IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 788 of 2015
DECIDED ON: DECEMBER 10, 2018

ARSHAD AND OTHERS

.....APPELLANTS

VERSUS

ASLAM AND OTHERS

.....RESPONDENTS

AND

FAO No. 789 of 2015

ARSHAD AND OTHERS

.....APPELLANTS

VERSUS

ASLAM AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Brijender Singh, Advocate for
Mr. Ashish Gupta, Advocate
for the appellants in both the appeals.

None for the respondents, in spite of service.

AVNEESH JHINGAN, J (ORAL)

The aforesaid two appeals are being disposed of by a common order as they are arising out of the same accident.

The award dated 11.11.2014 passed by the Motor Accident Claims Tribunal, Mewat (for short 'the Tribunal') passed in MACT case No. 96 of 01.07.2013 has been assailed by the legal heirs of Saddique and Mehram seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act').

The appellants are seven children of Saddique and Mehram. The driver of Mini Truck bearing registration No. RJ-05-GA-6602 (hereinafter referred to as 'offending vehicle'), owner of offending vehicle have been arrayed as respondents No.1 and 2 respectively in the present appeal. One of the sons of Saddique has been arrayed as respondent No.3.

The brief facts necessary for the adjudication of the present appeals are that on 15.05.2013 Saddique alongwith his wife Mehram was coming to his village from Punhana to Rithat via Shikrawa. They were travelling on a motorcycle. When they reached near village Shikrawa, the motorcycle was hit by a rashly and negligently driven offending vehicle. As a result of the impact, both the occupants of the motorcycle suffered serious and multiple injuries and died at the spot.

Two separate claim petitions under Section 166 of the Act were filed before the Tribunal by the unfortunate children who lost their parents in the motor vehicular accident.

The Tribunal after considering the facts and appreciating the evidence adduced, held that the accident was caused due to rash and negligent driving of the offending vehicle. The driver and owner of the offending vehicle were held jointly and severally liable to pay the compensation. During the proceedings, the claimants came to know that the offending vehicle was not insured and they gave their consent for deleting the United India Insurance Company Ltd. from the array of parties.

The Tribunal awarded a compensation to the tune of ₹5,57,600/- alongwith interest @9% per annum on account of death of Saddique. The amount awarded included ₹20,000/- for loss of consortium for love and affection and for funeral expenses.

The Tribunal awarded a compensation to the tune of ₹4,90,400/- alongwith interest @9% per annum on account of death of Mehram. The amount awarded included ₹20,000/- for loss of consortium for love and affection and for funeral expenses.

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The claimants before the Tribunal in MACT case No. 96 of 01.07.2013/09.09.2013 pleaded that Saddique was 46 years of age and was earning ₹10,000/- per month. It was claimed that he was working as a driver. The claimants failed to substantiate the occupation and earnings of the deceased. The Tribunal assessed the monthly earning of the deceased as ₹4000/- per month. 1/5th deduction for self-expenses was made, as the deceased was survived by more than six dependants. Multiplier of 14 was applied.

Learned counsel for the appellants argued that the Tribunal erred in assessing the monthly income of the deceased as ₹4000/-, which is even less than the minimum wages for an unskilled labourer. His grievance is that the amounts under the conventional heads are on lower side and no future prospects have been awarded.

The contention raised by learned counsel for the appellants deserves acceptance.

In the cases where the claimants fail to substantiate the monthly earnings and occupation of the deceased, the safest yardstick is to rely upon the minimum wages prevalent in the State at the time of accident. In the State of Haryana, the minimum wages for an unskilled labourer at the time of accident was ₹5212/-. The same is rounded off to ₹5200/- for the purpose of calculating the compensation.

Having due regard to the decisions of the Supreme Court in ***National Insurance Co. Ltd. vs. Pranay Sethi and others;*** ***2017 (4) RCR (Civil) 1009*** and ***Hem Raj vs. Oriental Insurance Company*** Ltd; **2018 (2) PLR 480;** 25% future prospects are awarded.

As the quantum of compensation is being revisited, it would be appropriate that the multiplier is to be made in consonance with the decision of Supreme Court in ***Smt. Sarla Verma and others vs. Delhi Transport Corporation and another;*** ***(2009) 6 SCC 121.*** Since the deceased was 46 years old, hence, multiplier of 13 is applied.

