

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

**FAO No. 600 of 2015 (O&M)
DECIDED ON: MAY 13, 2019**

RALLA SINGH AND ANOTHER
APPELLANTS

VERSUS

BHAJAN SINGH AND OTHERS
RESPONDENTS

2. FAO No. 601 of 2015 (O&M)

SMT. CHINDERPAL KAUR
APPELLANT

VERSUS

BHAJAN SINGH AND OTHERS
RESPONDENTS

3. FAO No. 602 of 2015 (O&M)

SMT. JASPAL KAUR
APPELLANT

VERSUS

BHAJAN SINGH AND OTHERS
RESPONDENTS

4. FAO No. 603 of 2015 (O&M)

SMT. MOHINDER KAUR
APPELLANT

VERSUS

BHAJAN SINGH AND OTHERS
RESPONDENTS

5.

FAO No. 604 of 2015 (O&M)

SATNAM SINGH

....APPELLANT

VERSUS

BHAJAN SINGH AND OTHERS

....RESPONDENTS

6.

FAO No. 605 of 2015 (O&M)

BALWINDER SINGH AND OTHERS

....APPELLANTS

VERSUS

BHAJAN SINGH AND OTHERS

.....RESPONDENTS

7.

FAO No. 606 of 2015 (O&M)

BHANA SINGH & OTHERS

....APPELLANTS

VERSUS

BHAJAN SINGH AND OTHERS

.....RESPONDENTS

8.

FAO No. 608 of 2015 (O&M)

PREM SINGH AND OTHERS

.....APPELLANTS

VERSUS

BHAJAN SINGH AND OTHERS

.....RESPONDENTS

9.

FAO No. 609 of 2015 (O&M)

SMT. ANGREJ KAUR

APPELLANT

VERSUS

BHAJAN SINGH AND OTHERS

RESPONDENTS

10.

FAO No. 610 of 2015 (O&M)

SMT. MURTI

APPELLANT

VERSUS

BHAJAN SINGH AND OTHERS

RESPONDENTS

11

FAO No. 611 of 2015 (O&M)

SMT. GURDIAL KAUR

APPELLANT

VERSUS

BHAJAN SINGH AND OTHERS

RESPONDENTS

12.

FAO No. 612 of 2015 (O&M)

SMT. JASWINDER KAUR

APPELLANT

VERSUS

BHAJAN SINGH AND OTHERS

RESPONDENTS

13.

FAO No. 613 of 2015 (O&M)

MANDEEP SINGH

APPELLANT

VERSUS

BHAJAN SINGH AND OTHERS

RESPONDENTS

14.

FAO No. 614 of 2015 (O&M)

GURBACHAN SINGH AND OTHERS

....APPELLANTS

VERSUS

BHAJAN SINGH AND OTHERS

.....RESPONDENTS

15.

FAO No. 615 of 2015 (O&M)

SHER SINGH AND OTHERS

.....APPELLANTS

VERSUS

BHAJAN SINGH AND OTHERS

....RESPONDENTS

16.

FAO No. 616 of 2015 (O&M)

SMT. CHARANJEET KAUR

APPELLANTS

VERSUS

BHAJAN SINGH AND OTHERS

RESPONDENTS

17.

FAO No. 617 of 2015 (O&M)

SMT. RAJPAL KAUR

APPELLANT

VERSUS

BHAJAN SINGH AND OTHERS

RESPONDENTS

18.

FAO No. 618 of 2015 (O&M)

HARWANT SINGH

APPELLANT

VERSUS

BHAJAN SINGH AND OTHERS

RESPONDENTS

19.

FAO No. 619 of 2015 (O&M)

RALLA SINGH

APPELLANT

VERSUS

BHAJAN SINGH AND OTHERS

RESPONDENTS

20.

FAO No. 620 of 2015 (O&M)

SMT. JASBIR KAUR

APPELLANT

VERSUS

BHAJAN SINGH AND OTHERS

RESPONDENTS

AND

21. FAO No. 672 of 2015 (O&M)

MASTER MANPREET SINGH MINOR THR. HIS NEXT FRIEND
AND NATURAL GUARDIAN FATHER PREM SINGH

APPELLANT

VERSUS

BHAJAN SINGH AND OTHERS

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Amit Singla, Advocate
for the appellants in all the appeals.

Mr. Bhavdeep Mamli, Advocate
for respondents No.1 and 2 i.e.
(driver and owner of offending vehicle)

Ms. Vandana Malhotra, Advocate and
Mr. Rajneesh Malhotra, Advocate
for the respondent-Insurance Company

AVNEESH JHINGAN, J (Oral):

Aggrieved of the award dated 25.09.2013 passed by the Motor Accident Claims Tribunal, Fatehabad (for brevity 'the Tribunal') in MACT Cases No. RBT-16-MACT of 2011/2013, RBT-17-MACT of 2011/2013, RBT-23-MACT of 2011/2013, RBT-60-MACT of 2011/2013, RBT-25-MACT of 2011/2013, RBT-32-MACT of 2011/2013, RBT-18-MACT of 2011/2013, RBT-24-MACT of 2011/2013, RBT-31-MACT of 2011/2013, RBT-21-MACT of 2011/2013, RBT-34-MACT of 2011/2013, RBT-27-MACT of 2011/2013, RBT-59-MACT of 2011/2013, RBT-26-MACT of

2011/2013, RBT-33-MACT of 2011/2013, RBT-58-MACT of 2011/2013, RBT-20-MACT of 2011/2013, RBT-22-MACT of 2011/2013, RBT-19-MACT of 2011/2013, RBT-29-MACT of 2011/2013, RBT-28-MACT of 2011/2013 and RBT-30-MACT of 2011/2013, the afore-said appeals have been filed. As these arise out of same accident and one award, these are being disposed of vide common order.

The driver, registered owner and insurer (i.e. Iffco Tokyo General Insurance Company Ltd.) of bus bearing registration No. RJ-31-PA-0002 (hereinafter referred to as 'offending vehicle') have been arrayed as respondents No.1 to 3 respectively in all the appeals.

