

FAO-6704-2015(O&M);
FAO-7329-2015(O&M);
FAO-8129-2015(O&M);
FAO-8130-2015(O&M);
FAO-8131-2015(O&M);
FAO-8132-2015(O&M);
FAO-8133-2015(O&M);
FAO-8134-2015(O&M);
FAO-556-2016(O&M);
FAO-557-2016(O&M); and
FAO-5344-2017(O&M)

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

(1)	FAO-6704-2015(O&M)	
Ambika and others		...Appellants
	Versus	
Bhopal Singh and others		...Respondents
(2)	FAO-7329-2015(O&M)	
Paramjit Kaur and others		...Appellants
	Versus	
Bhopal Singh and others		...Respondents
(3)	FAO-8129-2015(O&M)	
National Insurance Co.Ltd.		...Appellant
	Versus	
Ambika and others		...Respondents
(4)	FAO-8130-2015(O&M)	
National Insurance Co. Ltd.		...Appellant
	Versus	
Paramjit Kaur and others		...Respondents

FAO-6704-2015(O&M);
FAO-7329-2015(O&M);
FAO-8129-2015(O&M);
FAO-8130-2015(O&M);
FAO-8131-2015(O&M);
FAO-8132-2015(O&M);
FAO-8133-2015(O&M);
FAO-8134-2015(O&M);
FAO-556-2016(O&M);
FAO-557-2016(O&M); and
FAO-5344-2017(O&M)

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(5)	FAO-8131-2015(O&M)	
National Insurance Co. Ltd.		...Appellant
Versus		
Jasbir Kaur and others		...Respondents
(6)	FAO-8132-2015(O&M)	
National Insurance Co. Ltd.		...Appellant
Versus		
Raj Rani and others		...Respondents
(7)	FAO-8133-2015(O&M)	
National Insurance Co. Ltd.		...Appellant
Versus		
Jasbir Kaur and others		...Respondents
(8)	FAO-8134-2015(O&M)	
National Insurance Co. Ltd.		...Appellant
Versus		
Pooja Garg and others		...Respondents

FAO-6704-2015(O&M);
FAO-7329-2015(O&M);
FAO-8129-2015(O&M);
FAO-8130-2015(O&M);
FAO-8131-2015(O&M);
FAO-8132-2015(O&M);
FAO-8133-2015(O&M);
FAO-8134-2015(O&M);
FAO-556-2016(O&M);
FAO-557-2016(O&M); and
FAO-5344-2017(O&M)

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(9) FAO-556-2016(O&M)

Jasbir Kaur

...Appellant

Versus

Bhopal Singh and others

...Respondents

(10) FAO-557-2016(O&M)

Jasbir Kaur

...Appellant

Versus

Bhopal Singh and others

...Respondents

(11) FAO-5344-2017(O&M)

National Insurance Co. Ltd.

...Appellant

Versus

Baljinder Singh and another

...Respondents

Date of Decision:-6.11.2019

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Paul S. Saini, Advocate
for the National Insurance Company in all the appeals.

FAO-6704-2015(O&M);
FAO-7329-2015(O&M);
FAO-8129-2015(O&M);
FAO-8130-2015(O&M);
FAO-8131-2015(O&M);
FAO-8132-2015(O&M);
FAO-8133-2015(O&M);
FAO-8134-2015(O&M);
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FAO-5344-2017(O&M)

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Mr.Saurav Kapoor, Advocate for
Mr.Rakesh Gupta, Advocate
for the appellants in FAO-7329-2015 and
for respondents No.1 to 3 in FAO-8130-2015.

Mr.Vipul Sharma, Advocate for
Mr.Nitin Mittal, Advocate
for the appellants in FAO-6704-2015 and
for respondents No.1 to 5 in FAO-8129-2015 and
for respondent No.1 in FAO-5344-2017.

Mr.S.S. Rangi, Advocate
for the appellant in FAO-556-2016 and FAO-557-2016 and
for respondent No.1 in FAO-8131-2015 and in
FAO-8132-2015.

Mr.Punit Jain, Advocate
for respondent No.6 – Cholamandalam MS General
Insurance Company Ltd. in FAO-7329-2015, FAO-8130-
2015, FAO-8131-2015, FAO-8132-2015, FAO-8133-2015,
FAO- 8134-2015, FAO-556-2016 and FAO-557-2016.

H.S. MADAAN, J.

By this order, I shall dispose of eleven FAOs i.e. FAO-6704-
2015 filed on behalf of appellants Ambika and others, FAO-7329-2015
filed on behalf of appellants Paramjit Kaur and others, FAO Nos.8129 to
8134 of 2015 and FAO-5344-2017 filed on behalf of appellant – National
Insurance Co. Ltd. and FAO Nos.556 and 557 of 2016 filed on behalf of
appellant – Jasbir Kaur, which have arisen out of the same accident.

