IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2618 of 2015 (O&M)

Date of Decision: 01.05.2019

Umesh Singh and another

.......Appellants

Versus

Jamil Ahmed through LRs and others

......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Abhinav Kalia, Advocate
for the appellants.

Mr. Varun Sharma, Advocate
for respondent No.3.

<u>AVNEESH JHINGAN, J.(oral)</u>

The appeal is against award dated 19.12.2014 passed by the Motor the Accident Claims Tribunal, Sonepat (hereinafter referred to as 'the Tribunal') in MACT Petition No.13 of 2012 filed under Section 163-A of the Motor Vehicles Act, 1988 (for short 'the Act').

The appellants are the parents of deceased-Roshan Kumar Singh.

The driver, owner and insurer (i.e. Reliance General Insurance Company Ltd.) of truck bearing registration No. HR-38-U-5718) (for short 'the truck') have been arrayed as respondents No. 1 to 3.

The factum of accident is not disputed by the parties.

A motor vehicular accident took place on 1.7.2012. The accident proved fatal for Roshan Kumar aged 25 years. He was going on a tractor trolly. The Truck was involved in the accident. FIR No. 259 dated

3.7.2012 was registered at Police Station Ganaur.

In the claim proceedings under Section 163-A of the Act, the involvement of the truck was duly proved. Owner, driver and insurer of the truck were held jointly and severally liable to pay compensation. The Tribunal assessed the monthly earning of the deceased as ₹ 3300/-; 30% future prospects were awarded; ½ deduction for self-expenses was made and multiplier of 14 was applied considering the age of the parents. The Tribunal awarded a sum of ₹ 3,85,360/- along with interest at the rate of 7.5% per annum. The amount awarded included ₹ 25,000/- for funeral expenses.

Learned counsel for the appellants argues that the Tribunal erred in making 50% deduction for self expenses, instead of 1/3rd. Further grievance raised is that multiplier of 14 has wrongly been applied considering the age of the parents.

Learned counsel for the insurer argues that the claim petition was under Section 163-A of the Act and no future prospects are to be awarded. The amount under conventional heads be awarded as per Second Schedule to the Act.

The claim petition was filed under Section 163-A of the Act. In the said proceedings, the claimants need not to prove the rash and negligent driving of the offending vehicle. The two restrictions are that the annual income of the deceased should be less than ₹ 40,000/- and the compensation is to be calculated as per the structured formula provided in the Second Schedule to the Act.

There is no dispute with regard to income assessed by the Tribunal as ₹ 3300/-. As per Second Schedule to the Act, no future prospects are to be awarded and 1/3rd deduction is to be made for self-expenses irrespective of the fact that the deceased was married or un-married. The deceased was 25 years of age and as per the Second Schedule to the Act, multiplier of 18 is to be applied.

The issue that the multiplier is to be applied 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,*** 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.
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> 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.*"*

Further, the Supreme Court in **M/s. Royal Sundaram Alliance Insurance Company Ltd. v. Mandala Yadagari Goud and others, Civil Appeal No. 6600 of 2015. decided on 9.4.2019,** 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.
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> 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."

As per the Second Schedule to the Act, the claimants are entittled to ₹ 2000/- for funeral expenses and ₹ 2500/- for loss of estate.

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

Sr. No.	Particulars	Amount awarded (₹)
1.	Monthly income	3300/-
2.	1/3rd deduction for self-expenses	1100/-
3.	Applying mulitplier of 18 (2200x18x12)	4,75,200/-
4.	Conventional heads	4500/-
	Total	4,79,700/-

The award dated 19.12.2014 is modified to the extent that amount awarded of ₹ 3,85,360/- by the Tribunal is enhanced to ₹ 4,79,700/- The claimants shall be entitled to the enhanced amount alongwith interest @ 7.5% per annum from the date of filing the claim petition till the realization of the amount.

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

01.05.2019
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Whether speaking/reasoned Yes
Whether Reportable: Yes