The facts emanating from the record are that on the ill-fated day of 28.11.2010, Karnail Kaur along-with Jasbir Kaur and other family members were coming back in four-wheeler bearing registration No. HR-47-A-3821 (hereinafter referred to as 'four-wheeler') after attending the bhog ceremony of Budh Singh. The four-wheeler in which they were travelling met with an accident near village Haroli. The four-wheeler was struck by the offending vehicle. As a result of the impact, the occupants of the four-wheeler sustained injuries and following persons i.e. Hans Raj, Karnail Kaur, Jasbir Kaur, Sarvjeet Kaur, Gurmeet Kaur, Kesar Kaur, Karnail Kaur @ Kailo and Tejo Kaur, succumbed to the injuries. FIR No. 467, dated 28.11.2010 was registered at Police Station Ratia, District Fatehabad.

The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was result of contributory negligence of drivers of both the vehicles. 25% negligence was attributed

to the driver of the offending vehicle. It was ordered that the compensation awarded shall be recovered from the respondents jointly and severally.

FAO No. 600 of 2015 in MACT Case No. RBT-16-MACT-2011/2013

The legal representatives of Karnail Kaur, 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 58 years old at the time of accident and was earning ₹4000/- per month being labourer. But, the claimants failed to prove the occupation and monthly earning of the deceased. Considering her to be house-wife, the Tribunal assessed her notional income as ₹2500/- per month and multiplier of '9' was applied. The Tribunal awarded an amount of ₹2,80,000/- along-with interest @9% per annum. The amount awarded included ₹10,000/- for funeral expenses.

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

Learned counsel for the appellants contends that the notional income assessed by the Tribunal is on lower side. His grievance is that the amounts under the conventional heads be awarded as per the decision of the Supreme Court in **National Insurance Company Limited vs. Pranay Sethi & others; AIR 2017 (SC) 5157.**

Learned counsel for the insurer argues that the claimants failed to prove the occupation and earning of the deceased. He defends the income assessed by the Tribunal.

The deceased was survived by husband and three sons, who are

in their late 30's. 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 the deceased as house-wife.

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."

Considering the age of the dependants and having a clue from the minimum wages at the time of accident, monthly notional income of the deceased is assessed as ₹3800/-. 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. Another amount of ₹40,000/- is awarded to the husband of the deceased for loss of consortium.

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

	Head	Compensation awarded
(i)	Monthly income	₹ 3800/- per month
(ii)	Annual Income	₹ 45,600/- per annum
(iii)	Multiplier	9 (as per age of deceased)
(iv)	Loss of income	45,600x9= ₹4,10,400/-
(v)	Funeral expenses	₹15,000/-
(vi)	Loss of estate	₹15,000/-
(vii)	Loss of consortium	₹40,000/-
	Total Compensation awarded	₹4,80,400/-

The award dated 25.09.2013 passed in MACT Case No. RBT-16-MACT of 2011/2013 is modified to the extent that amount of ₹2,80,000/- awarded by the Tribunal is enhanced to ₹4,80,400/-.

The claimants shall be entitled to the enhanced amount alongwith interest @ 6% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is allowed.

FAO No. 604 of 2015 in MACT Case No. RBT-25-MACT of 2011/2013

The legal representative of Kesar Kaur, 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 59 years old at the time of accident and claimed her earning ₹4000/- per month. But, the claimants failed to prove the occupation and monthly earning of the deceased. Considering her to be house maker, the Tribunal assessed her notional income as ₹2500/- per annum and multiplier of '9' was applied. The Tribunal awarded an amount of ₹2,80,000/- along-with interest @9% per annum. The amount awarded included ₹10,000/- for funeral expenses.

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

Learned counsel for the appellants contends that the notional income assessed by the Tribunal is on lower side. His grievance is that the amounts under the conventional heads be awarded as per the decision of the Supreme Court in **Pranay Sethi's** case (supra).

Learned counsel for the insurer argues that the claimants failed to prove the occupation and earning of the deceased. He defends the income, assessed by the Tribunal.

The deceased was survived by a son and four married daughters. 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-maker.

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's** case (supra) has held that role of a lady towards her family cannot be measured in monetary terms.

Considering the age of the dependants and having a clue from the minimum wages at the time of accident, monthly notional income of the deceased is assessed as ₹3800/- 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's case (supra).

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	₹ 3800/- per month
(ii)	Annual Income	₹ 45,600/- per annum
(iii)	Multiplier	9 (as per age of deceased)
(iv)	Loss of income	45,600x9= ₹4,10,400/-
(v)	Funeral expenses	₹15,000/-
(vi)	Loss of estate	₹15,000/-
	Total Compensation awarded	₹4,40,400/-

The award dated 25.09.2013 passed in MACT Case No. RBT-25-MACT of 2011/2013 is modified to the extent that amount of ₹2,80,000/- awarded by the Tribunal is enhanced to ₹4,40,400/-.

The claimants shall be entitled to the enhanced amount alongwith interest @ 6% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is allowed.

FAO No. 605 of 2015 in MACT Case No. RBT-32-MACT of 2011/2013

The legal representatives of Sarvjeet Kaur 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 30 years old at the time of accident. It was claimed that she was earning ₹4000/- per month being labourer. The claimants failed to prove the occupation and monthly earning of the deceased. Considering her to be house-wife, the Tribunal assessed her notional income as ₹2500/- per month and multiplier of '16' was applied. The Tribunal awarded an amount of ₹4,90,000/- along-with interest @9% per annum. The amount awarded included ₹10,000/- for funeral expenses.

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

Learned counsel for the appellants contends that the notional income of the deceased assessed by the Tribunal is on lower side. He argues that the Tribunal erred applying the multiplier of '16' instead of '17', as deceased was 30 years old at the time of accident. Submission is that the amounts under the conventional heads be awarded as per the decision of the Supreme Court in **Pranay Sethi's** case (supra).

