

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

1.

Darshna and another

Amit Kumar and others

FAO No.5786 of 2014

Date of Decision: 16.05.2019

Versus

Appellants

Respondents
2.

Hoshiar Singh

Amit Kumar and others

FAO No.5953 of 2014

Versus

Appellant

Respondents
3.

Vishal

Amit Kumar and others

FAO No.4797 of 2014

Versus

Appellant

Respondents
4.

Sourabh

Amit Kumar and others

FAO No.4365 of 2014

Versus

Appellant

Respondents
5.

Amit

Amit Kumar and others

FAO No.5748 of 2014

Versus

Appellant

Respondents
6.

Satgur Singh

Amit Kumar and others

FAO No.4796 of 2014

Versus

Appellant

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sagar Aggarwal, Advocate
for the appellant(s).

Ms. Vandanaa Malhotra, Advocate
for respondent No.3.

Mr. Amit Jaiswal, Advocate
for respondent No.7.

None for remaining respondents.

AVNEESH JHINGAN, J (Oral):

Aggrieved of the award dated 18.02.2014 passed by the Motor Accident Claims Tribunal, Kaithal [for brevity 'the Tribunal'] in MACT Cases No. 104, 98, 106, 102, 99 and 100 of 2012 the present appeals have been filed by the claimants. These six appeals arise out of same accident and one award, these are being disposed of vide common order.

The driver, registered owner and insurer (i.e. Chalamandlam General Insurance Co. Ltd.) of Tractor Trolley bearing registration No. HR-08D-1023 (hereinafter referred to as 'offending vehicle') were arrayed as respondents No.1 to 3 before the Tribunal whereas, driver, owner and insurer (i.e. The Oriental Insurance Company Ltd.) of Tata Sumo bearing registration No. CH-03-Q-9665 (hereinafter referred to as 'Sumo') were arrayed as respondents No.4 to 7 before the Tribunal.

The facts emanating from the record are that on 17.02.2012, Hoshiar Singh , Vishal, Saurabh, Satgur and Amit along

with Rajinder Kumar, Sonu @ Sonav, Ram Mehar and Mohan Lal and others were travelling in Tata Sumo. Sanjeev Kumar was driving the Tata Sumo. When they reached near Sinhmar Hotel in the area of Police Station Barwala, the offending vehicle loaded with paddy husk was going ahead of the Tata Sumo. There were no reflectors or indicators affixed. The driver of the Tata Sumo was overtaking the offending vehicle, the offending vehicle suddenly turned towards the right side, as a result thereof, Tata Sumo struck against the offending vehicle, iron pipes were protruding around and behind the offending vehicle, as a result Ram Mehar, Rajinder Kumar, Mohan Lal and Sonu @ Sonav suffered injuries and succumbed to their injuries. The other occupants of Tata Sumo received grievous injuries. FIR No. 66, dated 18.02.2014 was registered at Police Station, Barwala.

Nine separate claim petitions under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'] were filed by the legal representatives of the deceased and by the injured persons. The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was result of rash and negligent driving of both the vehicles. The ratio of negligence was held as 70% of the offending vehicle and 30% of the Tata Sumo. The owner, driver and insurer of the Tata Sumo were held jointly and severally liable to pay compensation to the extent of 30% and owner and driver of offending vehicle were held jointly and severally liable to pay

compensation to the extent of 70%. The insurer of the offending vehicle was absolved from liability to pay.

FAO No.5786 of 2014 (MACT Case No.104 of 2012):

The legal representatives of Sonu @ Sonav, aged 14 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 student of 9th standard. He being a student, there was no claim regarding his monthly earning. The Tribunal awarded lump sum compensation of ₹3,00,000/- on account of his death and ₹2,00,000/- were awarded for medical expenses, which were proved by producing bills Mark-58 and Ex.P-59 to Ex.P-94. The claimants were held entitled to ₹5,00,000/- alongwith interest @ 7.5% per annum.

Heard learned counsel for the parties and perused the record.

Learned counsel for the appellants argues that the Tribunal erred in awarding lump sum compensation instead of applying the multiplier method.

