201 (1/5)

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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1. **FAO No.2138 of 2001**
Date of Decision: 21.02.2019

Bindu Anand and others

Appellants

Versus

Mohinder Singh and others

Respondents

2. **FAO No.2139 of 2001 (O&M)**

Kavita Rani and others

Appellants

Versus

Mohinder Singh and others

Respondents

3. **FAO No.2136 of 2001**

Bindu Anand

Appellant

Versus

Mohinder Singh and others

Respondents

4. **FAO No.2134 of 2001**

Shakti Rani Anand

Appellant

Versus

Mohinder Singh and others

Respondents

5. **FAO No.2135 of 2001**

Sidhant Anand

Appellant

Versus

Mohinder Singh and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vinod K. Kanwal, Advocate for
Mr. Ashit Malik, Advocate
for the appellants.

Mr. Paul S. Saini, Advocate
for respondent No.3-The National Insurance Co. Ltd.

Mr. Suvir Dewan, Advocate
for respondent No.5-The Oriental Insurance Co. Ltd.

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AVNEESH JHINGAN, J (Oral):

The award dated 27.09.1996 passed by the Motor Accident Claims Tribunal, Jagadhri [for brevity 'the Tribunal'] has been assailed in five appeals by the legal heirs/claimants seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

Since all the five appeals arise from the same accident and same award, these are being disposed of by a common order.

The record of this appeal was burnt and from the salvaged record of the partially burnt cases, the same was reconstructed subject to all just exceptions and further verification.

The driver, owner and insurer (i.e. The National Insurance Company Ltd.) of Tanker bearing registration No. DL-1G-3737 [hereinafter referred to as 'offending vehicle'] are respondents No.1 to 3 whereas owner and insurer (i.e. The Oriental Insurance Company Ltd.) of Maruti Car bearing registration No. HR-02B-9901 [hereinafter referred to as 'car'] are respondents No.4 and 5 in all the appeals.

Brief facts necessary for adjudication of the present appeal are that on 26.04.1996, Shakti Rani Anand, Ashwani Anand, Shanti Nath @ Billa, Vijay Kumar Anand, Bindu Anand and minor child Sidhant Anand were travelling in a car. The car was being driven by Ashwani Anand. The said car was being followed by another vehicle which was being driven by Kamal Anand. In the intervening night of 26/27.04.1996, at about 01:30 A.M., the car was struck by a rashly and negligently driven offending vehicle. As a result of the impact, the car was completely damaged, resultantly, Shanti Nath @ Billa died at the spot and Ashwani Anand lost his life on his way to the hospital. Shakti Rani Anand, Bindu Anand and Sidhant Anand sustained grievous injuries. FIR No.12, dated 27.04.1996 was registered at Police Station Mullepur, District Fatehgarh Sahib.

Claim petitions were filed under Section 166 of the Act by the legal heirs of Shanti Nath @ Billa & Ashwani Anand also by Shakti Rani Anand, Bindu Anand and Sidhant Anand. The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to the rash and negligent driving of the offending vehicle. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

1. <u>FAO No.2138 of 2001</u>

In the MACT Case No.108 of 1996 filed by legal heirs of Ashwani Anand, it was pleaded that the deceased was a businessman and was also doing agricultural work. His income tax returns were produced before the Tribunal. The Tribunal after considering the income tax returns opined that annual income of the deceased was ₹69,000/- but awarded compensation by considering the monthly income of the deceased as ₹5,500/-. The Tribunal made 1/3rd deduction for self-expenses and applied multiplier of '14'. Age of the deceased was taken as 35 years relying upon the post-mortem report. The Tribunal awarded a sum of ₹6,04,800/-.

Learned counsel for the appellants contends that inspite of recording the finding that the annual earning of the deceased was ₹69,000/-, the Tribunal awarded compensation by considering his monthly income as ₹5,500/-. He further contends that no future prospects have been awarded and 1/3rd deduction for self-expenses has wrongly been made as the deceased was survived by four dependents i.e. widow, two minor children and mother. He also contends that no amount has been awarded under the conventional heads and multiplier has wrongly been applied. The grievance raised is that statutory interest under Section 171 of the Act has not been awarded by the Tribunal.

Learned counsel for the insurer while defending the award resists any further enhancement.