Learned counsel for the insurer argues that the claimants failed to prove the occupation and earning of the deceased. He further argues that the deceased was more than 30 years old and the Tribunal rightly applied the multiplier of '16'.

In the case in hand, the deceased was a young lady and survived by husband and two minor sons. Upbringing of the minor children would suffer in the absence of mother. The Supreme Court in **Jitendra Khimshankar Trivedi's** case (supra) has already held that the role of a lady in Indian Society cannot be measured in monetary terms.

Considering the age of the dependants and having a clue from the minimum wages at the time of accident, monthly notional income of the deceased is assessed as ₹4500/-. As the notional income is being assessed, no deduction for self-expenses is to be made in view of the decision of the Division Bench of this Court in Paramjit Singh's case (supra)

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. Another amount of ₹40,000/- is awarded to the husband of the deceased for loss of consortium.

As per the pleadings, the deceased was 30 years old at the time of accident. Even, in the post-mortem report the age of deceased was depicted as 30 years. The deceased fell in the age group of 26-30. 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.

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

	Head	Compensation awarded
(i)	Monthly income	₹ 4500/- per month
(ii)	Annual Income	₹ 54,000/- per annum
(iii)	Multiplier	17 (as per age of deceased)
(iv)	Loss of income	54,000x17= ₹9,18,000/-
(v)	Funeral expenses	₹15,000/-
(vi)	Loss of estate	₹15,000/-
(vii)	Loss of consortium	₹40,000/-
	Total Compensation awarded	₹9,88,000/-

The award dated 25.09.2013 passed in MACT Case No. RBT-32-MACT of 2011/2013 is modified to the extent that amount of ₹4,90,000/- awarded by the Tribunal is enhanced to ₹9,88,000/-.

The claimants shall be entitled to the enhanced amount alongwith interest @ 6% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is allowed.

FAO No. 606 of 2015 in MACT Case No. RBT-32-MACT of 2011/2013

The legal representatives of Gurmeet Kaur 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 35 years old at the time of accident. The claimants failed to prove the occupation and monthly earning of the deceased. Considering her to be house-wife, the Tribunal assessed her notional income as ₹2500/- per month; multiplier of '15' was applied. The Tribunal awarded an amount of ₹4,60,000/- along-with interest @9% per annum. The amount awarded included ₹10,000/- for funeral expenses.

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

Learned counsel for the appellants contends that the notional income of the deceased assessed is on lower side. He argues that the Tribunal erred applying the multiplier of '15' instead of '16', as deceased was 35 years old at the time of accident. Submission is that the amounts under the conventional heads be awarded as per the decision of the

Supreme Court in **Pranay Sethi's** case (supra).

Learned counsel for the insurer argues that the claimants failed to prove the occupation and earning of the deceased. He further argues that the deceased was more than 35 years old and the tribunal has rightly applied the multiplier of '15'.

In the case in hand, the deceased was a young lady and survived by husband and four minor children. The Supreme Court in **Jitendra Khimshankar Trivedi's** case (supra) has already held that the role of a lady in Indian Society cannot be measured in monetary terms.

Considering the age of the dependants, having a clue from the minimum wages at the time of accident and also the fact that upbringing of minor children would suffer, monthly notional income of the deceased is assessed as ₹4500/- per month. As the notional income is being assessed, no deduction for self-expenses is to be made in view of the decision of the Division Bench of this Court in **Paramjit Singh's** case (supra)

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. Another amount of ₹40,000/- is awarded to the husband of the deceased for loss of consortium.

As per the pleadings, the deceased was 35 years old at the time of accident, even, in the post-mortem report the age of deceased was depicted as 35 years. The deceased fell in the age group of 31-35, in consonance with the decision of the Supreme Court in **Sarla Verma's** case (supra) multiplier of '16' is applied.

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

under:

	Head	Compensation awarded
(i)	Monthly income	₹ 4500/- per month
(ii)	Annual Income	₹ 54,000/- per annum
(iii)	Multiplier	16 (as per age of deceased)
(iv)	Loss of income	54,000x16= ₹8,64,000/-
(v)	Funeral expenses	₹15,000/-
(vi)	Loss of estate	₹15,000/-
(vii)	Loss of consortium	₹40,000/-
	Total Compensation awarded	₹9,34,000/-

The award dated 25.09.2013 passed in MACT Case No. RBT-18-MACT of 2011/2013 is modified to the extent that amount of ₹4,60,000/- awarded by the Tribunal is enhanced to ₹9,34,000/-.

The claimants shall be entitled to the enhanced amount alongwith interest @ 6% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is allowed.

FAO No. 608 of 2015 in MACT Case No. RBT-60-MACT of 2011/2013

The legal representatives of Jasbir Kaur 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 35 years old at the time of accident and used to earn ₹4000/- per month being labourer. The claimants failed to prove the occupation and monthly earning of the deceased. Considering her to be house-wife, the Tribunal assessed her notional income as ₹2500/- per month; multiplier of '15' was applied. The Tribunal awarded an amount of ₹4,60,000/- along-with

interest @9% per annum. The amount awarded included ₹10,000/- for funeral expenses.

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

Learned counsel for the appellants contends that the notional income of the deceased assessed is on lower side. He argues that the Tribunal erred applying the multiplier of '15' instead of '16'. Submission is that the amounts under the conventional heads be awarded as per the decision of the Supreme Court in **Pranay Sethi's** case (supra).

Learned counsel for the insurer argues that the claimants failed to prove the occupation and earning of the deceased. He further argues that the deceased was more than 35 years old and the tribunal has rightly applied the multiplier of '15'.

In the case in hand, the deceased was a young lady and survived by husband and four minor children. The Supreme Court in **Jitendra Khimshankar Trivedi's** case (supra) has already held that the role of a lady in Indian Society cannot be measured in monetary terms.

Considering the age of the dependants, having a clue from the minimum wages at the time of accident and also the fact that upbringing of minor children would suffer, monthly notional income of the deceased is assessed as ₹4500/- per month. As the notional income is being assessed, no deduction for self-expenses is to be made in view of the decision of the Division Bench of this Court in **Paramjit Singh's** case (supra)

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. Another amount of ₹40,000/- is awarded to the husband of the deceased for loss of consortium.