FAO-6704-2015(O&M);
FAO-7329-2015(O&M);
FAO-8129-2015(O&M);
FAO-8130-2015(O&M);
FAO-8131-2015(O&M);
FAO-8132-2015(O&M);
FAO-8133-2015(O&M);
FAO-8134-2015(O&M);
FAO-556-2016(O&M);
FAO-557-2016(O&M); and
FAO-5344-2017(O&M)

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Briefly stated, facts of the case are that on 2.6.2013, Baljinder Singh son of Kartar Singh, a resident of village Ghanour, Tehsil Rajpura, District Patiala, aged about 38 years working as a driver with Neeraj @ Bunti son of Sant Ram, resident of House No.3586, Sector 22-D, Chandigarh was driving Force Tempo Traveller bearing registration No.PB01-A-3868 (hereinafter referred to as ill-fated vehicle) going from Chandigarh to Nanded (Hazoor Sahib) via Delhi; members of 2-3 families were travelling in that vehicle, which included Neeraj @ Bunti, Roshan Lal, Sadhu Singh, Pooja, Paramjit, Sharwan Singh, Raj Rani etc.; at about 4:00 a.m., when such vehicle reached in front of Gupta Farm House, Bhigan, Police Station Murthal, District Sonapat on Amritsar to Delhi G.T. Road, National Highway No.1 then a tractor trolley bearing registration No.HR10-S-6851(hereinafter referred to as the offending vehicle) loaded with sand was standing in lane No.1 on G.T. Road with its face towards Delhi side; no precautions indicating that the tractor trolley was standing on the road like placing bricks, stone, branches of tree, safety cones, reflectors, burning of fire, which might have suggested to the road users that tractor trolley was standing with its all wheels on the metalled portion had been taken; due to glare of the headlights of the vehicles coming from the opposite side, Baljinder Singh could not notice

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FAO-8130-2015(O&M);
FAO-8131-2015(O&M);
FAO-8132-2015(O&M);
FAO-8133-2015(O&M);
FAO-8134-2015(O&M);
FAO-556-2016(O&M);
FAO-557-2016(O&M); and
FAO-5344-2017(O&M)

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the stationary tractor trolley on the road, resultantly the ill-fated vehicle hit the offending vehicle, consequently an accident took place in which Sarwan Singh and Neeraj @ Bunti suffered multiple grievous injuries and died on the spot, whereas Baljinder Singh, Pooja, Raj Rani, Paramjit Kaur, Roshan Lal and other passengers travelling in the ill-fated vehicle sustained injuries; they were taken to General Hospital, Sonipat by highway police patrol in their vehicles; FIR No.150 dated 2.6.2013 was registered with Police Station Murthal, District Sonipat for the offences under Sections 279, 337, 304-A IPC against respondent No.1 – Bhopal Singh with regard to the accident in question.

The legal representatives of deceased Neeraj @ Bunti, namely his widow – Ambika, minor sons – Kartik and Rohit, mother – Smt.Kanta Devi and father – Sh.Sant Ram had brought a claim petition bearing MACT Case No.1246 of 22.7.2013 under Section 166 of Motor Vehicles Act against respondents i.e. Bhopal Singh – owner and driver, Bijender – another owner and National Insurance Company Ltd. - insurer of the offending canter, claiming compensation.

The legal representatives of deceased Sarwan Singh, namely, his widow – Smt.Paramjit Kaur and sons – Babbar Singh and Lakhwinder Singh had brought a claim petition bearing MACT Case No.1262 of

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FAO-8130-2015(O&M);
FAO-8131-2015(O&M);
FAO-8132-2015(O&M);
FAO-8133-2015(O&M);
FAO-8134-2015(O&M);
FAO-556-2016(O&M);
FAO-557-2016(O&M); and
FAO-5344-2017(O&M)

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29.7.2013 under Section 166 of Motor Vehicles Act against the abovesaid respondents as well as against Baljinder Singh – driver, Neeraj @ Bunti through his legal representatives, namely Smt.Ambika, Kartik and Rohit – owners and Cholamandalam MS General Insurance Company Ltd. - insurer of the ill-fated vehicle, claiming compensation.

The petitioner/claimant Raj Rani had brought a claim petition bearing MACT Case No.1267 of 1.8.2013 under Section 166 of Motor Vehicles Act against the abovesaid respondents as mentioned in MACT Case No.1262 of 29.7.2013, claiming compensation.

The petitioner/claimant Jasbir Kaur had brought a claim petition bearing MACT Case No.1271 of 7.8.2013 under Section 166 of Motor Vehicles Act against the abovesaid respondents as mentioned in MACT Case No.1262 of 29.7.2013, claiming compensation on account of injuries suffered by her in the accident. She had also filed claim petition bearing MACT Case No.1272 of 7.8.2013 under Section 166 of Motor Vehicles Act against the abovesaid respondents as mentioned in MACT Case No.1262 of 29.7.2013, claiming compensation on account of death of her husband Sadhu Singh in the accident.

The petitioner/claimant Pooja had brought a claim petition bearing MACT Case No.1373 of 29.10.2013 under Section 166 of Motor

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FAO-8130-2015(O&M);
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FAO-8132-2015(O&M);
FAO-8133-2015(O&M);
FAO-8134-2015(O&M);
FAO-556-2016(O&M);
FAO-557-2016(O&M); and
FAO-5344-2017(O&M)

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Vehicles Act against the abovesaid respondents as mentioned in MACT Case No.1262 of 29.7.2013, claiming compensation on account of injuries suffered by her in the accident.

