250(1/5)

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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(1) FAO No.4447 of 2006 (O&M);
(2) FAO No.4446 of 2006 (O&M);
(3) FAO No.4444 of 2006 (O&M);
(4) FAO No.4445 of 2006 (O&M);
(5) FAO No.4448 of 2006 (O&M)

Date of Decision: 27.02.2019

Amardeep Singh

Appellant

Versus

Vijay Kumar and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Gopal Sharma, Advocate
for the appellant(s).

Mr. M.K. Dogra, Advocate
for respondent No.3-Insurance Company.

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AVNEESH JHINGAN, J (Oral):

The award dated 05.05.2006 passed by the Motor Accident Claims Tribunal, Patiala [for brevity 'the Tribunal'] in MACT Cases No.200T/21.07.2003 to 204T/21.07.2003 has been assailed by Amardeep Singh.

The driver, owner and insurer (i.e. The New India

Assurance Co. Ltd.) of Truck bearing registration No. PB-08B-7955 [hereinafter referred to as 'offending vehicle'] have been arrayed as respondents No.1 to 3 respectively in the appeal.

The facts necessary for adjudication of the present appeal are that on the ill fated day of 15.06.2003, Pritpal Singh Handa, his wife Parveen Kaur; daughters Manpreet Kaur & Chanpreet Kaur and son Amardeep Singh {mentioned as 'Amardeep Singh' in the title of the award and 'Amandeep Singh' in the body of award (hereinafter referred to as 'Amardeep Singh)} were travelling in Maruti Car bearing registration No. CH-01B-2188 [hereinafter referred to as 'car']. On their way back from Amritsar to Patiala, the car was hit by a rashly and negligently driven offending vehicle. As a result of the impact, occupants of the car received grievous injuries. Pritpal Singh Handa and Parveen Kaur died at the spot and rest of three were taken to Civil Hospital, Kartarpur, from where they were referred to Civil Hospital, Jalandhar. Manpreet Kaur and Chanpreet Kaur died on the way to Civil Hospital, Jalandhar, while Amardeep Singh was shifted to Satyam Hospital, Jalandhar. FIR No.56, dated 15.06.2003 was registered at Police Station Kartarpur.

Five claim petitions were filed under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'] by Amardeep Singh seeking compensation for death of his parents, sisters and for injuries sustained by him. 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.4447 of 2006:</u>

This appeal arise from MACT Case No.201T/21.07.2003 which has been filed by Amardeep Singh seeking compensation awarded under Section 166 of the Act, for death of his father Pritpal Singh Handa, aged 50 years. In the claim petition, it was pleaded that the deceased was working as a Senior Lecturer of Commerce in Punjab Public College, Samana. His salary was proved as ₹21,016/- per month. The loss of dependency was calculated by the Tribunal as ₹1,44,000/-, after deducting Gratuity, Provident Fund and ex-gratia amount received and ₹6,000/- was awarded for funeral expenses. Compensation of ₹1,50,000/- in total was awarded with the direction to respondents that the said amount be deposited within two months failing which they were held liable to pay future interest @ 9% per annum from the date of application till the decree and 6% future interest from the date of order till realization of the amount.

Learned counsel for the appellant contends that once carry-home salary was proved as ₹21,016/- after deducting Income Tax of ₹4,900/-, the multiplier method should have been adopted and no deduction should have been made for Gratuity and Provident Fund. He placed reliance on the decision of the Supreme Court in case ***Manasvi Jain vs. Delhi Transport Corporation, 2014(3) SCC 22.*** He further contends that no future prospects have been awarded and the amount awarded under the conventional heads is on the lower side. The grievance is raised against granting conditional interest.

Learned counsel for the Insurer while defending the award resisted any further enhancement.

The contentions raised by learned counsel for the appellant deserve acceptance. The claimant was able to prove monthly earning of the deceased and the fact that he was working as Lecturer in the College.