As per the pleadings, the deceased was 35 years old at the time of accident. Even, in the post-mortem report the age of deceased was depicted as 35 years. The deceased fell in the age group of 31-35. In consonance with the decision of the Supreme Court in Sarla Verma's case (supra) multiplier of '16' is applied.

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

	Head	Compensation awarded
(i)	Monthly income	₹ 4500/- per month
(ii)	Annual Income	₹ 54,000/- per annum
(iii)	Multiplier	16 (as per age of deceased)
(iv)	Loss of income	54,000x16= ₹8,64,000/-
(v)	Funeral expenses	₹15,000/-
(vi)	Loss of estate	₹15,000/-
(vii)	Loss of consortium	₹40,000/-
	Total Compensation awarded	₹9,34,000/-

The award dated 25.09.2013 passed in MACT Case No. RBT-60-MACT of 2011/2013 is modified to the extent that amount of ₹4,60,000/- awarded by the Tribunal is enhanced to ₹9,34,000/-.

The claimants shall be entitled to the enhanced amount alongwith interest @ 6% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is allowed.

FAO No. 614 of 2015 in MACT Case No. RBT-17-MACT of 2011/2013

The legal representatives of Karnail Kaur @ Kailo, 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 50 years old at the time of accident. It was pleaded that the deceased used to earn ₹4000 per month being labourer and was also used to perform household duties. The claimants failed to prove the occupation and monthly earning of the deceased. Considering her to be house-wife, the Tribunal assessed her notional income as ₹2500/- per month; multiplier of '11' was applied. The Tribunal awarded an amount of ₹3,40,000/- along-with interest @9% per annum. The amount awarded included ₹10,000/- for funeral expenses.

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

Learned counsel for the appellants contends that the notional income of the deceased assessed by the Tribunal is on lower side. He argues that the Tribunal erred applying the multiplier of '11' instead of '13'. He submits that the amounts under the conventional heads be awarded as per the decision of the Supreme Court in **Pranay Sethi's** case (supra).

Learned counsel for the insurer argues that the claimants failed to prove the occupation and earning of the deceased. He further argues that the deceased was more than 50 years old and the tribunal has rightly applied the multiplier of '11'.

In the case in hand, the deceased was a house-wife and

survived by husband and three sons who were in their early 20's and two married daughters. The Supreme Court in **Jitendra Khimshankar Trivedi's** case (supra) has held that the role of a lady in Indian Society cannot be measured in monetary terms.

Considering the age of the dependants, having a clue from the minimum wages at the time of accident and the fact that three sons, who are in their late 20's there settlement would be affected in the absence of their mother, monthly notional income of the deceased is assessed as ₹4500/-. As the notional income is being assessed, no deduction for self-expenses is to be made in view of the decision of the Division Bench of this Court in **Paramjit Singh's** case (supra)

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. Another amount of ₹40,000/- is awarded to the husband of the deceased for loss of consortium.

As per the pleadings, the deceased was 50 years old at the time of accident. Even, in the post-mortem report the age of deceased was depicted as 50 years. The deceased fell in the age group of 46-50. In consonance with the decision of the Supreme Court in **Sarla Verma's** case (supra) multiplier of '13' is applied.

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

	Head	Compensation awarded
(i)	Monthly income	₹ 4500/- per month
(ii)	Annual Income	₹ 54,000/- per annum

(iii)	Multiplier	13 (as per age of deceased)
(iv)	Loss of income	54,000x13= ₹7,02,000/-
(v)	Funeral expenses	₹15,000/-
(vi)	Loss of estate	₹15,000/-
(vii)	Loss of consortium	₹40,000/-
	Total Compensation awarded	₹7,72,000/-

The award dated 25.09.2013 passed in MACT Case No. RBT-17-MACT of 2011/2013 is modified to the extent that amount of ₹3,40,000/- awarded by the Tribunal is enhanced to ₹7,72,000/-.

The claimants shall be entitled to the enhanced amount alongwith interest @ 6% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is allowed.

FAO No. 615 of 2015 in MACT Case No. RBT-23-MACT of 2011/2013

The legal representative of Tejo Kaur @ Tejo 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 58 years old at the time of accident. The claimants failed to prove the occupation and monthly earning of the deceased. Considering her to be house-wife, the Tribunal assessed her notional income as ₹2500/- per month and multiplier of '9' was applied. The Tribunal awarded an amount of ₹2,80,000/- along-with interest @9% per annum. The amount awarded included ₹10,000/- for funeral expenses.

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

Learned counsel for the appellants contends that the Tribunal erred in assessing the notional income of the deceased. The amounts under the conventional heads be awarded as per the decision of the Supreme Court in **Pranay Sethi's** case (supra).

Learned counsel for the insurer argues that the claimants failed to prove the occupation and earning of the deceased. He defends the income of the deceased, assessed by the Tribunal.

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 the deceased as house-maker.

In Indian society, role of a lady towards her family cannot be measured in monetary terms. 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's** case (supra) has held that role of a lady towards her family cannot be measured in monetary terms.

Considering the age of the dependants, having a clue from the minimum wages at the time of accident, monthly notional income of the deceased is assessed as ₹3800/- 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's** case (supra).

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	₹ 3800/- per month
(ii)	Annual Income	₹ 45,600/- per annum
(iii)	Multiplier	9 (as per age of deceased)
(iv)	Loss of income	45,600x9= ₹4,10,400/-
(v)	Funeral expenses	₹15,000/-
(vi)	Loss of estate	₹15,000/-
	Total Compensation awarded	₹4,40,400/-

The award dated 25.09.2013 passed in MACT Case No. RBT-23-MACT of 2011/2013 is modified to the extent that amount of ₹2,80,000/- awarded by the Tribunal is enhanced to ₹4,40,400/-.

The claimants shall be entitled to the enhanced amount alongwith interest @ 6% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is allowed.