The petitioner/claimant Baljinder had also brought a claim petition bearing MACT Case No.473 of 1.9.2016 under Section 166 of Motor Vehicles Act against the respondents i.e. Bhopal Singh – driver and owner and National Insurance Company Ltd. - insurer of the offending vehicle, claiming compensation on account of injuries suffered by him in the accident.

MACT Case No.473 of 1.9.2016 filed by Baljinder Singh was tried separately by Motor Accidents Claims Tribunal, Chandigarh. Whereas remaining six claim petitions were consolidated and tried together by Motor Accidents Claims Tribunal, Chandigarh.

On being put to notice, the respondents in the claim petitions had appeared and offered a contest. Issues on merits were framed. The parties were afforded adequate opportunities to lead their evidence.

On conclusion of trial, MACT Chandigarh vide Award dated 16.5.2017 accepted the claim petition bearing MACT Case No.473 of 1.9.2016 filed by applicant/claimant Baljinder Singh and granted him compensation of Rs.9,16,810/- with interest @ 7.5% per annum from the

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FAO-7329-2015(O&M);
FAO-8129-2015(O&M);
FAO-8130-2015(O&M);
FAO-8131-2015(O&M);
FAO-8132-2015(O&M);
FAO-8133-2015(O&M);
FAO-8134-2015(O&M);
FAO-556-2016(O&M);
FAO-557-2016(O&M); and
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date of filing of the application till realization. The liability of respondents No.1 and 2 i.e. driver-cum-owner of the offending vehicle as well as its insurer – National Insurance Company Ltd. was held to be joint and several.

Whereas the other six claim petitions, which were consolidated and tried together were partly accepted by the Motor Accidents Claims Tribunal, Chandigarh and petitioners Ambika and others, who had filed MACT Case No.1246 of 22.7.2013 were awarded compensation of Rs.36,67,500/-; petitioners Paramjit Kaur and others, who had filed MACT Case No.1262 of 29.7.2013 were awarded compensation of Rs.15,09,200/-; petitioner Raj Rani, who had filed MACT Case No.1267 of 1.8.2013 was awarded compensation of Rs.42,000/-; petitioner Jasbir Kaur, who had filed MACT Case No.1271 of 7.8.2013 for injuries suffered by her was awarded compensation of Rs.2,22,000/- and she was further awarded a sum of Rs.7,07,900/- in MACT Case No.1272 of 7.8.2013, which she had filed for claiming compensation on account of death of her husband in the accident; petitioner Pooja Garg, who had filed MACT Case No.1373 of 29.10.2013 was awarded compensation of Rs.40,000/- along with interest at the rate of 7.5% per annum from the date of filing of the petitions till final

FAO-6704-2015(O&M);
FAO-7329-2015(O&M);
FAO-8129-2015(O&M);
FAO-8130-2015(O&M);
FAO-8131-2015(O&M);
FAO-8132-2015(O&M);
FAO-8133-2015(O&M);
FAO-8134-2015(O&M);
FAO-556-2016(O&M);
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realization payable by respondents No.1 to 3 jointly and severally.

The manner in which the compensation is to be apportioned between the claimants in MACT Case No.1246 of 22.7.2013 titled as 'Ambika and others Versus Bhopal Singh and others' and in MACT Case No.1262 of 29.7.2013 titled as 'Paramjit Kaur and others Versus Bhopal Singh and others', was also given in the award.

The National Insurance Company Limited being insurer of the offending tractor trolley felt aggrieved by the awards and has filed FAO Nos.8129 to 8134 of 2015 and FAO-5344-2017. Whereas claimants in MACT Case No.1246 of 22.7.2013, MACT Case No.1262 of 29.7.2013, MACT Case No.1271 and 1272 of 7.8.2013 were dissatisfied with the amount of compensation awarded to them and they have also approached this Court seeking enhancement of compensation awarded to them and notices of the appeals were given to the respective respondents.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the appellant – National Insurance Company has argued that the accident had taken place on account of rash and negligent driving of Force Tempo Traveller vehicle by Baljinder Singh inasmuch as he had hit the tractor trolley from behind, therefore,

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FAO-7329-2015(O&M);
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FAO-8130-2015(O&M);
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FAO-8132-2015(O&M);
FAO-8133-2015(O&M);
FAO-8134-2015(O&M);
FAO-556-2016(O&M);
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the blame for the accident is to be borne by Baljinder Singh driver of the Force Tempo Traveller and not driver of the tractor trolley. According to him, even if it is taken that the tractor trolley was standing on a part of the metalled road, enough vacant space of the road was available through which the Tempo Traveller vehicle could have passed more particularly when there was very less traffic due to early morning hours and that the tractor trolley driver has wrongly been held to be responsible for the accident. According to him at the most it could be termed as a case of contributory negligence and 50% of the liability should be placed on the driver, owner and insurance company of the ill-fated tempo traveller.

Whereas learned counsel appearing for Cholamandalam MS General Insurance Company Ltd. has contested the contentions contending that the entire responsibility for happening of the accident was that of tractor trolley driver, who had wrongly parked the tractor trolley on the metalled portion of the road without giving any indication and the Tribunal has rightly held respondent No.1 Bhopal Singh to be responsible for the accident and this finding should not be disturbed.

