortium, love and affection + ₹15,000/- for the loss of estate and ₹15,000/- for funeral expenses. In this manner, the award is modified in the following manner:-

Loss of dependency	:	₹8,77,500/-
Increase in the income of future prospects (40%)	:	₹3,51,000/-
Loss of consortium, love and affection	:	₹40,000/-
Loss of estate	:	₹15,000/-
Funeral expenses	:	₹15,000/-
Total		₹12, 98, 500/-

However, the enhanced amount of compensation shall carry interest @ 7.5% from the date of filing of the claim-petition.

With the aforesaid modification in the award, the present appeal stands disposed of.

January 18, 2018 **(HARI PAL VERMA)**
seema **JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No