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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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**FAO No.1044 of 2008
Date of Decision: 09.05.2019**

Hari Chand and another

Appellants

Versus

Mohan and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Akshat Mittal, Advocate for
Mr. Sachin Mittal, Advocate
for the appellants.

Mr. Vinod Gupta, Advocate
for respondent No.4.

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AVNEESH JHINGAN, J (Oral):

The award dated 31.08.2007 passed in MACT No.155 by the Motor Accident Claims Tribunal, Faridabad [for brevity 'the Tribunal'] has been assailed by the parents of Rambir seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

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/co-owner, two owners and insurer (i.e. United India Insurance Company Ltd.) of Tractor bearing registration No.

HR-50-4166 [hereinafter referred to as 'offending vehicle'] were respondents before the Tribunal.

The factum of accident is not disputed by the parties. A motor vehicular accident took place on 30.04.2004. The accident proved fatal for Rambir. The accident was result of rash and negligent driving of the offending vehicle. FIR No.212 of 2004 was registered at Police Station Sadar, Palwal. The owners, driver and insurer were held jointly and severally liable to pay the compensation.

In the claim proceedings, it was proved that the deceased was 20 years old at the time of accident and was working as Helper with M/s Krishna Enterprises. His salary certificate was exhibited as Ex.PW-12/A, it was substantiated that he was drawing salary of ₹3,000/- per month; 1/3rd deduction for self-expenses was made and multiplier of '7' was applied considering the age of claimants. The Tribunal awarded compensation of ₹1,12,500/-. The amount awarded included ₹9,500/- under the conventional heads.

Learned counsel for the appellants contends that no future prospects have been awarded; multiplier has wrongly been applied considering the age of parents of the deceased and amounts awarded under the conventional heads are on the lower side.

Learned counsel for the insurer defends the award and argues that ½ deduction for self-expenses be made as the deceased was bachelor at the time of accident.

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 at the time of accident and fell in the category of self-employed or a person having fixed wages. The claimants shall also be entitled to ₹15,000/- each for funeral expenses and for loss of estate.

As the quantum of compensation is being revisited, it would be appropriate that ½ deduction for self-expenses is made in consonance with the decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21.***

The deceased was 20 years old at the time of accident, multiplier of '18' is applied in view of decision of the Supreme Court in ***Sarla Verma's case*** (supra).

The issue regarding applying multiplier considering the age of the deceased and not of the claimants is no longer *res integra.*

The Supreme Court in the case of ***Sube Singh and another vs. Shyam Singh (Dead) and others; (2018) 3 SCC 18*** has held as under:

> *"On the basis of the finding recorded by the Tribunal and affirmed by the High Court, it is evident that the deceased was 23 years of age on the date of accident i.e. 22.09.2009. He was unmarried and his parents who filed the petition*

for compensation were in the age group of 40 to 45 years. The High Court, relying on the decision in the case of Ashvinbhai Jayantilal Modi (supra), held that multiplier 14 will be applicable in the present case, keeping in mind the age of the parents of the deceased. The legal position, however, is no more res integra. In the case of Munna lal Jain (supra) decided by a three Judge Bench of this Court, it is held that multiplier should depend on the age of the deceased and not on the age of the dependants."

(*emphasis supplied)*

The Supreme Court in its recent decision in ***M/s. Royal Sundaram Alliance Insurance Company Ltd. v. Mandala Yadagari Goud and others, Civil Appeal No. 6600 of 2015. D/d. 9.4.2019*** has reiterated this fact and held as under:-

"9. The focus for determination of such claim is the deceased and what would be his contribution towards the dependents would he to be alive, for the benefits of the dependents. It is trite to say, and in fact conceded by the learned counsel for the insurance company, that in case the deceased is a married person, it is the age of the deceased which is to be taken into account. The question is whether in case the deceased is a bachelor, a different principle for calculation of the multiplier should be applied by shifting the focus to the age of the claimants? We are of the view that the answer to this question should be in the negative.

10. We may also note the importance of applying uniform settled principle to such cases. Certainty of law is important. Once the law is settled, it should not be repeatedly changed as that itself causes confusion and litigation. It is with this *objection that this Court has endeavoured to settle legal principles in respect of the matter in question.*

11. A reading of the judgment in Sube Singh (supra) shows that where a three Judge Bench has categorically taken the view that it is the age of the deceased and not the age of the parents that would be the factor for the purposes of taking the multiplier to be applied. This judgment undoubtedly relied upon the case of Munna Lal Jain (supra) which is also a three Judge Bench judgment in this behalf. The relevant portion of the judgment has also been extracted. Once again the extracted portion in turn refers to the judgment of a three Judge Bench in Reshma Kumari & Ors. v. Madan Mohan & Anr., (2013) 9 SCC 65. The relevant portion of Reshma Kumari in turn has referred to Sarla Verma (supra) case and given its imprimatur to the same. The loss of dependency is thus stated to be based on : (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. It is the third aspect which is of significance and Reshma Kumari categorically states that it does not want to revisit the law settled in Sarla Verma case in this behalf.

12. Not only this, the subsequent judgment of the Constitution bench in Pranay Sethi (supra) has also been referred to in Sube Singh for the purpose of calculation of the multiplier.

13. We are convinced that there is no need to once again take up this issue settled by the aforesaid judgments of three Judge Bench and also relying upon the Constitution Bench that it is the age of the deceased which has to be taken into account and not the age of the dependents."

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

Particulars	Amount (in ₹)
Monthly income of the deceased as assessed	3,000/-
40% Future Prospects	1,200/-
Sub Total	4,200/-
½ deduction for self expenses	2,100/-
Monthly Dependency	2,100/-
Annual Dependency	25,200/-
Applying multiplier of '18'	**4,53,600/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Grand Total	**4,83,600/-**

The award dated 31.08.2007 is modified to the extent that amount of ₹1,12,500/- awarded by the Tribunal is enhanced to ₹4,83,600/-.

The claimants shall be entitled to the enhanced amount 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

May 09, 2019
pankaj baweja

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