After hearing learned counsel for the parties, I find that from the facts and circumstances of the case and the evidence available on the record, it clearly comes out that the root cause of the accident was wrong

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FAO-7329-2015(O&M);
FAO-8129-2015(O&M);
FAO-8130-2015(O&M);
FAO-8131-2015(O&M);
FAO-8132-2015(O&M);
FAO-8133-2015(O&M);
FAO-8134-2015(O&M);
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parking of the tractor trolley on the metalled portion of the road. The accident had taken place in early morning hours and there was no indication in the form of placing bricks, stones, branches of tree, switching on of parking lights, by placing burning wood/safety cones nearby to give any indication to the commuters of the road that tractor trolley was parked ahead. It was definitely an act showing lack of care and caution on the part of the tractor trolley driver and his reckless approach in the matter. The driver of the ill-fated vehicle could not be expected to anticipate that tractor trolley would be lying parked on the road. Formal FIR with regard to the accident was also registered against Bhopal Singh – respondent No.1. He while appearing as RW3 Bhopal Singh had admitted in his cross-examination that FIR for causing the accident had been registered against him and he is facing trial in that regard in Court at Sonipat. He also admitted it as correct that he had not approached any higher authority that a false case had been registered against him. A perusal of the FIR copy Ex.P2 goes to show that it find clearly mentioned that the accident had taken place due to rash and negligent parking of the tractor trolley in question by its driver. The Tribunal has rightly observed that the road in question is National Highway No.1, which is very busy and drivers are not expected to park their vehicles in the middle of the

FAO-6704-2015(O&M);
FAO-7329-2015(O&M);
FAO-8129-2015(O&M);
FAO-8130-2015(O&M);
FAO-8131-2015(O&M);
FAO-8132-2015(O&M);
FAO-8133-2015(O&M);
FAO-8134-2015(O&M);
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road that too without giving any indication and further in moving traffic, the tractor trolley has to be either off the road or keep moving and is not to be parked in the middle of the road. The Tribunal referring to the cross-examination of RW3 Bhopal Singh has observed that he had admitted therein that when tyre of his vehicle burst, his vehicle was on the road.

The finding recorded by the Tribunal is correct and appropriate and does not call for any interference. It can certainly be not taken to be a case of contributory or composite negligence as has been submitted by learned counsel representing National Insurance Company Ltd. It being so, the owners, driver and insurance company of the tractor trolley were rightly held to be jointly and severally liable to pay compensation to the claimants.

Now coming to the quantum of compensation given to the claimants.

First taking up FAO No.5344 of 2017 filed by the National Insurance Company Ltd. against the award passed in MACT Case No.473 of 1.9.2016 titled 'Baljinder Singh Versus Bhopal Singh and another'.

The Tribunal has taken the avocation of Baljinder Singh – injured as that of driver in employment of Neeraj @ Bunti getting salary of Rs.7,000/- per month plus incentive of Rs.300/- per visit. His driving

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FAO-7329-2015(O&M);
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FAO-8132-2015(O&M);
FAO-8133-2015(O&M);
FAO-8134-2015(O&M);
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licence authorizing him to drive transport vehicle till 27.11.2015 and for non-transport vehicle till 2.2.2025 has also been taken into consideration. In that way, his monthly income has been assessed to be Rs.9,000/-, which cannot be taken to be on higher side. As per MLR of injured Baljinder dated 2.6.2013, copy Mark-A, he had suffered fractures and other injuries on right side of the pelvic region and on the right lower leg and left lower leg etc. He remained hospitalized also and got follow up treatment. He had got his permanent disability assessed from the medical board, which was found to be 37%. The Tribunal has observed that the claimant would face hardship in driving four wheelers due to disability suffered by him in the accident and loss of earning capacity was assessed as Rs.3,600/- per month. The compensation has been assessed as under:

Annual income	Rs.1,08,000/-
Loss of future earning per annum (40% of the annual income)	Rs.43,200/-
Multiplier applicable with reference to age	16
Loss of future earnings (Rs.43,200 x 16)	Rs.6,91,200/-

The claimant has also been awarded compensation under various heads as enumerated in para No.28 of the Award, which is as

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FAO-8130-2015(O&M);
FAO-8131-2015(O&M);
FAO-8132-2015(O&M);
FAO-8133-2015(O&M);
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under:

Sr.No.	Particulars	Amount
1.	Special Diet, attendant and hospitalization	Rs.7,000/-
2.	Pain and suffering	Rs.30,000/-
3.	Medical Expenses	Rs.1,28,610/-
4.	Loss of emenities	Rs.50,000/-
5.	Transportation	Rs.10,000/-
6.	Loss of income due to Permanent disability	Rs.6,91,200/-
	Total	Rs.9,16,810/-

This compensation can certainly be not termed to be on higher side keeping in view the nature, extent and magnitude of the injuries suffered by the injured.

Therefore, **FAO-5344-2017** filed on behalf of the National Insurance Company Ltd. in that regard is without any merit and is dismissed.

Now coming to FAO No.8134-2015 filed by the National Insurance Company Ltd. against the award passed in MACT Case No.1373 of 29.10.2013 titled 'Pooja Garg Versus Bhopal Singh and others'.