The contentions raised by learned counsel for the appellants deserve acceptance. The Income Tax Returns were exhibited before the Tribunal. The Tribunal considering the Returns, came to the conclusion that the deceased was having annual income of ₹69,000/- and rest of the income shown in the Returns was relating to interest. Once annual income of the deceased was established, it would be appropriate that compensation be calculated on the said amount i.e. ₹69,000/-.

Having due regard to the decisions of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157*** and ***Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480,*** 40% future prospects are awarded as the deceased was below 40 years of age and falls under the category of self-employed or a person having an established income.

The claimants are also entitled to ₹15,000/- each for funeral expenses and for loss of estate. ₹40,000/- are awarded to the widow for loss of consortium.

The deceased was survived by four dependents. In consonance with the decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21,*** 1/4th deduction for self-expenses is to be made. Since the deceased was in the age group of 31-35, multiplier of '16' is to be applied.

In view of above discussion, compensation is re-calculated as under:-

Particulars	Amount (in ₹)
Annual income of the deceased as assessed by the Tribunal	69,000/-
40 % Future Prospects	27,600/-
Sub Total	96,600/-
1/4th deduction for self expenses	24,150/-
Annual Dependency	72,450/-
Applying multiplier of '16'	**11,59,200/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Loss of consortium to the widow	**40,000/-**
Grand Total	**12,29,200/-**

The award dated 27.09.1996 in MACT Case No.108 of 1996 is modified to the extent that amount of ₹6,04,800/- awarded by the Tribunal is enhanced to ₹12,29,200/-.

The Tribunal while awarding the compensation has not awarded any interest which is statutory in nature. The Supreme Court in ***Dharampal and others Vs. U.P. State Road Transport Corporation 2008(12) SCC 208*** held as under:

> *"8. As per Section 171 of the Motor Vehicle Act, 1988 (hereinafter referred as 'Act') where the claim for compensation made under the act is allowed by the Claims Tribunal, the tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate from such date not earlier than the date of making claim.*
>
> *9. In **National Insurance Company Ltd. Vs.***

> ***Keshav Bahadur, reported in 2004(2) RCR (Civil) 99: (2004) 2 SCC 370*** *this Court has held that the provisions require payment of interest in addition to compensation already determined. Even though the expression "may"is used, a duty is laid on the Tribunal to consider the question of interest separately with due regard to the facts and circumstances of the case. It was clearly held in the said decision that the provision of payment of interest is discretionary and is not and cannot be bound by rules.*
>
> *10. Interest is compensation for forbearance or detention of money, which ought to have been paid to the claimant. No rate of interest is fixed under Section 171 of the Act and the duty has been bestowed upon the court to determine such rate of interest."*

In view of decision of the Supreme Court, the claimants shall be entitled to the compensation alongwith interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is allowed in the aforesaid terms.

2. <u>FAO No.2139 of 2001</u>

In the MACT Case No.31 of 1996 filed by legal heirs of Shanti Nath (deceased), it was pleaded that the deceased was 34 years old at the time of accident and was running transport business. It was claimed that the deceased was income tax payee, but nothing was produced before the Tribunal. The Tribunal assessed monthly income of the deceased as ₹3,600/-; 1/3rd deduction for self-expenses was made and multiplier of '14' was applied. The Tribunal awarded a sum of ₹4,03,200/-.

Learned counsel for the appellants raises five-fold issues:-

- firstly, no future prospects have been awarded;
- secondly, 1/3rd deduction has wrongly been made instead of 1/4th as the deceased was survived by five dependents i.e. widow, three minor children and mother;
- thirdly, multiplier of '14' has wrongly been applied;
- fourthly, no amount has been awarded under the conventional heads and
- lastly, statutory interest under Section 171 of the Act has not been awarded by the Tribunal.

Learned counsel for the insurer while defending the award resists any further enhancement.

The contentions raised by learned counsel for the appellants deserve acceptance.

Having due regard to the decisions of the Supreme Court in cases of ***Pranay Sethi*** (supra) and ***Hem Raj*** (supra), 40% future prospects are awarded as the deceased was below 40 years of age and falls under the category of self-employed or a person having an established income.