FAO No. 601 of 2015 in MACT Case No. RBT-19-MACT of 2011/2013

The injured Chhinderpal Kaur, aged 37 years is in appeal seeking enhancement of compensation awarded under Section 166 of the Act.

In the claim proceedings, it was proved that she remained hospitalized for four days w.e.f. 28.11.2010 to 01.12.2010. Her medico-legal report Ex.P-93, was proved by the deposition of Dr. V.K. Jain, PW-24 who deposed that the injured was advised to undergo X-ray for right

forearm and skull. The Tribunal awarded a sum of ₹12,200/- alongwith interest @9% per annum. The amount awarded included ₹5000/- for pain and suffering and special diet, ₹5000 for loss of income and ₹2200/- for medical expenses.

Learned counsel for the appellant contends that the Tribunal while awarding the compensation has not considered the various pecuniary and non-pecuniary heads and the amount awarded by the Tribunal is on the lower side.

Learned counsel for the insurer defends the award, argues that there was no permanent or temporary disability and the amount incurred for medical expenses were duly reimbursed by the Tribunal. He resisted any further enhancement.

Though, the claimant had not suffered any permanent or temporary disability but it is proved that she remained hospitalized for four days in three different hospitals. *Albeit*, the Tribunal while awarding the compensation has taken into consideration, the compensation to be awarded for pain and suffering, special diet and loss of income but had not taken into account that the claimant would have required an attendant during the period of hospitalization and certain amount would have been spent for transportation also.

Keeping in view the facts and circumstances of the case in entirety, ₹10,000/- is awarded for attendant charges and transportation.

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

The award dated 25.09.2013 passed in FAO No. 601 of 2015 in

MACT Case No. RBT-19-MACT of 2011/2013 is modified to the extent that amount of ₹12,200/- awarded by the Tribunal is enhanced by ₹10,000/-.

The appeal is allowed.

FAO No. 602 of 2015 in MACT Case No. RBT-29-MACT of 2011/2013

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

In the claim proceedings, it was proved that she remained hospitalized for five days w.e.f. 28.11.2010 to 02.12.2010. Her medico-legal report Ex.P114, was proved by the deposition of Dr. Virender Bishnoi, PW-26. The Tribunal awarded a sum of ₹10,000/- alongwith interest @9% per annum. The amount awarded included ₹3000/- for pain and suffering and special diet and ₹7000/- for medical expenses.

Learned counsel for the appellant contends that the Tribunal while awarding the compensation had not considered the various pecuniary and non-pecuniary heads and the amount awarded by the Tribunal is on the lower side.

Learned counsel for the insurer defends the award and argues that there was no permanent or temporary disability and resisted any further enhancement.

The claimant suffered soft tissue injury on the right side of chest, right side of thigh, leg and foot. There was a lacerated wound over left pinna. She remained hospitalized for five days. Though there was no permanent or temporary disability but the amounts spent for attendant, transportation and loss of services towards family, require to be considered.

Keeping in view the facts and circumstances of the case in entirety and in order to award just and equitable compensation and another sum of ₹10,000/- is awarded.

The award dated 25.09.2013 passed in FAO No. 602 of 2015 in MACT Case No. RBT-29-MACT of 2011/2013 is modified to the extent that amount of ₹10,000/- awarded by the Tribunal is enhanced by ₹10,000/-.

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. 603 of 2015 in MACT Case No. RBT-27-MACT of 2011/2013

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

In the claim proceedings, it was claimed that she had a tenderness over right and left elbow, chest and abdomen. No doctor was deposed/examined. The Tribunal awarded a sum of ₹5000/- along-with interest @9% per annum.

Learned counsel for the appellant contends that the Tribunal while awarding the compensation had not considered the various pecuniary and non-pecuniary heads and the amount awarded by the Tribunal is on the lower side.

Learned counsel for the insurer defends the award, argues that there was no permanent or temporary disability and resisted any further enhancement. He further submits that nature of injuries were not proved, as no doctor was examined.

The claimant suffered no serious injury and there was no hospitalization. The medical expenses incurred by her were not proved. Though it was pleaded that she had tenderness over right and left elbow, chest and abdomen. Keeping in view the facts and circumstances of the case in entirety and in order to award just and equitable compensation, another sum of ₹5000/- is awarded.

The award dated 25.09.2013 passed in FAO No. 603 of 2015 in MACT Case No. RBT-27-MACT of 2011/2013 is modified to the extent that amount of ₹5000/- awarded by the Tribunal is enhanced by ₹5000/-.

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. 609 of 2015 in MACT Case No. RBT-26-MACT of 2011/2013

The injured Angrej Kaur, aged 38 years is in appeal seeking enhancement of compensation awarded under Section 166 of the Act.

In the claim proceedings, the injuries and the treatment was proved by the deposition of Dr. V.K. Jain, PW-24. Dr. Sandeep Goyal, PW-25 proved fracture of right ulna and clavicle. The injuries were treated conservatively. The Tribunal awarded a sum of ₹30,000/- along-with interest @9% per annum. The amount awarded included ₹10,000/- for pain and suffering and special diet, ₹10,000/- for medical expenses and ₹10,000/- for loss of services to the family.

Learned counsel for the appellant contends that the Tribunal while awarding the compensation had not considered the various pecuniary

and non-pecuniary heads and the amount awarded by the Tribunal is on the lower side.

Learned counsel for the insurer defends the award and argues that there was no permanent or temporary disability. He resisted any further enhancement.

It was proved that the claimant had suffered fracture on right ulna and left clavicle and she remained admitted for 10 days. The Tribunal opined that it might have taken 3-4 months for the claimant to recover. The Tribunal never considered the amount to be awarded for transportation, follow-up treatment, attendant charges and even the amount awarded for pain suffering is on the lower side.

Considering the facts that house-wife had suffered fracture and her household duties would have suffered, must have required attendant not only during the period of her hospitalization but till she fully recovered. Even, the family might have to engage extra help to undertake the daily works of the family.