The Tribunal has noticed that the petitioner/claimant Pooja

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FAO-8129-2015(O&M);
FAO-8130-2015(O&M);
FAO-8131-2015(O&M);
FAO-8132-2015(O&M);
FAO-8133-2015(O&M);
FAO-8134-2015(O&M);
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had placed on record copy of her discharge and follow up card as Mark-A and has proved in evidence bills Ex.P42 and Ex.P43, total of which comes out to Rs.1,275/-. Her discharge and follow up card shows that she must have incurred much more than the bills/record maintained/produced by her in the Court. Therefore, lump sum compensation of Rs.40,000/- was awarded to her on account of expenses incurred on the treatment, pain and suffering, mental agony and special diet etc. The amount can certainly be not termed to be on higher side and there is no scope to reduce the same.

Therefore, **FAO-8134-2015** filed on behalf of the National Insurance Company Ltd. in that regard is without any merit and is dismissed accordingly.

Now coming to FAO No.8132-2015 filed by the National Insurance Company Ltd. against the award passed in MACT Case No.1267 of 1.8.2013 titled 'Raj Rani Versus Bhopal Singh and others'.

The Tribunal has noticed that petitioner/claimant Raj Rani had sustained injuries in the accident and as per her version she remained admitted in PGI w.e.f. 2.6.2013 to 7.6.2013. She had placed on record her discharge summary as Ex.P39 and bills/receipts Ex.P41 and Ex.P44, the total of bills amount was worked out to Rs.16,192/-, which was rounded off to Rs.17,000/-. Considering that she must have suffered expenses

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FAO-7329-2015(O&M);
FAO-8129-2015(O&M);
FAO-8130-2015(O&M);
FAO-8131-2015(O&M);
FAO-8132-2015(O&M);
FAO-8133-2015(O&M);
FAO-8134-2015(O&M);
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towards special diet and transportation during the period of admission in hospital and must have been attended by some one, in addition to that must have suffered pain and suffering, mental agony etc., a sum of Rs.25,000/- was also awarded under the head special diet, transportation, attendants, pains and sufferings, mental agony etc. on guess work. The amount can certainly be not termed to be on higher side and there is no scope to reduce the same.

Therefore, **FAO-8132-2015** filed on behalf of the National Insurance Company Ltd. in that regard is without any merit and is dismissed accordingly.

Now coming to FAO No.8133-2015 filed by the appellant - National Insurance Company Ltd. and FAO No.556-2016 filed by appellant/claimant Jasbir Kaur against the award passed in MACT Case No.1271 of 7.8.2013(injury case) titled 'Jasbir Kaur Versus Bhopal Singh and others'.

As per the evidence adduced by claimant Jasbir Kaur, she remained admitted in PGI, Chandigarh from 2.6.2013 to 19.6.2013. Since she had taken an insurance policy, she had lodged claim amounting to Rs.2,00,884/- and a sum of Rs.80,000/- was disbursed to her. She was found entitled to the balance amount of Rs.1,21,906 after deducting

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FAO-5344-2017(O&M)

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Rs.80,000/- from the claim amount of Rs.2,00,884/- i.e. Rs.1,21,906/-, which was rounded off to Rs.1,22,000/-. The approach of the Tribunal in doing so is correct and proper. She had suffered physical disability to the extent of 35% qua her right foot, as per the disability certificate Ex.P1 issued to her and in view of testimony of Dr.Rajneesh Sood, Medical Officer, Department of Orthopedics, Government Multi Specialty Hospital, Sector 16, Chandigarh. Such doctor has found that there was restriction of movement at right ankle and right hip. Movements at hip were painful beyond 90 degree flexion and there was minimal shortening. There was history of skin grafting over right foot. A sum of Rs.50,000/- was awarded to her on account of disability suffered. Another sum of Rs.50,000/- was awarded to her towards special diet, transportation, attendants, pains and sufferings, mental agony etc. since as per case of the claimant, she had remained hospitalized w.e.f. 2.6.2013 to 19.6.2013. Thus the total compensation amount to which the claimant/petitioner was found entitled was held to be Rs.2,22,000/- as per the calculations given in para No.46, which are as under:

Sr.No.	Category	Amount
1.	On account of medical treatment	Rs.1,22,000/-
2.	On account of 35% permanent physical disability and loss of amenities of life	Rs.50,000/-

FAO-6704-2015(O&M);
 FAO-7329-2015(O&M);
 FAO-8129-2015(O&M);
 FAO-8130-2015(O&M);
 FAO-8131-2015(O&M);
 FAO-8132-2015(O&M);
 FAO-8133-2015(O&M);
 FAO-8134-2015(O&M);
 FAO-556-2016(O&M);
 FAO-557-2016(O&M); and
 FAO-5344-2017(O&M)

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3.	On account of special diet, transportation, pains and sufferings, attendants, mental agony etc.	Rs.50,000/- (On guess work).
	Total	Rs.2,22,000/-

To my mind, the compensation of Rs.50,000/- awarded for 35% permanent physical disability and loss of amenities of life is on the lower side.

Learned counsel for the claimant has referred to authority **Master Mallikarjun Versus Divisional Manager, The National Insurance Company Limited and another, 2014(14) SCC 396** by the Apex Court wherein the Apex Court had laid down parameters for award of compensation in case of permanent disability as follows:

(i) For permanent disability upto 10% Rs. One Lakh.

