

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

**FAO No. 380 of 2012
DECIDED ON: APRIL 08, 2019**

SMT. LUXMI KAUR AND ANOTHER

APPELLANTS

VERSUS

INDERJIT SINGH AND OTHERS

RESPONDENTS

2. FAO No. 381 of 2012

SMT. JEET KAUR AND ANOTHER

.....APPELLANTS

VERSUS

INDERJIT SINGH AND OTHERS

.....RESPONDENTS

3. FAO No. 382 of 2012

SMT. JEET KAUR AND ANOTHER

.....APPELLANTS

VERSUS

INDERJIT SINGH AND OTHERS

.....RESPONDENTS

4. FAO No. 383 of 2012

KULDEEP SINGH

.....APPELLANT

VERSUS

INDERJIT SINGH AND OTHERS

.....RESPONDENTS

AND

5. FAO No. 384 of 2012

PREM SINGH

.....APPELLANT

VERSUS

INDERJIT SINGH AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. N.K. Malhotra, Advocate
for the appellants in all the appeals.

Mr. H.R. Bhardwaj, Advocate
for respondent No.1-Inderjit Singh.

Mr. Vinod Chaudhri, Advocate
for the respondent-Insurance Company of Truck.

Mr. Ravinder Arora, Advocate and
Mr. Neeraj Khanna, Advocate
for respondent-Insurance Company of Bolero Jeep.

AVNEESH JHINGAN, J (Oral):

Aggrieved of the award dated 17.02.2011 passed by the Motor
Accident Claims Tribunal, Rohtak (for brevity 'the Tribunal') in MACT
Cases No. 31 of 2007/2009, 29/2007/2009, 30 of 2007/2009, 32 of

2007/2009 and 33 of 2007/2009, the present five appeals have been filed. As the same arise out of same accident and one award, these are being disposed of vide common order.

The driver, registered owner and insurer (i.e. The New India Assurance Company Ltd.) of Truck bearing registration No. PB-03-L-9764 (hereinafter referred to as 'offending vehicle') have been arrayed as respondents No.1 to 3 respectively in all the appeals whereas, driver, owner and insurer (i.e. The Oriental Insurance Company Ltd.) of Bolero Jeep bearing temporary registration No. HR-61BB(HQ)T-4323 (hereinafter referred to as 'Bolero Jeep') have been arrayed as respondents No.4 to 6 respectively in all the appeals.

The facts with regard to the accident are not in dispute between the parties. On 03.09.2006, Barkha, Jasleen @ Jassi, Asha Rani, Raj Kaur and Prem Singh alongwith others were going to attend the marriage in a Bolero Jeep, which was being driven by Devender. When they reached near Moda village, it was struck by the offending vehicle coming from the opposite side. As a result of the impact, the occupants of the Bolero Jeep sustained injuries. Barkha, Jasleen @ Jassi, Asha Rani and Raj Kaur lost their lives and Prem Singh sustained injuries. FIR No. 230, dated 03.09.2006 was registered at Police Station Sunam, District Sangrur.

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 driver, owner and insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

FAO No. 380 of 2012 in MACT Case No. 31 of 2007/2009

The legal representatives of Barkha are in appeal seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

In the claim proceedings it was pleaded that the deceased was 16 years old at the time of accident and was a student of 10+1. It was claimed that she was earning ₹5000/- per month by giving tuitions and coaching. The claimants failed to prove the monthly earning of the deceased. The Tribunal awarded a lump-sum of ₹2,50,000/-.

Learned counsel for the appellants contends that the Tribunal erred in awarding a lump-sum amount and not applying the multiplier method.

Learned counsel for the insurer while defending the award resisted any further enhancement. He submits that the deceased was only a student of 10+1, the claimants failed to prove the monthly earning of the deceased and the Tribunal has rightly awarded a lump-sum amount.

Heard learned counsel for the parties and perused the record.

The Tribunal erred in awarding a lump-sum amount on account of death of a 16 years old girl, who was a student of 10+1. *Albeit* claimants failed to prove the earning of the deceased but there is no serious dispute to the fact that she was a student of 10+1.

In the motor vehicular accident cases, the courts are duty bound to award just and equitable compensation. This duty becomes more onerous in cases where the deceased is a student, as it is impossible to predict that what the future held for the deceased. In the present case the

deceased was a student of 10+1 and was just 16 years old.