Keeping in view the afore-said facts in order to award just and equitable compensation, another sum of ₹10,000/- each is awarded for follow-up treatment, for transportation and for attendant charges. A sum of ₹5000/- is awarded for pain and suffering.

The award dated 25.09.2013 passed in FAO No. 609 of 2015 in MACT Case No. RBT-26-MACT of 2011/2013 is modified to the extent that amount of ₹30,000/- awarded by the Tribunal is enhanced by ₹35,000/-.

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. 610 of 2015 in MACT Case No. RBT-31-MACT of 2011/2013

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

In the claim proceedings, it was proved that an amount of ₹74,975/- was incurred as medical expenses. She suffered injuries on chest, abdomen, right side of leg and shoulder. Dr. V.K. Jain, PW-24 deposed before the Tribunal that injuries suffered by the claimant were simple in nature but would take 2-3 weeks to recover. Dr. Manoj Soni, PW-23 proved the treatment taken by the claimant w.e.f. 30.11.2010 to 06.12.2010. The Tribunal awarded a sum of ₹84,975/- alongwith interest @9% per annum. The amount awarded included ₹7000/- for loss of services to the family, ₹3000 for special diet and pain and suffering.

Learned counsel for the appellant contends that the claimant remained hospitalized for 16 days. She was operated upon on 16.12.2010 and thereafter she underwent follow up treatment as an outdoor patient. He argues that the amount awarded by the Tribunal is on the lower side.

Learned counsel for the insurer defends the award and argues that there was no permanent or temporary disability. It is stated that the claimant was a housewife and no loss of income was proved. He resisted any further enhancement.

From the perusal of record, it is evident that the claimant was operated upon and remained hospitalized for 16 days.

The Tribunal while awarding compensation had not considered

the amounts to be awarded for transportation, attendant charges, follow-up treatment and the amounts awarded for pain and suffering and special diet are on lower side.

The Supreme Court in case of **G. Ravindranath @ R. Chowdary Versus E. Srinivas and another, 2013(12) SCC 455**, held as under:-

“11. We have heard learned counsel for the parties and carefully perused the record.

It is settled law that compensation in personal injury cases should be determined under the following heads:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

12. In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that

compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.”

Keeping in view the facts and circumstances of the case in entirety and in order to award just and equitable compensation, ₹5,000/- is awarded for transportation, ₹10,000/- is awarded for attendant charges, ₹15,000/- is awarded for follow-up treatment, ₹10,000/- is awarded for pain and suffering and special diet and ₹15,000/- is awarded for loss of services to the family.

The award dated 25.09.2013 passed in FAO No. 610 of 2015 in MACT Case No. RBT-31-MACT of 2011/2013 is modified to the extent that amount of ₹84,975/- awarded by the Tribunal is enhanced to ₹1,29,975/-.

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. 611 of 2015 in MACT Case No. RBT-21-MACT of 2011/2013

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

In the claim proceedings, it was proved that she had diffused swelling over chest, left and right ankle, leg and thigh but no doctor was examined. There was no proof with regard to her hospitalization. The Tribunal awarded a sum of ₹5000/- alongwith interest @9% per annum.

Learned counsel for the appellant contends that the Tribunal awarded a meagre amount.

Learned counsel for the insurer defends the award and argues that there was no permanent or temporary disability. He further argues that no doctor was examined and there was no proof with regard to her hospitalization. He resisted any further enhancement.

The claimant was not able to show that there was any hospitalization. Even medical expenses incurred were not proved.

Keeping in view the facts and circumstances of the case, the amount awarded by the Tribunal is enhanced by ₹5000/-.

The award dated 25.09.2013 passed in FAO No. 611 of 2015 in MACT Case No. RBT-21-MACT of 2011/2013 is modified to the extent that amount of ₹5000/- awarded by the Tribunal is enhanced by ₹5000/-.

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. 612 of 2015 in MACT Case No. RBT-28-MACT of 2011/2013

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

In the claim proceedings, it was pleaded that she remained hospitalized for 12 days. Dr. Sandeep Goyal, PW-25, Dr. Manmohan Pahwa, PW-22 and Dr. Manoj Soni, PW-23 had proved the treatment taken by the claimant and the fact that she incurred ₹1,11,802/- on medical expenses. The Tribunal awarded a sum of ₹1,31,802/- alongwith interest @9% per annum. The amount awarded included ₹10,000/- for loss of

income and another ₹10,000/- was awarded to compensate other heads i.e. pain and suffering and special diet.

Learned counsel for the appellant contends that the claimant remained hospitalized for more than 12 days, she was operated upon on 30.11.2010 and was advised for follow-up treatment.

Learned counsel for the insurer defends the award and argues that there was no permanent or temporary disability and there is nothing on record to show that how much time the claimant took to recover. He resisted any further enhancement.

From the perusal of record, it is evident that the claimant suffered bilateral pleural effusion and mild ascities and then developed surgical emphysema and pain in abdomen. She remained hospitalized for 12 days. She was operated upon. Duty cast upon is to compensate the injured to the extent that the money can put her in the same position as she would have not suffered in the accident.

The Tribunal while awarding compensation never took into consideration the amounts to be awarded for transportation, attendant charges, follow-up treatment and loss of family services. Due to her operation, her family would have been deprived of her services. The amounts awarded for pain and suffering and special diet also needs to be enhanced.

Keeping in view the facts and circumstances of the case in entirety and in order to award just and equitable compensation, ₹10,000/- is awarded for transportation, ₹10,000/- is awarded for attendant charges, ₹10,000/- is awarded for follow-up treatment, ₹15,000/- is awarded for loss

of services to be rendered to the family, ₹10,000/- is awarded for pain and suffering and ₹10,000/- is awarded for special diet.

The award dated 25.09.2013 passed in FAO No. 612 of 2015 in MACT Case No. RBT-28-MACT of 2011/2013 is modified to the extent that amount of ₹1,31,802/- awarded by the Tribunal is enhanced to ₹1,67,802/-.