Learned counsel for the insurer argues that as the deceased was only a student, the Tribunal rightly awarded compensation of ₹3,00,000/- on account of his death.

The contention raised by learned counsel for the

appellants deserves acceptance. There is no challenge to the fact that the deceased was student of 9th Class and he was 14 years old at the time of accident. In case of death of student, it is impossible to predict what the future held for the deceased. Following the decision of the Supreme Court in **Kishan Gopal and another Vs. Lala and others; (2014) 1 SCC 244**, notional income of the deceased is assessed as ₹30,000/- per annum.

The Supreme Court in **Reshma Kumari v. Madan Mohan, (2009) 13 SCC 422**, held as under:-

“40. In what we have discussed above, we sum up our conclusions as follows :

(i) In the applications for compensation made under Section 166 of the 1988 Act in death cases where the age of the deceased is 15 years and above, the Claims Tribunals shall select the multiplier as indicated in Column (4) of the table prepared in SarlaVerma read with para 42 of that judgment.

(ii) In cases where the age of the deceased is upto 15 years, irrespective of the Section 166 or Section 163A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in SarlaVerma should be followed.”

In view of law laid by the Supreme Court, multiplier of '15' is applied where deceased was below 15 years of age.

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

**FAO No.5786 of 2014 &
5 connected appeals.**

{6}

Particulars	Amount (in ₹)
Dependence (₹30,000/- x 15)	4,50,000/-
Funeral Expenses	15,000/-
Loss of Estate	15,000/-
Medical Expenses as awarded by the Tribunal	2,00,000/-
Total Compensation	6,80,000/-

The award dated 18.02.2014 passed in MACT Case No.104 of 2012 is modified to the extent that amount of ₹5,00,000/- awarded by the Tribunal is enhanced to ₹6,80,000/-.

The claimants shall be entitled to 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.5953 of 2014 (MACT Case No.98 of 2012):

This appeal has been filed by Hoshiar Singh seeking enhancement of compensation awarded for injuries sustained by him in the accident. It was proved in the claim proceedings that the appellant remained hospitalized for 3 days and medical expenses worth ₹4,000/- were incurred. The Tribunal awarded compensation of ₹8,000/- alongwith interest @ 7.5% per annum. The amount awarded included ₹4,000/- for medical expenses, ₹2,000/- for pain and suffering and ₹2,000/- for special diet.

Learned counsel for the appellant contends that compensation awarded by the Tribunal is on the lower side.

Learned counsel for the insurer argues that there is no proof with regard to nature of injuries and treatment undergone. He

defends the award.

From perusal of the record, it is evident that the appellant remained hospitalized for three days. There is no evidence to prove nature of injuries and type of treatment undergone. There was no temporary or permanent disability suffered by the appellant. There is no deposition of any Doctor. However, keeping in view the fact that the appellant remained hospitalized for three days and in order to award just and equitable compensation, a sum of ₹5,000/- more is awarded for pain and suffering.

The award dated 18.02.2014 passed in MACT Case No.98 of 2012 is modified to the extent that amount of ₹8,000/- awarded by the Tribunal is enhanced by ₹5,000/-.

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

The appeal is allowed.

FAO No.4797 of 2014 (MACT Case No.106 of 2012):

This appeal has been filed by Vishal seeking enhancement of compensation awarded for injuries sustained by him in the accident. It was proved in the claim proceedings that the appellant remained hospitalized for 4 days and medical expenses worth ₹18,400/- were incurred. The Tribunal awarded compensation of ₹28,400/- alongwith interest @ 7.5% per annum. The amount

awarded included ₹18,400/- for medical expenses, ₹5,000/- for pain and suffering and ₹5,000/- for special diet.

Learned counsel for the appellant contends that compensation awarded by the Tribunal is on the lower side.

Learned counsel for the insurer argues that there is no proof with regard to nature of injuries and treatment undergone. He defends the award.

From perusal of the record, it is evident that the appellant remained hospitalized for four days, there was no evidence to prove nature of injuries and type of treatment undergone. There was no temporary or permanent disability suffered by the appellant. However, keeping in view the period of hospitalization and in order to award just and equitable compensation, a sum of ₹7,000/- more is awarded for pain and suffering.

