220 (1 of 3)

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

FAO No.3546 of 2018
Date of Decision: 30.05.2019

Sandhya and others
Appellants
Versus
Ram Niwas and others
Respondents

FAO No.4552 of 2018 (O&M)

Sheela @ Shakuntala and another
Appellants
Versus
Ram Niwas and others
Respondents

FAO No.4628 of 2018

Suman and others
Appellants
Versus
Ram Niwas and others
Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Rishab Lohan, Advocate
for the appellants [in FAO Nos.3546 and 4552 of 2018].

Mr. Prashant Sethi, Advocate
for the appellants [in FAO No.4628 of 2018].

Mr. R.S. Sharma, Advocate
for the respondent-Insurer.
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AVNEESH JHINGAN, J (Oral):

The award dated 03.01.2018 passed by the Motor Accident Claims Tribunal, Jind [hereinafter referred to as 'the Tribunal'] in MACT Case No.65 of 2016 and MACT Case No.64 of 2016 has been assailed by filing three appeals. FAO No.3546 of

2018 has been filed by widow, two minor children and mother of Inderjeet (deceased); FAO No.4552 of 2018 has been preferred by mother and grand mother of Satish Kumar (deceased) and FAO No.4628 of 2018 has been filed by widow and two minor children of Satish Kumar. Since these three appeals arise from same accident and one award, these are being disposed of by a common order.

All the claimants are in appeal seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The driver, owners i.e. Haryana Roadways Rohtak Depot and State of Haryana and insurer (i.e. The Oriental Insurance Company Ltd.) of Bus bearing registration No. HR-46C-8635 [hereinafter referred to as 'offending vehicle'] have been arrayed as respondents No.1 to 4 respectively in all the appeals.

The facts necessary for adjudication of the present appeals are that on 03.05.2016, Satish Kumar (rider) and Inderjeet Singh (pillion rider) were going on a motorcycle bearing registration No. HR-32F-3873. When they reached near bus stand of village Jai Jai Wanti, the offending vehicle dashed into the motorcycle. As a result, both the riders sustained injuries and were taken to Civil Hospital, Julana. Satish Kumar was declared dead in the hospital and Inderjeet Singh was further referred to PGIMS, Rohtak, on the way to Rohtak, he succumbed to the injuries.

In the claim petitions, the Tribunal opined that accident was result of rash and negligent driving of the offending vehicle. All the respondents were held jointly and severally liable to pay the compensation.

FAO No.3546 of 2018 :(MACT Case No.65 of 2016)

In the claim petition filed by the legal representatives of Inderjeet, Income Tax Returns (ITRs) of the deceased were exhibited. Taking into consideration ITRs of the deceased, income of the deceased was taken as ₹3,00,000/- per annum; 1/4th deduction for self-expenses was made as the deceased was survived by four dependents and multiplier of '15' was applied considering him in the age group of 36-40. The Tribunal awarded compensation of ₹34,45,000/- alongwith interest @ 7.5% per annum. The amount awarded included ₹70,000/- under the conventional heads.

There is no challenge to the income assessed; 1/4th deduction made for self-expenses; multiplier applied of '15' and amount awarded under the conventional heads.

Learned counsel for the appellants contends that deceased was carrying on business of White Wash Contractor and was below 40 years of age, the grievance raised is that no future prospects have been awarded.

Learned counsel for the insurer defends the award and resisted any further enhancement.

Having due regard to the decisions of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and***

others AIR 2017 SC 5157 and ***Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480;*** 40% future prospects are awarded.

As there is no challenge to the loss of dependency i.e. ₹33,75,000/- calculated by the Tribunal. 40% of the said amount i.e. ₹13,50,000/- is awarded as future prospects.

The award dated 03.01.2018 passed in MACT Case No.65 of 2016 is modified to the extent that amount of ₹34,45,000/- is enhanced by ₹13,50,000/-.

The claimants shall be entitled to the enhanced amount alongwith interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is allowed.

FAO No.4552 and 4628 of 2018: (MACT Case No.64 of 2016)

The grievances raised by legal representatives of Satish Kumar are that the deceased was not 26 years old at the time of accident, the Tribunal wrongly applied multiplier of '17'. Further grievance is that no future prospects have been awarded.

In the claim petition, it was pleaded that deceased was working as Sub-Operator with Fast Way Cable Network and he was earning ₹52,000/- per month. The claimants failed to prove earning of the deceased and the Tribunal assessed monthly income as ₹10,000/-, multiplier of '17' was applied considering him in the age group of 26-30 and $1/4^{th}$ deduction for self-expenses was made. The

Tribunal awarded compensation of ₹16,00,000/- alongwith interest @ 7.5% per annum. The amount awarded included ₹70,000/- under the conventional heads.

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

Learned counsel for the appellants contends that the deceased was 25 years and few months old at the time of accident, the Tribunal erred in applying multiplier of '17'. He submits that no future prospects have been awarded.

Learned counsel for the insurer defends the award.

The date of birth of the deceased was 04.10.1990 as proved by production of Aadhaar Card by the claimants. He was 25 years and few months at the time of accident. As per decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21,*** multiplier of '17' is to be applied where age group of deceased is 26-30 and multiplier of '18' is to be applied where age group is of 21-25. In the present case, the deceased was not 26 years old, hence multiplier of '18' is applied.

As the deceased was below 40 years old and fell in the category of self-employed or having fixed wages, in consonance with the decision of the Supreme Court in ***Pranay Sethi's and Raj's case*** (supra), 40% future prospects are awarded.

There is no challenge to the income of the deceased assessed by the Tribunal, deduction made for self-expenses and amounts awarded under conventional heads.

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

Particulars	Amount (in ₹)
Monthly income of the deceased as assessed	10,000/-
40% Future Prospects	4,000/-
Sub Total	14,000/-
1/4th deduction for self expenses	3,500/-
Monthly Dependency	10,500/-
Annual Dependency	1,26,000/-
Applying multiplier of '18'	**22,68,000/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Loss of consortium to the widow	**70,000/-**
Grand Total	**23,38,000/-**

The award dated 03.01.2018 passed in MACT Case No.64 of 2016 is modified to the extent that amount of ₹16,00,000/- is enhanced to ₹23,38,000/-.

The claimants shall be entitled to the enhanced amount alongwith interest @ 7.5% per annum from the date of filing of the claim petition, till realization of the amount.

The appeal is allowed.

[AVNEESH JHINGAN]
JUDGE

May 30, 2019
pankaj baweja

1. Whether speaking/ reasoned : Yes
2. Whether reportable : Yes