The claimants are entitled to ₹15,000/- each for funeral expenses and for loss of estate. ₹40,000/- are awarded to the widow for loss of consortium.

The deceased was survived by five dependents. In consonance with the decision of the Supreme Court in ***Sarla Verma's case*** (supra), 1/4th deduction for self-expenses is to be made. Since the deceased was in the age group of 31-35, multiplier of '16' is to be applied.

In view of above discussion, compensation is re-calculated as under:-

Particulars	Amount (in ₹)
Monthly income of the deceased as assessed	3,600/-
40 % Future Prospects	1,440/-
Sub Total	5,040/-
1/4th deduction for self expenses	1,260/-
Monthly Dependency	3,780/-
Annual Dependency	45,360/-
Applying multiplier of '16'	**7,25,760/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Loss of consortium to the widow	**40,000/-**
Grand Total	**7,95,760/-**

The award dated 27.09.1996 in MACT Case No.31 of 1996 is modified to the extent that amount of ₹4,03,200/- awarded by the Tribunal is enhanced to ₹7,95,760/-.

The Tribunal while awarding the compensation has not awarded any interest which is statutory in nature.

In view of decision of the Supreme Court in ***Dharampal's case*** (supra), the claimants shall be entitled to the compensation alongwith interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is allowed in the aforesaid terms.

3. **FAO No.2136 of 2001**

Bindu Anand had filed MACT Case No.110 of 1996 under Section 166 of the Act, seeking compensation for injuries sustained by her in the accident. Dr. P.K. Kohli deposed as PW-4 before the Tribunal, and stated that the appellant remained hospitalized from 27.04.1996 to 25.05.1996. She had suffered dislocation of right hip joint with fracture acetabulum. The medical bills to the tune of ₹13,500/- were proved by the appellant. The Tribunal awarded a sum of ₹13,500/- for medical bills and a lump sum amount of ₹15,000/- for all other heads.

Learned counsel for the appellant contends that the appellant was hospitalized for almost a month and she had suffered dislocation of right hip joint with fracture acetabulum, the amount awarded by the Tribunal is meagre. His grievance is that statutory interest under Section 171 of the Act has not been awarded by the Tribunal.

Learned counsel for the insurer while defending the award argues that there was no permanent or temporary disability.

There is no dispute on the fact that the appellant remained hospitalized for almost one month. She had suffered dislocation of right hip joint with fracture acetabulum. The nature of injuries sustained was such that she would have required attendant during the period of hospitalization and subsequently also. Similarly, transportation would have been required as there was not only fracture but dislocation of hip joint. Special diet also ought to have been given to the claimant for speedy recovery. Since the claimant was house-wife and she was bed-ridden for a long time, pain & suffering would have been not only for her but for her family also. The role of house-wife cannot be measured in monetary terms, yet contribution towards her family cannot be under estimated and her being bed-ridden for more than one month and thereafter during the recovery period, there is bound to be financial loss.

The Supreme Court in case of ***G. Ravindranath @ R. Chowdary Versus E. Srinivas and another, 2013(12) SCC 455,*** held as under:-

> *"11. We have heard learned counsel for the parties and carefully perused the record.*
>
> *It is settled law that compensation in personal injury cases should be determined under the following heads:*
>
> ***Pecuniary damages (Special damages)***
>
> *(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food and miscellaneous expenditure.*
>
> *(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:*
>
> *(a) Loss of earning during the period of treatment;*
>
> *(b) Loss of future earnings on account of permanent*

> *disability.*
>
> *(iii) Future medical expenses.*
>
> ***Non-pecuniary damages (General damages)***
>
> *(iv) Damages for pain, suffering and trauma as a consequence of the injuries.*
>
> *(v) Loss of amenities (and/or loss of prospects of marriage).*
>
> *(vi) Loss of expectation of life (shortening of normal longevity).*
>
> *12. In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."*

Though there was no permanent or temporary disability, yet in the facts and circumstances of the case, the compensation awarded is enhanced as under:-

Particulars	**Amount (in ₹)**
Medical Bills (as awarded by the Tribunal)	13,500/-
Attendant Charges	5,000/-
Special Diet	5,000/-
Transportation Charges	5,000/-
Pain & suffering	10,000/-
Financial Loss	10,000/-
Total	**48,500/-**

The award dated 27.09.1996 in MACT Case No.110 of

1996 is modified to the extent that amount of ₹28,500/- awarded by the Tribunal is enhanced to ₹48,500/-.