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. 613 of 2015 in MACT Case No. RBT-59-MACT of 2011/2013

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

In the claim proceedings, it was proved that he suffered diffused swelling over knee, leg and foot but no doctor was examined to prove the injuries suffered by the claimant. The Tribunal awarded a lump-sum of ₹5000/- alongwith interest @9% per annum.

Learned counsel for the appellant contends that the Tribunal awarded a meagre amount.

Learned counsel for the insurer defends the award and argues that there was no permanent or temporary disability. He further argues that no doctor was examined to prove the nature of injuries. He resisted any further enhancement.

Though it was proved that the claimant sustained injuries but was not able to establish the nature of injuries, even, no doctor was examined.

Keeping in view the facts and circumstances of the case in entirety and the fact that the claimant received injuries in the accident, the amount awarded by the Tribunal is enhanced by ₹5000/-.

The award dated 25.09.2013 passed in FAO No. 613 of 2015 in MACT Case No. RBT-59-MACT of 2011/2013 is modified to the extent that amount of ₹5000/- awarded by the Tribunal is enhanced by ₹5000/-.

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. 616 of 2015 in MACT Case No. RBT-33-MACT of 2011/2013

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

In the claim proceedings, it was proved that she suffered multiple injuries on the various part of her body *albeit* no doctor was examined to prove her medico-legal report Ex.P-107. The Tribunal awarded a lump-sum of ₹8000/- alongwith interest @9% per annum.

Learned counsel for the appellant contends that the Tribunal awarded a meagre amount.

Learned counsel for the insurer defends the award and argues that there was no permanent or temporary disability. He further argues that no doctor was examined and resisted any further enhancement.

Though it was proved that the claimant sustained injuries but the claimant was not able to show the expenses incurred on her treatment and no doctor was examined to prove the nature of injuries.

Keeping in view the facts and circumstances of the case and

the fact that the claimant suffered wound which was stitched, the amount awarded by the Tribunal is enhanced by ₹7000/-.

The award dated 25.09.2013 passed in FAO No. 616 of 2015 in MACT Case No. RBT-33-MACT of 2011/2013 is modified to the extent that amount of ₹8000/- awarded by the Tribunal is enhanced by ₹7000/-.

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. 617 of 2015 in MACT Case No. RBT-34-MACT of 2011/2013

The injured Rajpal Kaur @ Raj Bala is in appeal seeking enhancement of compensation awarded under Section 166 of the Act.

In the claim proceedings, it was proved that she suffered diffused swelling on the right side of scapula. She also suffered bilateral pleural effusion and mild ascities and then developed surgical emphysema and pain abdomen. She remained hospitalized for three days. The Tribunal awarded a lump-sum of ₹14,200/- alongwith interest @9% per annum. The amounts awarded included ₹5000/- for pain and suffering and special diet, ₹2200/- for medical expenses and ₹7000/- for loss of services to the family.

Learned counsel for the appellant contends that the compensation awarded by the Tribunal is on the lower side and needs to be enhanced.

Learned counsel for the insurer defends the award and argues that there was no permanent or temporary disability. He argues that the Tribunal while awarding the compensation has considered the facts in toto, he resisted any further enhancement.

In the present case, Dr. Manmohan Pahwa, PW-22 proved the treatment taken by the claimant and also the fact that the claimant remained hospitalized for three days. He deposed that the claimant would taken 2-3 months to recover. The Tribunal never took into consideration the fact that the claimant suffered fracture and she would not be able to do her works of daily routine. She needed attendant and her family also would have suffered due to her injuries sustained in the accident. Transportation would have been required for medical check up and special diet was required for speedy recovery. She also suffered physical and mental agony for weeks together.

Keeping in view the facts and circumstances of the case in entirety, the compensation is re-calculated as under:

	Heads	Compensation awarded
(i)	Pain and suffering	₹10,000/-
(ii)	Special diet	₹10,000/-
(iii)	Follow-up treatment	₹ 5000/-
(iv)	Transportation	₹5000/-
(v)	Loss of services to the family	₹15,000/-
(vi)	Medical expenses (as awarded by the Tribunal)	₹ 2200/-
(vii)	Attendant charges	₹10,000/-
	Total compensation awarded	₹57,200/-

The award dated 25.09.2013 passed in FAO No. 617 of 2015 in MACT Case No. RBT-34-MACT of 2011/2013 is modified to the extent that amount of ₹14,200/- awarded by the Tribunal is enhanced to ₹57,200/-.

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. 618 of 2015 in MACT Case No. RBT-58-MACT of 2011/2013

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

In the claim proceedings, it was proved that he suffered injuries over thigh, leg and pelvic region both sides. He also suffered fracture of pubic ram. The Tribunal awarded a lump-sum of ₹10,000/- alongwith interest @9% per annum.

Learned counsel for the appellant contends that the Tribunal had not considered the various pecuniary and non-pecuniary heads while awarding the compensation.

Learned counsel for the insurer defends the award and argues that there was no permanent or temporary disability. He further argues that no doctor was examined to prove the nature of injuries and type of treatment. He resisted any further enhancement.

It is evident that the claimant left the hospital on 02.12.2010 against medical advice. There is no proof with regard to his nature of injuries sustained by him and the type of treatment undergone. Though, it was pleaded that he remained admitted in Community Health Centre, Ratia and thereafter, taken to General Hospital, Fatehabad, he remained there upto 02.12.2010. In the absence of any proof with regard to the nature of injuries, it would be difficult to quantify the compensation exactly but the fact remains that he remained hospitalized for four days.

In order to award just and equitable compensation and to cover up various pecuniary and non-pecuniary heads, another sum of ₹20,000/- is awarded.

The award dated 25.09.2013 passed in FAO No. 618 of 2015 in MACT Case No. RBT-58-MACT of 2011/2013 is modified to the extent that amount of ₹10,000/- awarded by the Tribunal is enhanced by ₹20,000/-.