The Supreme Court in “M.R. Krishna Murthi vs. New India Assurance Co. Ltd. and others, 2019 (4) Scale 362, has carved out principles for dealing with the cases where the deceased was a student. It was held as under:-

“23. From the conjoint reading of the aforesaid judgments, inter alia, following principles can be culled out which would be relevant for deciding the instant appeal:

(i) In those cases where the victim of the accident is not an earning person but a student, while assessing the compensation for loss of future earning, the focus of the examination would be the career prospect and the likely earning of such a person in future. For example, where the claimant is pursuing a particular professional course, the poseer would be: what would have been his income had he joined a service commensurating with the said course. That can be the future earning.

(ii) There may be cases where the victim is not, at that stage, doing any such course to get a particular job. He or she may be studying in a school. In such a case, future career would depend upon multiple factors like the family background, choice/interest of the complainant to pursue a particular career, facilities available to him/her for adopting such a career, the favourable surrounding circumstances to see which would have enabled the claimant to successfully pick up the said career etc.

If the chosen field is employment, then the future earning can be taken on the basis of salary and allowances which are payable for such calling. In case, career is a particular profession, the future earning would depend on host of other factors on the basis of which chances to achieve success in such a profession can be ascertained.

(iii) *There may be cases like Deo Patodi where even a student, the claimant would have made earnings on part-time basis or would have received offer for a particular job. In such cases, these factors would also assume relevance.*

(iv) *After ascertaining the likely earning of the victim in the aforesaid manner, the nature of injuries and disability suffered as a result thereof would be kept in mind while determining as to how much earning has been affected thereby. Here, impact of injuries on functional disability is to be seen. In case of death of victim, it would result in total loss of earning. In the case of injuries, the nature of disability becomes important. Such an exercise was undertaken in N. Manjegowda case.”*

The Supreme Court held that while assessing the compensation for loss of future earning, career prospects has to be looked into especially keeping in view of the professional course being pursued by the deceased and as to what would be the income if the deceased would have joined the service.

In the case in hand the deceased was a student of 10+1. Considering the above-stated facts the monthly income of the deceased is assessed as ₹2800/-.

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.

In consonance with the decision of the Supreme Court in **Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21**; multiplier of '18' is applied as the deceased was 16 years old at the time of accident and ½ deduction for self-expenses is made, as the deceased

was a bachelor.

In consonance with the decision of the Supreme Court in **Pranay Sethi's** case (supra), the claimants are entitled to ₹15000/- each for funeral expenses and for loss of estate.

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

	Head	Compensation awarded
(i)	Monthly Income	₹ 2800/- per month
(ii)	Future prospects at 40%	₹ 1120/- per month
(iii)	Total Income	₹ 3920/- per month
(iv)	Deduction of personal expenses	₹ 1960/- (i.e. 1/2 of total income)
(v)	Multiplier	18 (as per age of deceased)
(vi)	Loss of income	1960x12x18= ₹4,23,360/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
	Total Compensation awarded	₹4,53,360/-

The award dated 17.02.2011 passed in MACT Case No. 31 of 2007/2009 is modified to the extent that amount of ₹2,50,000/- awarded by the Tribunal is enhanced to ₹4,53,360/-.

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.

FAO No. 381 of 2012 in MACT Case No. 29 of 2007/2009

The legal representative of Jasleen @ Jassi aged 19 ½ years are in appeal seeking enhancement of compensation awarded under Section 166 of the Act.

In the claim proceedings it was pleaded that the deceased was 19 ½ years old at the time of accident and was a student of B.A. Ist year. It was claimed that she was running beauty parlour and giving tutitions and used to earn ₹6000/- per month. The claimants failed to prove the occupation and monthly earning of the deceased. The Tribunal awarded a lump-sum of ₹3,00,000/-.

Learned counsel for the appellants contends that the Tribunal erred in awarding a lump-sum amount and not applying the multiplier method.

Learned counsel for the insurer while defending the award resisted any further enhancement. He submits that the deceased was only a student of B.A. Ist Year. The claimants failed to prove the monthly earning of the deceased and the Tribunal has rightly awarded a lump-sum amount.

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

The Tribunal erred in awarding a lump-sum amount on account of death of a 19 ½ years old girl, who was a student of B.A. 1st Year. *Albeit* claimants failed to prove the earning of the deceased but there is no serious dispute to the fact that she was a student of B.A. 1st Year.

In the motor vehicular accident cases, the courts are duty bound to award just and equitable compensation. This duty becomes more onerous in cases where the deceased is a student, as it is impossible to predict that what the future held for the deceased. In the present case the deceased was a student of B.A. 1st ear, she was just 19 ½ years old.

