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

**FAO No. 5952 of 2014
DECIDED ON: APRIL 12, 2019**

**KANTA DEVI & OTHERS**

**APPELLANTS**

**VERSUS**

**AMIT KUMAR AND OTHERS**

**RESPONDENTS**

**2. FAO No. 5955 of 2014**

**SMT. KAVITA AND OTHERS**

**.....APPELLANTS**

**VERSUS**

**AMIT KUMAR AND OTHERS**

**.....RESPONDENTS**

**3. FAO No. 4798 of 2014**

**SMT. RITU DEVI AND OTHERS**

**.....APPELLANTS**

**VERSUS**

**AMIT KUMAR AND OTHERS**

**.....RESPONDENTS**

**CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present: Mr. Vinod K. Kanwal, Advocate for
Mr. Ashit Malik, Advocate
for the appellants in all the appeals.

Ms. Vandana Malhotra, Advocate
for the respondent-Cholamandlam General Insurance Co. Ltd.

Mr.Amit Jaiswal, Advocate
for the respondent-The Oriental Insurance Co. Ltd.

None for the remaining respondents.

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**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. 101, 103 and 105 of 2012, the present appeals have been filed by the claimants. Three 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. Cholamandlam General Insurance Co. Ltd.) of tractor trolley bearing registration No. HR-08-D-1023 (hereinafter referred to as 'offending trolley') 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 trolley 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 trolley, the trolley suddenly turned towards the right side, as a result thereof, Tata Sumo struck against the trolley, iron pipes were protruding around and behind the trolley, 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 18.02.2012 was registered at Police Station, Barwala.

Nine separate claim petitions under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as '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 trolley 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 trolley were held jointly and severally liable to pay compensation to the extent of 70%. The insurer of the trolley was exonerated as no premium was paid for insuring the trolley.

**<u>FAO No. 5955 of 2012 in MACT Case No. 101 of 2012</u>**

The legal representatives of Mohan Lal aged 27 years are in appeal seeking enhancement of compensation awarded under Section 166 the Act.

In the claim proceedings it was pleaded that the deceased was working as Electrician and was earning ₹15,000/- per month. The claimants failed to prove the monthly earning of the deceased. The Tribunal assessed the monthly income of the deceased as ₹ 4500/-. A lump-sum amount of ₹30,000/- on account of future prospects was awarded; 1/3rd deduction for self-expenses was made; multiplier of '14' was applied. The Tribunal awarded a compensation of ₹6,00,000/- alongwith interest @7.5% per annum. The amount awarded included ₹25,000/- for loss of consortium, ₹31,000 for loss of care and guidance and ₹10,000/- for funeral expenses.

Heard learned counsel for the parties and perused the documents.

Learned counsel for the appellants contends that the income assessed of the deceased by the Tribunal is less than the minimum wages prevalent in the State at the time of accident. He further submits that the multiplier of '14' was wrongly applied by the Tribunal instead of '17'. His grievance is that the amount awarded under the conventional heads are on lower side and lump-sum amount for future prospects was wrongly awarded.

Learned counsel for the insurer while defending the award and resisted any further enhancement. He argues that no amount should be awarded for loss of care and guidance.

The contention raised by learned counsel for the appellants deserves acceptance.

Having clue from the minimum wages prevalent in the State at the time of accident for an unskilled labourer, the monthly income of the deceased is assessed as ₹5000/- per month.

There is no dispute between the parties with regard to the deduction made for self-expenses.

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 and fell in the category of self-employed or having fixed wages.

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 '17' is applied as the deceased was 27 years old at the time of accident

As the quantum of compensation is being revisited, it would be appropriate that the amounts under the conventional heads are awarded 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. ₹40,000/- is awarded for loss of consortium to the widow. No amount is awarded for loss of care and guidance.

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

| | **Head** | **Compensation awarded** |
|---|---|---|
| (i) | Monthly Income | ₹ 5000/- per month |
| (ii) | Future prospects at 40% | ₹ 2000/- per month |

| | | |
|---|---|---|
| (iii) | Total Income | ₹ 7000/- per month |
| (iv) | Deduction of personal expenses | ₹ 2333/- (i.e. 1/3rd of total income) |
| (v) | Multiplier | 17 (as per age of deceased) |
| (vi) | Loss of income | 4667x12x17= ₹9,52,068/- |
| (vii) | Funeral expenses | ₹15,000/- |
| (viii) | Loss of estate | ₹15,000/- |
| (ix) | Loss of consortium | ₹40,000/- |
| | Total Compensation awarded | ₹10,22,068/- |

The award dated 18.02.2014 passed in MACT Case No. 101 of 2012 is modified to the extent that amount of ₹6,00,000/- awarded by the Tribunal is enhanced to ₹10,22,068/-.

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. 5952 of 2012 in MACT Case No. 105 of 2012**

The legal representatives of Rajinder Kumar aged 32 years, are in appeal seeking enhancement of compensation awarded under Section 166 the Act.

In the claim proceedings it was pleaded that the deceased was working as Mason and was earning ₹14,000/- per month. The claimants failed to prove the monthly earning of the deceased. The Tribunal assessed the monthly income of the deceased as ₹ 4500/-. A lump-sum amount of ₹30,000/- on account of future prospects was awarded; 1/3rd deduction for self-expenses was made; multiplier of '14' was applied. The Tribunal awarded a compensation of ₹6,00,000/- alongwith interest @7.5% per annum. The amount awarded included ₹25,000/- for loss of consortium, ₹31,000 for loss of love and affection and ₹10,000/- for funeral expenses.

Heard learned counsel for the parties and perused the documents.