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. 619 of 2015 in MACT Case No. RBT-22-MACT of 2011/2013

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

In the claim proceedings, it was proved that he suffered tenderness over chest, knee and forearm and also wound. Dr. Sandeep Goyal, PW-25 proved that the claimant remained hospitalized in MAMC, Agroha w.e.f. 28.11.2010 to 29.11.2010. The Tribunal awarded a lump-sum of ₹3000/- alongwith interest @9% per annum.

Learned counsel for the appellant contends that the Tribunal awarded a meagre amount.

Learned counsel for the insurer defends the award and argues that there was no permanent or temporary disability. He resisted any further enhancement.

There is no proof with regard to the nature of injuries sustained and the type of treatment undergone. It was proved that he remained

admitted in MAMC, Agroha for two days. In the absence of any proof with regard to the nature of injuries, it would not be appropriate to award compensation under each heads separately. In order to balance the equities, a lump-sum amount of ₹10,000/- more is awarded.

The award dated 25.09.2013 passed in FAO No. 619 of 2015 in MACT Case No. RBT-20-MACT of 2011/2013 is modified to the extent that amount of ₹3000/- awarded by the Tribunal is enhanced by ₹10,000/-.

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. 620 of 2015 in MACT Case No. RBT-30-MACT of 2011/2013

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

In the claim proceedings, it was proved that she suffered fracture and remained as an indoor patient at General Hospital, Fatehabad. The Tribunal awarded a lump-sum of ₹10,000/- alongwith interest @9% per annum.

Learned counsel for the appellant contends that the Tribunal has not considered the various pecuniary and non-pecuniary heads while awarding the compensation.

Learned counsel for the insurer defends the award and argues that there was no permanent or temporary disability. He argues that no doctor was examined to prove the nature of injuries and type of treatment, he resisted any further enhancement.

There is no proof with regard to the nature of injuries sustained

and the type of treatment undergone. In the absence of any proof with regard to the nature of injuries and considering the fact that she remained hospitalized, in order to award just and equitable compensation and to cover up various pecuniary and non-pecuniary heads, another sum of ₹20,000/- is awarded.

The award dated 25.09.2013 passed in FAO No. 620 of 2015 in MACT Case No. RBT-30-MACT of 2011/2013 is modified to the extent that amount of ₹10,000/- awarded by the Tribunal is enhanced by ₹20,000/-.

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. 672 of 2015 in MACT Case No. RBT-22-MACT of 2011/2013

The injured Manpreet Singh aged 6 years is in appeal seeking enhancement of compensation awarded under Section 166 of the Act.

In the claim proceedings, it was proved that he suffered multiple injuries in the accident but those were simple in nature. The Tribunal awarded a lump-sum of ₹7000/- alongwith interest @9% per annum.

Learned counsel for the appellant contends that the Tribunal awarded a very meagre amount.

Learned counsel for the insurer defends the award and resisted any further enhancement, as there was no serious injuries.

Considering the fact that the injured was six years old and remained hospitalized for two days and in order to award just and equitable

compensation, another sum of ₹7000/- is awarded.

The award dated 25.09.2013 passed in FAO No. 672 of 2015 in MACT Case No. RBT-22-MACT of 2011/2013 is modified to the extent that amount of ₹7000/- awarded by the Tribunal is enhanced by ₹7000/-.

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.

A common issue arises in all the afore-said appeals that there was a contributory negligence on the part of drivers of both the vehicles. None of the appeals relate to the driver of any of the vehicle. The deceased and injured were the occupants of the four-wheeler. It would be pertinent to note here that in all the claim petitions, respondents were driver, owner and the insurer of the offending vehicle. The Tribunal in its concluding paragraph held that the driver, owner and insurer of the offending vehicle shall be liable to pay compensation jointly and severally as per the ratio given. The said observation of the Tribunal cannot be sustained. So far as the claimants are concerned, for them it is a case of composite negligence and it is upon them to proceed against any of the parties i.e. either owner, driver and insurer of the offending vehicle or driver, owner and the insurer of four-wheeler.

The Supreme Court in **Khenyei v. New India Assurance Co. Ltd. and others, 2015(9) SCC 273**, has held as under:

“18. This Court in Challa Bharathamma & Nanjappan (supra) has dealt with the breach of policy conditions by the owner when the insurer was asked to pay the compensation fixed by the tribunal and the right to recover the same was given to the

insurer in the executing court concerned if the dispute between the insurer and the owner was the subject-matter of determination for the tribunal and the issue has been decided in favour of the insured. The same analogy can be applied to the instant cases as the liability of the joint tortfeasor is joint and several. In the instant case, there is determination of inter se liability of composite negligence to the extent of negligence of 2/3rd and 1/3rd of respective drivers. Thus, the vehicle - trailer-truck which was not insured with the insurer, was negligent to the extent of 2/3rd. It would be open to the insurer being insurer of the bus after making payment to claimant to recover from the owner of the trailer-truck the amount to the aforesaid extent in the execution proceedings. Had there been no determination of the inter se liability for want of evidence or other joint tortfeasor had not been impleaded, it was not open to settle such a dispute and to recover the amount in execution proceedings but the remedy would be to file another suit or appropriate proceedings in accordance with law.

What emerges from the aforesaid discussion is as follows :

- (i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation as liability of joint tortfeasors is joint and several.*
- (ii) In the case of composite negligence, apportionment of compensation between two tortfeasors vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.*
- (iii) In case all the joint tortfeasors have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tortfeasors is only for the purpose of their inter se liability so that one may recover the sum from the*

other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/extent of their negligence has been determined by the court/tribunal, in main case one joint tortfeasor can recover the amount from the other in the execution proceedings.

(iv) It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decree or award.”

In view of the afore-said decision of the Supreme Court, the claimants shall be entitled to recover the compensation either from both or any of the joint *tort-feasor*.

However, it is clarified that this observation shall not construed as an expression of opinion on the merit of *inter-se* liability between the owner, driver and insurer of the offending vehicle and that of four-wheeler.

All the afore-said appeals are allowed, in view of the afore-said terms.

(AVNEESH JHINGAN)
JUDGE

MAY 13, 2019
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>