(ii) Disability above 10% and upto 30% ₹ 3 lakhs.

(iii) Disability upto 60% ₹ 4 lakhs.

(iv) Disability upto 90% ₹ 5 lakhs.

(v) Disability above 90% ₹ 6 lakh.

Though it relates to a child and it could be said that the disability with regard to entire body is to be taken but even then the compensation of Rs.50,000/- is on very low side. The same is enhanced to

FAO-6704-2015(O&M);
FAO-7329-2015(O&M);
FAO-8129-2015(O&M);
FAO-8130-2015(O&M);
FAO-8131-2015(O&M);
FAO-8132-2015(O&M);
FAO-8133-2015(O&M);
FAO-8134-2015(O&M);
FAO-556-2016(O&M);
FAO-557-2016(O&M); and
FAO-5344-2017(O&M)

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Rs.1 lakh.

The Tribunal instead of awarding compensation under separate heads has clubbed all the heads awarding compensation of Rs.50,000/-, which is not proper.

As regards special diet, a person suffering injuries does need special diet for early and proper recovery. A award a sum of **Rs.25,000/-** under that head.

Keeping in view the period of hospitalization and nature of injuries and that claimant would have gone to the hospital for follow up treatment also, a sum of **Rs.25,000/-** is awarded to him on account of transportation.

The claimant having suffered injuries did require help of an attendant during the period of his hospitalization and then going to hospital for follow up treatment. A sum of **Rs.20,000/-** is accordingly awarded to the appellant/claimant on that score.

In my view considering the number of injuries suffered by the claimant, period of hospitalization, it is very difficult to quantify the pain and suffering undergone by a person suffering injury requiring long hospitalization, surgeries and follow up treatment. Keeping in view the facts and circumstances of the case, I award a sum of **Rs.30,000/-** under

FAO-6704-2015(O&M);
FAO-7329-2015(O&M);
FAO-8129-2015(O&M);
FAO-8130-2015(O&M);
FAO-8131-2015(O&M);
FAO-8132-2015(O&M);
FAO-8133-2015(O&M);
FAO-8134-2015(O&M);
FAO-556-2016(O&M);
FAO-557-2016(O&M); and
FAO-5344-2017(O&M)

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that head.

The claimant on account of injuries suffered by her would not be able to walk, run or sit as she was prior to the accident. A sum of **Rs.25,000/-** is awarded to her on account of loss of expectation of life.

The Tribunal has awarded compensation of Rs.2,22,000/- along with interest @ 7.5% per annum from the date of filing of the petition till realization payable by respondents No.1 to 3 jointly and severally. The same is enhanced to Rs.3,47,000/-.

In this way, the additional amount comes out to Rs.1,25,000/- (3,47,000 - 2,22,000). The claimant would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the additional amount. The other terms and conditions given in the award shall apply to the additional amount as well.

With such modification, **FAO-556-2016** filed by appellant/applicant/claimant – Jasbir Kaur is allowed partly with costs and **FAO-8133-2015** filed on behalf of the National Insurance Company Ltd. in that regard is without any merit and is dismissed accordingly.

Next coming to FAO No.8131-2015 filed by the appellant - National Insurance Company Ltd. and FAO No.557-2016 filed by appellant/claimant Jasbir Kaur against the award passed in MACT Case

FAO-6704-2015(O&M);
FAO-7329-2015(O&M);
FAO-8129-2015(O&M);
FAO-8130-2015(O&M);
FAO-8131-2015(O&M);
FAO-8132-2015(O&M);
FAO-8133-2015(O&M);
FAO-8134-2015(O&M);
FAO-556-2016(O&M);
FAO-557-2016(O&M); and
FAO-5344-2017(O&M)

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No.1272 of 7.8.2013(death case of Sadhu Singh) titled 'Jasbir Kaur Versus Bhopal Singh and others'.

According to the claimant Jasbir Kaur, her husband Sadhu Singh, who had died in the accident was earning Rs.25,000/- per month from the avocation of agriculturist. The Tribunal considering the photocopy of passport of the deceased Ex.P5 recording his date of birth as 2.2.1947 with accident having taken place on 2.6.2013 took his age as 58 years at the time of accident. The claimant had placed on record photocopy of fard jamabandi for the year 2009-2010 showing that Sadhu Singh was having 58 kanals of agriculture land in his name. According to the claimant, the deceased was earning Rs.25,000/- by cultivating the land. However, in absence of any cogent and convincing evidence, the Tribunal took his income as Rs.8,000/- per month. Although learned counsel for the appellant/claimant has vehemently contended that the income so taken is on the lower side but keeping in view the fact that the land is still there and the claimant can herself cultivate the land or give it on lease, rent etc., therefore she is to be compensated for loss on account of management of land by the deceased, which has been assessed to be Rs.8,000/- per month and it cannot be said to be on lower side. The Tribunal has added 15% of the amount towards future prospects. Though

FAO-6704-2015(O&M);
FAO-7329-2015(O&M);
FAO-8129-2015(O&M);
FAO-8130-2015(O&M);
FAO-8131-2015(O&M);
FAO-8132-2015(O&M);
FAO-8133-2015(O&M);
FAO-8134-2015(O&M);
FAO-556-2016(O&M);
FAO-557-2016(O&M); and
FAO-5344-2017(O&M)

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in view of ratio of authority *National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009*, when the deceased was self-employed or on fixed salary and was in age group of 50 to 60 years, an addition of 10% is to be made. Doing that the monthly income of the deceased is taken as Rs.8,000 + 800 = Rs.8,800/-.