Learned counsel for the appellants contends that the income assessed of the deceased by the Tribunal is less than the minimum wages prevalent in the State at the time of accident. He submits that the multiplier of '14' was wrongly applied by the Tribunal instead of '16'. The grievance is that the amount awarded under the conventional heads are on lower side, 1/3rd deduction for self-expenses was wrongly made and future prospects awarded are not in consonance with the decision of Supreme Court in ***Pranay Sethi's*** case (supra).

Learned counsel for the insurer while defending the award resisted any further enhancement. He argues that no amount should be awarded for loss of love and affection.

The contention raised by learned counsel for the appellants deserves acceptance.

Having a clue from the minimum wages prevalent in the State at the time of accident for an unskilled labourer, the monthly income of the deceased is assessed as ₹5000/-.

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, as the deceased was below 40 years of age and fell in the category of self-employed or having fixed wages.

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

***Verma's*** case (supra), multiplier of '16' is applied as the deceased was 32 years old at the time of accident and 1/4th deduction for self-expenses is made as the deceased was survived by five dependants.

As the quantum of compensation is being revisited, it would be appropriate that the amounts under the conventional heads are awarded 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. ₹40,000/- is awarded for loss of consortium to the widow. No amount is awarded for loss of love and affection.

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

| | **Head** | **Compensation awarded** |
|---|---|---|
| (i) | Monthly Income | ₹ 5000/- per month |
| (ii) | Future prospects at 40% | ₹ 2000/- per month |
| (iii) | Total Income | ₹ 7000/- per month |
| (iv) | Deduction of personal expenses | ₹ 1750/- (i.e. 1/4th of total income) |
| (v) | Multiplier | 16 (as per age of deceased) |
| (vi) | Loss of income | 5250x12x16= ₹10,08,000/- |
| (vii) | Funeral expenses | ₹15,000/- |
| (viii) | Loss of estate | ₹15,000/- |
| (ix) | Loss of consortium | ₹40,000/- |
| | Total Compensation awarded | ₹10,78,000/- |

The award dated 18.02.2014 passed in MACT Case No. 105 of 2012 is modified to the extent that amount of ₹6,00,000/- awarded by the Tribunal is enhanced to ₹10,78,000/-.

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. 4798 of 2012 in MACT Case No. 103 of 2012**

The legal representatives of Ram Mehar aged 28 years are in appeal seeking enhancement of compensation awarded under Section 166 the Act.

In the claim proceedings it was pleaded that the deceased was working as Mason and was earning ₹14,000/- per month. The claimants failed to prove the monthly earning of the deceased. The Tribunal assessed the monthly income of the deceased as ₹ 4500/-. A lump-sum amount of ₹30,000/- on account of future prospects was awarded; 1/3rd deduction for self-expenses was made; multiplier of '14' was applied. The Tribunal awarded a compensation of ₹6,00,000/- alongwith interest @7.5% per annum. The amount awarded included ₹25,000/- for loss of consortium, ₹31,000 for loss of care and guidance and ₹10,000/- for funeral expenses.

Heard learned counsel for the parties and perused the documents produced by them.

Learned counsel for the appellants contends that the income assessed of the deceased by the Tribunal is less than the minimum wages prevalent in the State at the time of accident. He further submits that the multiplier of '14' was wrongly applied by the Tribunal instead of '17'. The grievance is that the amount awarded under the conventional heads are on lower side. Further that 1/3rd deduction for self-expenses was wrongly made and future prospects are not awarded in consonance with the decision of Supreme Court in ***Pranay Sethi's*** case (supra).

Learned counsel for the insurer while defending the award resisted any further enhancement. He argues that no amount should be awarded for loss of care and guidance.

The contention raised by learned counsel for the appellants deserves acceptance.

Having a clue from the minimum wages prevalent in the State at the time of accident for an unskilled labourer, the monthly income of the deceased is assessed as ₹5000/- per month.

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, as the deceased was below 40 years of age and fell in the category of self-employed or having fixed wages.

In consonance with the decision of the Supreme Court in ***Sarla Verma's*** case (supra), multiplier of '17' is applied as the deceased was 28 years old at the time of accident and 1/4th deduction for self-expenses is made as the deceased was survived by five dependants.

As the quantum of compensation is being revisited, it would be appropriate that the amounts under the conventional heads are awarded 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. ₹40,000/- is awarded for loss of consortium to the widow. No amount is awarded for loss of love and affection.

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

| | **Head** | **Compensation awarded** |
|---|---|---|
| (i) | Monthly Income | ₹ 5000/- per month |
| (ii) | Future prospects at 40% | ₹ 2000/- per month |
| (iii) | Total Income | ₹ 7000/- per month |
| (iv) | Deduction of personal expenses | ₹ 1750/- (i.e. 1/4$^{th}$ of total income) |
| (v) | Multiplier | 17 (as per age of deceased) |
| (vi) | Loss of income | 5250x12x17= ₹10,71,000/- |
| (vii) | Funeral expenses | ₹15,000/- |
| (viii) | Loss of estate | ₹15,000/- |
| (ix) | Loss of consortium | ₹40,000/- |
| | Total Compensation awarded | ₹11,41,000/- |

The award dated 18.02.2014 passed in MACT Case No. 103 of 2012 is modified to the extent that amount of ₹6,00,000/- awarded by the Tribunal is enhanced to ₹11,41,000/-.

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.

**(AVNEESH JHINGAN)**
**JUDGE**

**APRIL 12, 2019**
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***Whether speaking/reasoned*** ***Yes***
***Whether reportable*** ***Yes***