The award dated 18.02.2014 passed in MACT Case No.106 of 2012 is modified to the extent that amount of ₹28,400/- awarded by the Tribunal is enhanced by ₹7,000/-.

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

The appeal is allowed.

FAO No.4365 of 2014 (MACT Case No.102 of 2012):

This appeal has been filed by claimant-Sourabh seeking enhancement of compensation awarded for injuries sustained by him

in the accident. He remained hospitalized for 5 days and medical expenses worth ₹32,100/- were incurred. The Tribunal awarded compensation of ₹42,100/- alongwith interest @ 7.5% per annum. The amount awarded included ₹32,100/- for medical expenses, ₹5,000/- for pain and suffering and ₹5,000/- for special diet.

Learned counsel for the appellant contends that compensation awarded by the Tribunal is on the lower side.

Learned counsel for the insurer argues that there is no proof with regard to nature of injuries and treatment undergone. He defends the award.

From perusal of the record, it is evident that the appellant remained hospitalized for five days, there was no evidence to prove nature of injuries and type of treatment undergone. There was no temporary or permanent disability suffered by the appellant. However, keeping in view the fact in totality and in order to award just and equitable compensation, a sum of ₹7,000/- more is awarded for pain and suffering.

The award dated 18.02.2014 passed in MACT Case No.102 of 2012 is modified to the extent that amount of ₹42,100/- awarded by the Tribunal is enhanced by ₹7,000/-.

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

The appeal is allowed.

FAO No.5748 of 2014 (MACT Case No.99 of 2012):

This appeal has been filed by claimant-Amit seeking enhancement of compensation for injuries sustained by him in the accident. It was proved in the claim proceedings that the appellant remained hospitalized for 6 days and medical expenses to the tune of ₹31,300/- were incurred. The Tribunal awarded compensation of ₹41,300/- alongwith interest @ 7.5% per annum. The amount awarded included ₹31,300/- for medical expenses, ₹5,000/- for pain and suffering and ₹5,000/- for special diet.

Learned counsel for the appellant contends that compensation awarded by the Tribunal is on the lower side.

Learned counsel for the insurer argues that there is no proof with regard to nature of injuries and treatment undergone. He defends the award.

There is no challenge to the fact that the appellant remained hospitalized for six days. There was no temporary or permanent disability suffered by the appellant. To compensate the appellant under other heads, a sum of ₹8,000/- more is awarded for pain and suffering.

The award dated 18.02.2014 passed in MACT Case No.99 of 2012 is modified to the extent that amount of ₹41,300/- awarded by the Tribunal is enhanced by ₹8,000/-.

It is clarified that while enhancing the compensation,

interest to be awarded under Section 171 of the Act has been taken into consideration.

The appeal is allowed.

FAO No.4796 of 2014 (MACT Case No.100 of 2012):

This appeal is filed by Satgur Singh seeking enhancement of compensation awarded under Section 166 of the Act for injuries sustained by him in the accident.

In the claim petition, the Tribunal awarded compensation of ₹3,26,000/- alongwith interest @ 7.5% per annum. The amount awarded included ₹2,86,600/- for medical expenses; ₹20,000/- for pain and suffering and ₹20,000/- for special diet.

The grievance raised by learned counsel for the appellant is that Disability Certificate was produced as Ex.P-14 but the Tribunal wrongly considered it as Discharge Certificate.

Learned counsel for the insurer argues that the Certificate was never proved as there is no deposition of any Doctor to prove the disability. From perusal of the record, it is forthcoming that Ex.P-14 was Disability Certificate.

The matter with regard to quantum of compensation is remitted back to the Tribunal to decide afresh taking into consideration only the fact that Disability Certificate was produced before the Tribunal and what would be its effect in case the same is not proved by any evidence.

**FAO No.5786 of 2014 &
5 connected appeals.**

{12}

The parties are directed to appear before the Tribunal on
30.07.2019.

The appeal is disposed of.

May 16, 2019
pankaj baweja

**[AVNEESH JHINGAN]
JUDGE**

1. Whether speaking/ reasoned

:

Yes
2. Whether reportable

:

No