The Tribunal while awarding the compensation has not awarded any interest which is statutory in nature.

In view of decision of the Supreme Court in ***Dharampal's case*** (supra), the claimants shall be entitled to the compensation alongwith interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is allowed in the aforesaid terms.

4. FAO No.2134 of 2001:

Shakti Anand had filed MACT Case No.107 of 1996 under Section 166 of the Act, seeking compensation for injuries sustained in the accident. Dr. P.K. Kohli deposed as PW-4 before the Tribunal and proved the injuries sustained by the claimant in the accident and treatment given by him. The Tribunal awarded a sum of ₹40,000/- for medicinal expenses and ₹45,000/- were awarded under various heads including pain, suffering, agony etc.

Learned counsel for the appellant contends that the appellant was hospitalized for almost a month and she had suffered head injury, lacerated wound on her face, fracture of both bones of left forearm, fracture shaft humerus right arm, fracture of shaft femur and left thigh. His grievance is that the compensation awarded is on the lower side and statutory interest under Section 171 of the Act has not been awarded by the Tribunal.

Learned counsel for the insurer while defending the award argues that there was no permanent or temporary disability.

Heard learned counsel for the parties and perused the paper book.

The nature of injuries were grievous and serious, this fact is fortified by the fact that the claimant had remained hospitalized for almost a month and had undergone follow-up treatment as an OPD Patient. Though the income tax returns were exhibited before the Tribunal but it was not proved that what was the source of her income and whether the said source suffered due to her injuries. However, even if she is treated to be a house-wife, financial loss is bound to occur for her being immobilized for a long period.

Though there was no permanent or temporary disability, yet in the facts and circumstances of the case, the compensation is enhanced as under:-

Particulars	Amount (in ₹)
Medical Bills (as awarded by the Tribunal)	40,000/-
Attendant Charges	10,000/-
Special Diet	10,000/-
Transportation Charges	10,000/-
Pain & suffering	20,000/-
Financial Loss	20,000/-
Follow-up treatment	15,000/-
Total	**1,25,000/-**

The award dated 27.09.1996 in MACT Case No.107 of 1996 is modified to the extent that amount of ₹85,000/- awarded by the Tribunal is enhanced to ₹1,25,000/-.

The Tribunal while awarding the compensation has not awarded any interest which is statutory in nature.

In view of decision of the Supreme Court in ***Dharampal's case*** (supra), the claimants shall be entitled to the compensation alongwith interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is allowed in the aforesaid terms.

5. FAO No.2135 of 2001

Sidhant Anand (minor) had filed MACT Case No.109 of 1996 through natural guardian, under Section 166 of the Act, seeking compensation for injuries sustained in the accident. Dr. P.K. Kohli deposed as PW-4 before the Tribunal and proved the injuries sustained in the accident and treatment given by him. It was proved that he had suffered head injury and wound on the scalp and fracture in matacarpal for which plaster splint was applied. He remained hospitalized from 27.04.1996 to 30.04.1996. The Tribunal awarded a sum of ₹3,000/- for medical expenses and ₹5,000/- under other heads.

Learned counsel for the appellant contends that the amount awarded by the Tribunal is on the lower side as the claimant has suffered head injury and wound on the scalp and fracture in matacarpal for which plaster was applied.

Learned counsel for the insurer while defending the award argues that there was no permanent or temporary disability.

Considering the facts of the case and the fact that a young child had suffered fracture and plaster was applied to him and he remained hospitalized for four days, amount of ₹8,000/- awarded by the Tribunal is enhanced by ₹10,000/-.

The award dated 27.09.1996 in MACT Case No.109 of 1996 is modified to the extent that amount of ₹8,000/- awarded by the Tribunal is enhanced by ₹10,000/-.

The Tribunal while awarding the compensation has not awarded any interest which is statutory in nature.

In view of decision of the Supreme Court in ***Dharampal's case*** (supra), the claimants shall be entitled to the compensation alongwith interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is allowed in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

February 21, 2019
pankaj baweja

1. Whether speaking/ reasoned : Yes
2. Whether reportable : Yes