The Tribunal has rightly deducted 1/3rd of the amount towards personal expenses in view of ratio of authority *Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77*. Doing that the dependency of claimant comes out to Rs.5,867/- per month, annual dependency comes out to Rs.5,867 x 12 = Rs.70,404/-.

The Tribunal has used multiplier of 9, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs.70,404 x 9 = 6,33,636/-.

The Tribunal has granted compensation of Rs.20,500/- to the claimant towards the expenses incurred on the treatment of Sadhu Singh after he had suffered injuries in the accident, which is just and proper. Thus the compensation comes out to Rs.6,54,136/-(6,33,636 + 20,500).

The Tribunal has further awarded compensation of Rs.25,000/- towards funeral expenses. However, in view of the ratio of

FAO-6704-2015(O&M);
FAO-7329-2015(O&M);
FAO-8129-2015(O&M);
FAO-8130-2015(O&M);
FAO-8131-2015(O&M);
FAO-8132-2015(O&M);
FAO-8133-2015(O&M);
FAO-8134-2015(O&M);
FAO-556-2016(O&M);
FAO-557-2016(O&M); and
FAO-5344-2017(O&M)

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authority *National Insurance Company Limited Versus Pranay Sethi and Ors.*(supra), the claimant is entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-. The total compensation comes out to Rs. 6,54,136 + 70,000 = 7,24,136/-.

The Tribunal has awarded compensation of Rs.7,07,900/- along with interest @ 7.5% per annum from the date of filing of the petition till realization payable by respondents No.1 to 3 jointly and severally. The same is enhanced to Rs.7,24,136/-.

In this way, the additional amount comes out to Rs.16,236/- (7,24,136 - 7,07,900). The claimant would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the additional amount. The other terms and conditions given in the award shall apply to the additional amount as well.

With such modification, **FAO-557-2016** filed by appellant/applicant/claimant – Jasbir Kaur is allowed partly with costs and **FAO-8131-2015** filed on behalf of the National Insurance Company Ltd. is dismissed.

Further coming to FAO No.8129-2015 filed by the appellant

FAO-6704-2015(O&M);
FAO-7329-2015(O&M);
FAO-8129-2015(O&M);
FAO-8130-2015(O&M);
FAO-8131-2015(O&M);
FAO-8132-2015(O&M);
FAO-8133-2015(O&M);
FAO-8134-2015(O&M);
FAO-556-2016(O&M);
FAO-557-2016(O&M); and
FAO-5344-2017(O&M)

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- National Insurance Company Ltd. and FAO No.6704 of 2015 filed by appellants/claimants Smt.Ambika and others against the award passed in MACT Case No.1246 of 22.7.2013(death case of Neeraj @ Bunti) titled 'Ambika and others Versus Bhopal Singh and others'.

The Tribunal took the age of deceased Neeraj @ Bunti to be 28 years in view of such age entered in his postmortem report Ex.P45. His monthly income was taken to be Rs.15,000/- considering that he used to pay monthly instalments of Rs.14,127/- on account of loan raised by him for purchase of tempo traveller from UCO Bank, Mohali and was paying Rs.7,000/- per month to Baljinder Singh driver of that vehicle. Though learned counsel for the claimants has contended that the income so taken is on lower side but since there is nothing to show that he was an income tax payee and accounts of the income and the expenditure of the deceased have not been proved in evidence, in my considered view the Tribunal was justified in assessing his monthly income to Rs.15,000/-. The Tribunal has rather allowed an addition of 50% towards future prospects when in terms of authority **National Insurance Company Limited Versus Pranay Sethi and Ors.(supra)**, keeping in view the age of the deceased 40% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs.15,000 + 6,000 =

FAO-6704-2015(O&M);
FAO-7329-2015(O&M);
FAO-8129-2015(O&M);
FAO-8130-2015(O&M);
FAO-8131-2015(O&M);
FAO-8132-2015(O&M);
FAO-8133-2015(O&M);
FAO-8134-2015(O&M);
FAO-556-2016(O&M);
FAO-557-2016(O&M); and
FAO-5344-2017(O&M)

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Rs.21,000/-.

The Tribunal has rightly deducted 1/4th of the amount towards personal expenses in view of ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr.(supra)**. Doing that the dependency of claimants comes out to Rs.15,750/- per month, annual dependency comes out to Rs. 15,750 x 12 = Rs.1,89,000/-.

The Tribunal has used multiplier of 17, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs. 1,89,000 x 17 = 32,13,000/-.

The Tribunal has further awarded a sum of Rs.25,000/- as funeral expenses, Rs.1,00,000/- to claimant No.1 – Ambika on account of loss of consortium and a sum of Rs.1,00,000/- to claimants No.2 and 3 as loss of care and guidance. However, However, in view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors.**(supra), the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-. Thus, the total compensation comes out to Rs. 32,13,000 + 70,000 = 32,83,000/-.

