

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

121

1. FAO No. 4453 of 2018
Date of Decision : 11.3.2019

National Insurance Company Ltd.**Appellant**

v.

Kuldeep Kaur and others**Respondents**

2. FAO No. 4456 of 2018

National Insurance Company Ltd.**Appellant**

v.

Gurnam Kaur and others**Respondents**

3. FAO No. 5011 of 2018

National Insurance Company Ltd.**Appellant**

v.

Piari Kaur and others**Respondents**

CORAM : HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr. Vinod Gupta, Advocate, for the appellant(s)

Mr. Surinder Garg, Advocate, for respondents No. 1 to 5

Mr. Ranjeet K. Jaswal, Advocate, for respondent No. 6

ANIL KSHETARPAL, J. (Oral)

By this judgment, FAOs No. 4453, 4456 and 5011 of 2018 shall stand disposed of as all the 3 appeals are arising from separate awards passed by the learned Motor Accidents Claims Tribunal (MACT) arising from one accident.

Learned counsel appearing for the Insurance Company has submitted that the findings of the learned MACT with respect to involvement of the offending vehicle i.e. ambulance Tata Banakar is erroneous. He further submitted that learned MACT has wrongly applied cut of 1/5th of the earning on account of the self expenses although it should be 1/4th. He further submitted that in FAO No. 4456 of 2018, the Court has wrongly added 25% of the income towards increase on account of future prospects although age of the driver was more than 50 years and not less than 50 years.

On the other hand, learned counsel for the respondent/ claimants fairly submits that as far as argument of learned counsel for the appellant with regard to cut on account of self expenses, the learned MACT has erred and cut should have been 1/4th and not 1/5th, however, he submitted that the rash and negligent driving of the offending vehicle has been proved by examination of PW3-Kulwant Singh. He has further submitted that in absence of cogent evidence the Court has assumed the age to be 50 years in FAO No. 4456 of 2018 and therefore, as per the judgment passed by the Hon'ble Supreme Court in the case of '**National Insurance Co. Ltd. v. Pranay Sethi and others, (2013) 9 SCC 65**' the addition on account of future prospects has been rightly applied by the Court to 25%.

As regards imposition of cut for working out dependency, there is no dispute between learned counsel for the parties. Accordingly, the cut on account of own expenses is substituted from 1/5th to 1/4th.

As regards argument of learned counsel that the vehicle has been wrongly involved in the accident, no doubt in the DDR vehicle number or name of the driver was not given, however, eye witness PW3-Kulwant Singh

has appeared and proved involvement of the offending vehicle as well as rash and negligent driving. He has stated that in order to save a dog, the driver of the offending vehicle swerved his vehicle, which resulted into accident with the motor cycle driven by the deceased. It is the paramount duty of the drivers travelling on highways to be careful before changing the lane. The road on which the accident took place, was single carriage way i.e. for incoming and outgoing. In such circumstances, it was the duty of driver of the offending vehicle to be careful before changing the lane. Still further evidence of Kulwant Singh, the alleged eye witness, has been found to be reliable by the MACT and this Court find no reason to differ with the same. Even driver of the offending vehicle had died in the same accident.

Keeping in view the aforesaid facts, this Court does not find any substance in the argument of learned counsel for the appellant/Insurance Company that the vehicle was not involved.

As regards argument of addition on account of future prospects to be noted that deceased was agriculturist and there was no certain proof of the age. In such circumstances, the Court has found the age of deceased to be 50 years. It could be treated both ways i.e. less than 50 years or more than 50 years.

Keeping in view the aforesaid fact, the addition made by learned MACT on account of future prospects is justified.

Accordingly, the compensation awarded to the claimants is re-worked as under :-

FAOs No. 4453 of 2018 and 5011 of 2018		
Heads	Compensation Awarded by MACT	Compensation awarded by this Court
Income assessed	7000	7000
Future prospects (40%)(+)	2800	2800
	9800	9800
Deduction (-)	(1/5 th) 1960	(1/4 th)1960
	7840	7350
Multiplier (16)	7840 X 12 X 16 = 15,05,280	7350 X 12 X 16 = 14,11,200
Conventional Heads :-		
(i) Loss of consortium	40000	40000
(ii) Loss of estate	Nil	15000
(iii) Funeral expenses	15000	15000
(iv) Love and affection to children	15000	Nil
Total compensation	15,75,280	14,81,200
FAO No. 4456 of 2018		
Heads	Compensation Awarded by MACT	Compensation awarded by this Court
Income assessed	7000	7000
Future prospects (25%)(+)	1750	1750
	8750	8750
Deduction (-)	(1/5 th) 1750	(1/4 th)2188
	7000	6562
Multiplier (13)	7000 X 12 X 13 = 10,92,000	6562 X 12 X 13 = 10,23,672
Conventional Heads :-		
(i) Loss of consortium	40000	40000
(ii) Loss of estate	Nil	15000
(iii) Love and affection to children	15000	Nil
(iv) Funeral expenses	15000	15000
Medical expenses	3,50,618	3,50,618
Total compensation	15,12,618	14,44,290

Present appeals stand disposed of.

A photocopy of this order be placed on the connected case files.

(ANIL KSHETARPAL)
JUDGE

11.3.2019
Ashwani

Speaking/Reasoned : Yes/No
Reportable : Yes/No