The compensation has to be awarded considering the gross salary, *less* income tax payable. The Supreme Court in ***Manasvi Jain's case (supra)*** held as under :-

> *"12. This Court in Shyamwati Sharma & Ors. Vs. Karam Singh & Ors., 2010(3) R.C.R. (Civil) 741 : (2010) 12 SCC 378, while considering the issues of deduction of taxes, contributions etc., for arriving at the figure of net monthly income, held that "while ascertaining the income of the deceased, any deductions shown in the salary certificate as deductions towards GPF, life insurance premium, repayments of loans etc., should not be excluded from the income. The deduction towards income tax/surcharge alone should be considered to arrive at the net income of the deceased."*

The salary of the deceased after deducting the income tax was proved as ₹21,016/-. The deceased was in the age group of 50-60 years, thus 15% future prospects are awarded; 1/3rd deduction for self-expenses is made and multiplier of '13' is applied.

In view of 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***, the claimant is entitled to ₹15,000/- each for funeral expenses and for loss of estate.

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

Particulars	Amount (in ₹)
Monthly income of the deceased as assessed	21,016/-
15 % Future Prospects	3,152/-
Sub Total	24,168/-
1/3rd deduction for self expenses	8,056/-
Monthly Dependency	16,112/-
Annual Dependency	1,93,344/-
Applying multiplier of '13'	**25,13,472/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Grand Total	**25,43,472/-**

The award dated 05.05.2006 passed in MACT Case No.201T/21.07.2003 is modified to the extent that amount of ₹1,50,000/- awarded by the Tribunal is enhanced to ₹25,43,472/-.

The appeal is allowed in the aforesaid terms.

2. FAO No.4446 of 2006:

This appeal arise from MACT Case No. 202T/21.07.2003 which has been filed by Amardeep Singh seeking enhancement of compensation awarded under Section 166 of the

Act for death of his mother Parveen Kaur. In the claim petition, it was pleaded that the deceased was 48 years old at the time of accident and she was a house-wife. The Tribunal awarded a sum of ₹50,000/- equivalent to the compensation under 'no fault liability'.

Learned counsel for the appellant contends that the Tribunal erred in not awarding compensation by applying multiplier method.

Learned counsel for the Insurer while defending the award resisted any further enhancement. He argues that the deceased was a house-wife and was non-earning member and, therefore, Tribunal has rightly assessed compensation.

The contention raised by learned counsel for the appellant deserves acceptance. The role of a house maker cannot be under estimated and it is very difficult to measure the contribution of a house maker in monetary terms. The role of a mother for children in Indian society is much more, she is a driving factor for the entire family. Reliance in this regard is placed on the decision of the Supreme Court in ***Jitendra Khimshankar Trivedi and others Versus Kasam Daud Kumbhar and others*****,** 2015 (4) SCC 237, wherein it was held as under:

> *"Even assuming Jayvantiben Jitendra Trivedi was not self employed doing embroidery and tailoring work, the fact remains that she was a housewife and a home maker. It is hard to monetize the domestic work done by a house mother.The services of the mother/wife is available 24 hours and her duties are never fixed.*

Courts have recognisedthe contribution made by the wife to the house is unvaluable and that it cannot be computed in terms of money. A housewife/home-maker does not work by the clock and she is inconstant attendance of the family throughout and such services rendered by the home maker has to be necessarily kept in view while calculating the loss of dependency."

Having a clue from the minimum wages at the time of accident, notional monthly income of the deceased is assessed as ₹2,400/- per month. As the notional income is being assessed, no deduction for self-expenses is to be made. This Court in ***Paramjit Singh and another Versus Dilbagh Singh alias Bagga and others, 2013(4) PLR 328*** held as under:-

"15. After the decision in Lata Wadhwa's case (supra), the notional income of the housewife is estimated according totheir age. The notional income of the housewife was takento be Rs.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 regard multiplier, the deceased was 48 years old, thus multiplier of '13' is to be applied in consonance with the decisions of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21.***

In view of decision of the Supreme Court in ***Pranay Sethi's case (supra),*** the claimant is entitled to ₹15,000/- each for loss of funeral expenses and for loss of estate.