The Tribunal has wrongly awarded compensation of

FAO-6704-2015(O&M);
FAO-7329-2015(O&M);
FAO-8129-2015(O&M);
FAO-8130-2015(O&M);
FAO-8131-2015(O&M);
FAO-8132-2015(O&M);
FAO-8133-2015(O&M);
FAO-8134-2015(O&M);
FAO-556-2016(O&M);
FAO-557-2016(O&M); and
FAO-5344-2017(O&M)

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Rs.36,67,500/-. The same is reduced to Rs.32,83,000/-. The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization on the amount of Rs.32,83,000 /-. Other terms and conditions regarding apportionment in the original award shall remain the same. The share of the claimants shall be reduced proportionately.

The excess amount if received by claimants be returned by them otherwise the appellant – insurance company shall be entitled to recover it by filing an execution application before the Tribunal.

With such modification, **FAO-8129-2015** filed by appellant – National Insurance Company Ltd. is allowed partly and **FAO-6704-2015** filed on behalf of the appellants Ambika and others is dismissed.

Next coming to FAO No.8130-2015 filed by the appellant - National Insurance Company Ltd. and FAO No.7329-2015 filed by appellants/claimants Paramjit Kaur and others against the award passed in MACT Case No.1262 of 29.7.2013(death case of Sarwan Singh) titled 'Paramjit Kaur and others Versus Bhopal Singh and others'.

The Tribunal has taken the age of deceased to be 57 years considering his date of birth entered in his service book as 17.9.1955. His

FAO-6704-2015(O&M);
FAO-7329-2015(O&M);
FAO-8129-2015(O&M);
FAO-8130-2015(O&M);
FAO-8131-2015(O&M);
FAO-8132-2015(O&M);
FAO-8133-2015(O&M);
FAO-8134-2015(O&M);
FAO-556-2016(O&M);
FAO-557-2016(O&M); and
FAO-5344-2017(O&M)

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avocation has been taken as employee in PWD B&R, Sirhind. His net payable salary in terms of salary statement Ex.PW10/2 was taken to be Rs.37,352/- as paid to him in the month of May, 2013 and considering that he was to retire on 30.9.2013 after attaining age of superannuation and after retirement he would only be getting pension and not the salary, the monthly pension was worked out to be Rs.19,225/-.

The Tribunal rather than considering the last pay drawn of the deceased, who was still in service has proceeded to assess his pension and then determine the compensation on the basis thereof. In my view, the approach of the Tribunal in doing so was not proper. The last pay drawn of the deceased ought to have been taken into consideration. Setting that mistake right, it is so done and the monthly income of the deceased is taken as Rs.37,352/- .

The Tribunal has not added any amount towards future prospects. However, in terms of authority **National Insurance Company Limited Versus Pranay Sethi and Ors.(supra)**, keeping in view the age of the deceased 57 years, 10% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs.37,352 + 3,735 = Rs.41,087/-. The annual income is thus worked out to Rs.4,93,044/-(41,087 x 12). Making the deduction from this amount on

FAO-6704-2015(O&M);
FAO-7329-2015(O&M);
FAO-8129-2015(O&M);
FAO-8130-2015(O&M);
FAO-8131-2015(O&M);
FAO-8132-2015(O&M);
FAO-8133-2015(O&M);
FAO-8134-2015(O&M);
FAO-556-2016(O&M);
FAO-557-2016(O&M); and
FAO-5344-2017(O&M)

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account of personal and living expenses of the deceased and as well as income tax liability, the dependency of the claimants is worked out to Rs.2,63,000/-.

The Tribunal has used multiplier of 9, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to $\text{Rs.}2,63,000 \times 9 = 23,67,000/-$.

The Tribunal has further awarded compensation of Rs.25,000/- towards funeral expenses and Rs.1 lakh on account of loss of consortium. However, in view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors.**(supra), the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-. The total compensation comes out to $\text{Rs. } 23,67,000 + 70,000 = 24,37,000/-$.

The Tribunal has awarded compensation of Rs.15,09,200/- along with interest @ 7.5% per annum from the date of filing of the petition till realization payable by respondents No.1 to 3 jointly and severally. The same is enhanced to Rs.24,37,000/-.

In this way, the additional amount comes out to Rs.9,27,800/- (24,37,000 - 15,09,200). The claimant would be entitled to get interest @

FAO-6704-2015(O&M);
FAO-7329-2015(O&M);
FAO-8129-2015(O&M);
FAO-8130-2015(O&M);
FAO-8131-2015(O&M);
FAO-8132-2015(O&M);
FAO-8133-2015(O&M);
FAO-8134-2015(O&M);
FAO-556-2016(O&M);
FAO-557-2016(O&M); and
FAO-5344-2017(O&M)

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7.5% per annum from the date of filing of the appeal till actual realization on the additional amount. The other terms and conditions given in the award shall apply to the additional amount as well.

With such modification, **FAO-7329-2015** filed by appellants/applicants/claimants – Paramjit Kaur and others is allowed partly with costs and **FAO-8130-2015** filed on behalf of the National Insurance Company Ltd. is dismissed.

6.11.2019

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No