The Supreme Court in *M.R. Krishna Murthi's* case (supra) has

held that while assessing the compensation for loss of future earning, career prospects has to be looked into especially keeping in view of the professional course being pursued by the deceased and as to what would be the income if the deceased would have joined the service.

In the case in hand the deceased was a student of B.A. 1st Year. Considering the above-stated facts the monthly income of the deceased is assessed as ₹2800/-.

Having due regard to the decisions of the Supreme Court in Pranay Sethi's case (supra) and Hem Raj's case (supra); 40% future prospects are awarded.

In consonance with the decision of the Supreme Court in Sarla Verma's case (supra) multiplier of '18' is applied as the deceased was 20 years old at the time of accident and ½ deduction for self-expenses is made, as the deceased was a bachelor.

In consonance with the decision of the Supreme Court in Pranay Sethi's case (supra). The claimants are entitled to ₹15000/- each for funeral expenses and for loss of estate.

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

	Head	Compensation awarded
(i)	Monthly Income	₹ 2800/- per month
(ii)	Future prospects at 40%	₹ 1120/- per month
(iii)	Total Income	₹ 3920/- per month
(iv)	Deduction of personal expenses	₹ 1960/- (i.e. 1/2 of total income)
(v)	Multiplier	18 (as per age of deceased)
(vi)	Loss of income	1960x12x18= ₹4,23,360/-
(vii)	Funeral expenses	₹15,000/-

(viii)	Loss of estate	₹15,000/-
	Total Compensation awarded	₹4,53,360/-

The award dated 17.02.2011 passed in MACT Case No. 29 of 2007/2009 is modified to the extent that amount of ₹3,00,000/- awarded by the Tribunal is enhanced to ₹4,53,360/-.

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.

FAO No. 382 of 2012 in MACT Case No. 30 of 2007/2009

The legal representative of Asha Rani aged 22 years are in appeal seeking enhancement of compensation awarded under Section 166 of the Act.

In the claim proceedings it was pleaded that the deceased was 21 years old at the time of accident and was a student of B.A. Final Year. It was claimed that she was giving tuitions and coaching/extra classes in RCM Public School and used to earn ₹7000/- per month. The claimants failed to prove the occupation and monthly earning of the deceased. The Tribunal awarded a lump-sum compensaiton of ₹3,00,000/-.

Learned counsel for the appellants contends that the Tribunal erred in awarding a lump-sum amount and not applying the multiplier method.

Learned counsel for the insurer while defending the award resisted any further enhancement. He submits that the deceased was only a student of B.A. Final Year, the claimants failed to prove the monthly

earning of the deceased and the Tribunal has rightly awarded a lump-sum amount.

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

The Tribunal erred in awarding a lump-sum amount on account of death of a 22 years old girl, who was a student of B.A. Final Year. *Albeit* claimants failed to prove the earning of the deceased but there is no serious dispute to the fact that she was a student of B.A. Final Year.

In the motor vehicular accident cases, the courts are duty bound to award just and equitable compensation. This duty becomes more onerous in cases where the deceased is a student, as it is impossible to predict that what the future held for the deceased. In the present case the deceased was a student of B.A. Final Year, she was just 22 years old.

The Supreme Court in *"M.R. Krishna Murthi's"* case (supra) has held that while assessing the compensation for loss of future earning, career prospects has to be looked into especially keeping in view of the professional course being pursued by the deceased and as to what would be the income if the deceased would have joined the service.

In the case in hand the deceased was a student of B.A. Final Year. Considering the facts, in order to arrive at just and equitable compensation the monthly income of the deceased is assessed as ₹3000/-.

Having due regard to the decisions of the Supreme Court in *Pranay Sethi's* case (supra) and *Hem Raj's* case (supra); 40% future prospects are awarded.

In consonance with the decision of the Supreme Court in *Sarla*

Verma's case (supra); multiplier of '18' is applied as the deceased was 16 years old at the time of accident and ½ deduction for self-expenses is made, as the deceased was a bachelor.

In consonance with the decision of the Supreme Court in Pranay Sethi's case (supra). The claimants are entitled to ₹15000/- each for funeral expenses and for loss of estate.

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

	Head	Compensation awarded
(i)	Monthly Income	₹ 3000/- per month
(ii)	Future prospects at 40%	₹ 1200/- per month
(iii)	Total Income	₹ 4200/- per month
(iv)	Deduction of personal expenses	₹ 2100/- (i.e. 1/2 of total income)
(v)	Multiplier	18 (as per age of deceased)
(vi)	Loss of income	2100x12x18= ₹4,53,600/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
	Total Compensation awarded	₹4,83,600/-

The award dated 17.02.2011 passed in MACT Case No. 30 of 2007/2009 is modified to the extent that amount of ₹3,00,000/- 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.