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

Particulars	**Amount (in ₹)**
Monthly income of the deceased as assessed	2,400/-
Annual Dependency	28,800/-
Applying multiplier of '13'	**3,74,400/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Grand Total	**4,04,400/-**

The award dated 05.05.2006 passed in MACT Case No.202T/21.07.2003 is modified to the extent that amount of ₹50,000/- awarded by the Tribunal is enhanced to ₹4,04,400/-.

3. & 4. FAO No.4444 and 4445 of 2006:

These two appeals arise from MACT Cases No.203T/21.07.2003 and 204T/21.07.2003 filed by Amardeep Singh being aggrieved of dismissal of claim petitions for compensation for death of his two sisters, aged 25 years and 21 years, namely, Manpreet Kaur and Chanpreet Kaur.

The Tribunal dismissed the claim petitions on the ground that both the sisters were un-married and were major.

Learned counsel for the appellant after arguing for some time, seeks permission to withdraw the two appeals.

Dismissed as withdrawn.

5. <u>FAO No.4448 of 2006:</u>

This appeal arise from MACT Case No.200T/21.07.2003, filed by Amardeep Singh seeking enhancement of compensation for injuries sustained by him. It was pleaded that the appellant was 23 years old at the time of accident. He was working as Trainee Processor in Kalka Branch of ADFC Bank. Dr. Joginder Singh, PW-4, deposed before the Tribunal and proved the record of Satyam Hospital, Jalandhar and Trauma Centre, Kapurthala. It was proved that the appellant was in Coma and remained admitted in the hospital from 15.06.2003 to 27.07.2003. It was proved that he was facing problem of memory loss, mentally upset and was talking irrelevantly. It was further proved that he was operated in the hospital on 25.06.2003. He suffered injuries and fracture of right frontal bone. There was a compressed fracture C3, C4 and C5 spine and mandible fracture. The Tribunal awarded a sum of ₹3,00,000/- which included ₹2,00,000/- for permanent disability and ₹50,000/- each for medical expenses and pain & suffering.

Learned counsel for the appellant contends that the disability is permanent, he is not able to do any job. He is unable to move without any help.

From the perusal of the award, it is evident that no Disability Certificate was produced before the Tribunal. Though PW-4 in his deposition, had given the details of injuries sustained by the appellant. Without expressing any opinion on the merits of the case, the matter is remitted back to the Tribunal to decide the claim petition afresh after providing opportunity to the parties to adduce evidence in support of their claims. The appellant shall be at liberty to get his disability re-assessed and to prove the same.

The appeal is disposed of accordingly.

There is challenge made by learned counsel for the appellant to the conditional interest awarded by the Tribunal.

The Tribunal erred in awarding conditional interest. The Supreme Court in ***National Insurance Co. Ltd. Vs. Keshav Bahadur and others 2004(2) SCC 370,*** held as under:-

> *Though Section 110CC of the Act (corresponding to Section 171 of the New Act) confers a discretion on the Tribunal to award interest, the same is meant to be exercised in cases where the claimant can claim the same as a matter of right. In the above background, it is to be judged whether a stipulation for higher rate of interest in case of default can be imposed by the Tribunal. Once the discretion has been exercised by the Tribunal to award simple interest on the amount of compensation to be awarded at a particular rate and from a particular date, there is no scope for retrospective enhancement for default in payment of compensation. No express or implied power in this regard can be culled out from Section 110CC of the Act or Section 171 of the new Act.*

Such a direction in the award for retrospective enhancement of interest for default in payment of the compensation together with interest payable thereon virtually amounts to imposition of penalty which is not statutorily envisaged and prescribed. It is, therefore directed that the rate of interest as awarded by the High Court shall alone be applicable till payment, without the stipulation for higher rate of interest being enforced, in the manner directed by the Tribunal.

In absence of special reasons, the compensation is to be awarded alongwith statutory interest as provided under Section 171 of the Act. 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.*
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> *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.”*

Keeping in view the law laid down by the Supreme Court and banks' rate of interest, the appellant is entitled to amount of compensations awarded for death of his father and mother alongwith interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount.

[AVNEESH JHINGAN]
JUDGE

February 27, 2019
pankaj baweja

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