The amounts under the conventional head are awarded in consonance with the decision of the Supreme Court in ***Pranay Sethi's*** case (supra). Claimants are entitled to a sum of ₹15,000/- each for funeral expenses and for loss of estate. No amount can be awarded for loss of love and affection.

In view of afore-said discussion, the compensation is recalculated as under:

	Head	Compensation awarded
(i)	Income	₹5200/- per month
(ii)	Future prospects at 25%	₹1300/- per month
(iii)	Total Income	₹6500/- per month
(iv)	Deduction of personal expenses	₹1300/- (i.e. 1/5th of total income)
(v)	Multiplier	13 (as per age of deceased)
(vi)	Total Dependency	₹5200x12x13=₹8,11,200/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
	Total Compensation awarded	₹8,41,200/-

The award dated 11.11.2014 passed in MACT case No. 96 of 01.07.2013/09.09.2013 is modified to the extent that the amount awarded of ₹5,57,600/- is enhanced to ₹8,41,200/-. The claimants/appellants shall be entitled to interest @7.5 % per annum on the enhanced amount of compensation from the date of filing of the claim petition till the realization of amount.

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The claimants before the Tribunal in a MACT case No. 95 of 01.07.2013/09.09.2013 pleaded that Mehram (deceased) was 32 years of age and was earning ₹5000/- per month while doing labour work. The claimants failed to substantiate the occupation and earnings of the deceased. The Tribunal assessed the monthly earning of the deceased as ₹3500/- per month. 1/5th deduction for self-expenses was made, as the deceased was survived by more than six dependants. The Tribunal took the age of the deceased as 42 years and applied a multiplier of 14.

Learned counsel for the appellants argued that in the cases where the notional income of the deceased was assessed, no deduction for self expenses ought to have been made. His grievance is that no amount has been awarded under the conventional heads.

The contention raised by learned counsel for the appellants deserves acceptance.

Claimants failed to substantiate the occupation and monthly earning of the deceased. In such circumstances, her income was assessed on estimation as ₹3500/- per month. As the occupation of Mehram was not proved she is to be treated as a house maker. Her income assessed is notional income i.e. ₹3500/-. In case where the notional income of the house-wife is considered, no deduction for self-expenses is to be made. This Court relying upon a decision of the Apex Court in case of ***<u>Arun Kumar Aggarwal and another Versus National Insurance Company and others;</u>*** (2010-3) 159 PLR 428 (SC) in ***<u>Paramjit Singh and another Versus Dilbagh Singh alias Bagga and others,</u>*** Vol. CLXXII (2013-4) 329, has held as under:

> "15. After the decision in Lata Wadhwa's case (supra), the notional income of the housewife is estimated according to their age. The notional income of the housewife was taken to be ₹3,000/- per month if she had been between the age group of 34 to 59 at the time of accident. The only riddle which is to be solved by us is as to whether 1/3rd cut should be applied on the notional income or not? The answer to this question is couched in the aforesaid extracted paragraph of the judgment of Lata Wadhwa's case (supra), as in that case, the Supreme Court was searching for a modest notional income of the housewife who was not earning an income but rendering multifarious services while managing all the chores of the family. Since it is a case where the Courts are confronted with the notional income of the housewife on account of her multifarious services which not only includes rearing the children but also performing all matrimonial obligations, in our considered view, the deduction of 1/3rd out of her notional

income is not warranted."

As the quantum of compensation is being revisited, it would be appropriate that the amounts under the conventional head are awarded in consonance with the decision of the Supreme Court in ***Pranay Sethi's*** case (supra). Claimants are entitled to a sum of ₹15,000/- each, for funeral expenses and for loss of estate.

In view of afore-said discussion, the compensation is recalculated as under:

	Head	**Compensation awarded**
(i)	Income	₹42000/- per annum
(ii)	Multiplier	14
(iii)	Total Income	₹5,88,000/- per annum
(iv)	Funeral expenses	₹15,000/-
(v)	Loss of estate	₹15,000/-
	Total Compensation awarded	₹6,18,000/-

The award dated 11.11.2014 passed in MACT case No. 95 of 01.07.2013/09.09.2013 is modified to the extent that the amount awarded of ₹4,90,400/- is enhanced to ₹6,18,000/-. The claimants/appellants shall be entitled to interest @7.5 % per annum on the enhanced amount of compensation from the date of filing of the claim petition till the realization of amount.

Both the appeal are allowed in the afore-said terms.

(AVNEESH JHINGAN)
JUDGE

DECEMBER 10, 2018
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No