FAO No. 383 of 2012 in MACT Case No. 32 of 2007/2009

The legal representative of Raj Kaur, aged 53 years are in

appeal seeking enhancement of compensation awarded under Section 166 of the Act.

In the claim proceedings it was pleaded that the deceased was 53 years old at the time of accident. It was claimed that she used to run Kiryana/Grocery shop in her house and used to earn ₹8000/- per month. The claimants failed to prove the occupation and monthly earning of the deceased. Considering the notional income of the deceased as per Second Schedule to the Act, the Tribunal assessed the annual income of the deceased as ₹15,000/- per annum; multiplier of '11' was applied. The Tribunal awarded an amount of ₹1,71,800/-. The amount included ₹2800/- for medical bills and ₹ 4000/- for funeral expenses.

Learned counsel for the appellants contends that the Tribunal erred in assessing the notional income relying upon the Second Schedule to the Act. His grievance is that the amounts awarded under the conventional heads are on lower side.

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

In the claim proceedings, the claimants failed to prove the occupation and monthly earning of the deceased, in such circumstances the Tribunal has rightly considered deceased as house-wife.

Although the claimants failed to prove the occupation and monthly earning of the deceased. In Indian society, role of a lady towards her family cannot be measured in monetary terms. She has multifarious roles to play as a mother, as a wife and many more. She is not working for some financial benefit but it is her affection, sincerity and care towards her

family that keeps her working round the clock. The Supreme Court in *Jitendra Khimshankar Trivedi and others Versus Kasam Daud Kumbhar and others*, (2015) 4 SCC 237, has 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 recognised the 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."

The accident occurred in the year 2006, having a clue from the minimum wages at the time of accident, monthly notional income of the deceased is assessed as ₹2400/- per month. As the notional income is being assessed, no deduction for self-expenses is to be made. Reliance in this regard is placed on the decision of Division Bench of this Court in *Paramjit Singh and another Versus Dilbagh Singh alias Bagga and others*, 2014 (4) RCR (Civil) 895, wherein it was held that no deduction for self expenses is to be made in case of notional income. Relevant para is quoted below:

"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 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."

There is no dispute regarding the application of multiplier.

As per the decision of Supreme Court in Pranay Sethi's case (supra), claimants are entitled to ₹15,000/- each for funeral expenses and for loss of estate.

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

	Head	Compensation awarded
(i)	Monthly income	₹ 2400/- per month
(ii)	Annual Income	₹ 28,800/- per annum
(iii)	Multiplier	11 (as per age of deceased)
(iv)	Loss of income	28,800x11= ₹3,16,800/-
(v)	Funeral expenses	₹15,000/-
(vi)	Loss of estate	₹15,000/-
	Total Compensation awarded	₹3,46,800/-

The award dated 17.02.2011 passed in MACT Case No. 32 of 2007/2009 is modified to the extent that amount of ₹1,71,800/- awarded by the Tribunal is enhanced to ₹3,46,800/-.

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.

FAO No. 384 of 2012 in MACT Case No. 33 of 2007/2009

The injured Prem Singh is in appeal seeking enhancement of compensation awarded under Section 166 of the Act.

In the claim proceedings it was pleaded that he sustained injuries in the accident. He suffered fracture on his right wrist. The Tribunal awarded a sum of ₹18,200/-. The amount awarded included ₹10,000/- for pain and suffering, ₹5200 for medical expenses and ₹3000 for transportation.

Learned counsel for the appellants contends that the claimant suffered fracture on his right wrist for which he needed an attendant during the period of treatment and also till the time he fully recovered.

Learned counsel for the insurer while defending the award resisted any further enhancement. He submits that there was neither any temporary disability nor permanent disability. Moreover, no doctor was examined

Considering the fact there was a fracture on the right wrist of the claimant, attendant would have been required during the period of treatment. Thus, the amount awarded by the Tribunal is enhanced by ₹10,000/- to cover the compensation to be awarded for attendant.

It is clarified that while enhancing the compensation the interest to be awarded under Section 171 of the Act has been taken into consideration.

The award dated 17.02.2011 passed in MACT Case No. 33 of 2007/2009 is modified to the extent that amount of ₹18,200/- awarded by the Tribunal is enhanced by ₹10,000/-.

The appeals are allowed in the afore-said terms.

(AVNEESH JHINGAN)
JUDGE

APRIL 08, 2019
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>