

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 27.04.2022

1. FAO-3170-2011

ICICI Lombard General Insurance Company Ltd. Appellant

versus

Sudesh and others Respondents

2. FAO-2378-2011

Sudesh and others Appellants

versus

Ragbir Singh and others Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Rajneesh Malhotra, Advocate
for the appellant in FAO-3170-2011 and
for respondent No.4 in FAO-2378-2011.

Mr. Ashit Malik, Advocate
for respondents No.1 to 5 in FAO-3170-2011 and
for appellants in FAO-2378-2011.

None for respondents No.6 to 8 in FAO-3170-2011 and
for respondents No.1 to 3 in FAO-2378-2011.

PANKAJ JAIN, J.

These are cross appeals against the award dated 12.11.2010 passed by Motor Accident Claims Tribunal, Jind (hereinafter referred to as 'MACT') in MACT Case No.46 of 25.03.2010. Insurance company is in appeal No. FAO-3170-2011 and the other appeal i.e. FAO-2378-2011 is at the instance of the claimants.

2. Primarily appellants in both the appeals dispute the quantum of compensation awarded by MACT to the claimants i.e. Rs.33,09,336/- on account of death of Balraj Singh in a motor vehicular accident dated 26.02.2010.

3. Both the appeals have borne out of claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'Act') filed by legal heirs of Balraj Singh. As per the claim petition, on 26.02.2010 Balraj Singh (since deceased) alongwith his cousin Parvesh Kumar was going from his village Ahirka to Delhi in his Maruti Car bearing registration No.HR-10-F-6374 which was being driven by Balraj Singh. When they reached in the area of village Bishanpura at Jind-Rohtak road at about 8:15 a.m., in between respondent No.1-Raghubir Singh (here in FAO No.2378 of 2011) while driving his truck bearing registration No.HR-67-2803 rashly and negligently came from the opposite direction i.e. from Rohtak side dashed against the car of Balraj Singh after coming on the wrong side of the road. Balraj Singh sustained multiple injuries and was rushed to General Hospital, Jind but he was declared dead by the doctors of the hospital. Thereafter, a criminal case bearing FIR No.88 dated 26.02.2010 under Sections 279, 304-A IPC was got registered at Police Station, Sadar Jind.

4. The claim petition was contested by the respondents. MACT framed the following issues:-

- (i) Whether the accident in question took place due to rash and negligent driving of truck bearing No.HR-67-2803 by respondent No.1 in which Balraj Singh has lost his life as alleged in the petition? OPP
- (ii) If issue No.1 is proved in affirmative to what amount of compensation the petitioners are entitled to and from whom? OPP
- (iii) Whether respondent No.1 was not holding a valid and effective driving license on the date of the accident? OPR-4.
- (iv) Relief.

5. The present appeals are directed against the findings of the MACT on issue No.2 i.e. the quantum of compensation. Primary grievance of the claimants/appellants is against the amount of income of the deceased as assessed by MACT. As per the claimants, the income of the deceased has been proved on record to be Rs.43,582/- per month, whereas MACT has assessed the same @ Rs.22,875/-.

6. Learned counsel for the claimants asserts that while assessing the income of the deceased, learned MACT solely relied upon ITR dated 22.07.2009 Ex.P-11 for the assessment year 2009-10, i.e. Financial Year 2008-09. He submits that the date of accident was 26.02.2010 and it has been proved on record that just about one and a half month before the fateful day, the deceased had resigned from his earlier employment and joined new service on 04.01.2010.

7. His last salary slip for the month of February 2010 was also proved on record at Ex.P-4 as per which his salary is shown to be Rs.45,166/- per month and the net payable salary has been shown to be Rs.43582/-. Learned counsel for the claimants has further drawn attention of this Court to the account statement Ex.P-19 which was shown credit of Rs.39,365/- on 05.02.2010 and further an amount of Rs.43,582/- credited on 17.03.2010. Thus, he claims that the award passed by MACT deserves to be modified to the extent that the salary needs to be assessed as proved on record and enhanced from Rs.22,875/- to Rs.43,582/- per month apart from granting other benefits under conventional heads as per the guidelines laid down by Apex Court in the case of **National Insurance Company Limited vs. Pranay Sethi and others 2017 (16) SCC 680.**

8. Per contra, counsel for the appellant i.e. Insurance Company in FAO No.3170 of 2011, has submitted that no fault can be found in the assessment of the

salary as the ITR is a public document which has rightly been taken as a basis for assessing income of the deceased. He further submits that the award passed by the MACT rather deserves to be modified as a compensation granted is exorbitant and the multiplier applied is higher than applicable as per **Sarla Verma vs. Delhi Transport Corporation 2009 (6) SCC 121**.

9. Having heard learned counsel for the parties and have carefully gone through the records, this Court is of the considered opinion that learned MACT erred in assessing the income of the deceased as Rs.22,875/- per month merely on the basis of ITR for the year 2009-10. Merely because ITR for the previous assessment year is on record and the subsequent events especially the hike in salary of the deceased which has been proved on record by documentary evidence cannot be ignored. Admittedly, before the deceased could file his ITR for the current assessment year, he met with an accident and lost his life. The hike in income/salary of the deceased after filing of ITR for previous assessment year must be factored in. The salary of the deceased has to be taken on the date of accident. Once the claimants have proved the income of the deceased on the date of accident with the cogent piece of evidence, MACT cannot brush aside such evidence on record without giving any reason.

10. In the considered opinion of this Court, the MACT fell in error in ignoring the documentary evidence which goes on to prove that the salary of the deceased at the time of accident was Rs.43,582/- per month and the same stands proved from the last salary slip and the corresponding bank statements which show credit of the said amount. Resultantly, the salary of the deceased is assessed @ Rs.43,582/- per month instead of Rs.22,875/- as assessed by MACT. Deceased was merely 38 years of age, thus, he will be entitled to future prospects @ 40%.

Multiplier is pegged down from 16 to 15 as per guidelines issued in para No.25 of Sarla Verma's case (supra).

11. Apart from this, the claimants shall be entitled for loss of consortium of Rs.40,000/- each. The claimants/appellants are further granted Rs.10,000/- for loss of estate. An amount of Rs.10,000/- awarded for the last rites of the deceased needs no modification.

12. The total compensation shall be calculated accordingly.

13. Keeping in view the aforesaid discussion, the award passed by MACT is modified accordingly. Both the appeals are disposed off in the aforesaid terms. Needless to say any amount already paid shall be adjusted.

(PANKAJ JAIN)
JUDGE

27.04.2022

Dinesh

Whether speaking/reasoned	Yes
Whether Reportable :	Yes