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

**FAO-337-2014
Date of decision : 10.05.2022**

Ravinderjit Kaur and others ..... Appellants

versus

Gurmeet Singh and others ...... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Vivek Suri, Advocate
for the appellants.

Mr. Rishav Soni, Advocate for
Mr. Amit Goyal, Advocate
for respondent No.3-Insurance Company.

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PANKAJ JAIN, J.

Claimants are in appeal. Challenge in this appeal is to the award dated 10.10.2013 passed by learned Motor Accident Claims Tribunal, Patiala (hereinafter referred to as 'Tribunal'). Appellants are seeking enhancement of compensation.

2. As per the claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as '1988 Act'), on 17.03.2012, deceased was going on motor cycle No.HR-99JC/8558 on the left hand side of the road via Patiala to Rajpura road. At about 11/11:30 p.m., when he reached near petrol pump in the area of village Bahadurgarh, the offending vehicle came from behind which was being driven by respondent No.1 in rash and negligent manner without obeying the traffic rules, struck the motor cycle of the deceased. Resultantly, the deceased received multiple injuries and died on the spot. The said accident was witnessed by one Gurmeet Singh son of Anoop Singh and FIR No.43 dated 18.03.2012 under Section 304-A IPC was also

registered against respondent No.1 in this regard.

3. Respondents No.1 and 2 filed joint written statement, whereas respondent No.3 i.e. insurance company filed a separate written statement and pleaded that driver of the vehicle i.e. respondent No.1 was not holding valid and effective licence and prayed for dismissal of the claim petition.

4. On the pleadings of the parties, the learned MACT framed the following issues:-

> "(i) Whether Harminder died in motor vehicle accident with Car No. CH-41(T)/1675 being driven by respondent No.1 rashly and negligently on 17.03.2012? OPP
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> (ii) In case, issue No.1 is proved, whether the claimants are entitled to the compensation, if so, to what extent and from whom? OPP
>
> (iii) Whether respondent No.1 was not holding a valid driving license at the time of accident, if so its effect? OPR
>
> (iv) Whether the vehicle in question to be driven in contravention of the express terms of the contract of insurance by a person not holding a valid driving license at the time of alleged accident, if so its effect? OPR
>
> (v) Relief.

5. The Tribunal after analyzing the evidence accepted the claim petition under Section 166 of the Act and awarded compensation of Rs.8,13,500/- to the claimants alongwith interest @ 8% per annum from the date of filing of the claim petition till realization.

6. Neither the owner and driver nor the insurance company has preferred any appeal. They have been held liable jointly and severally.

7. Counsel for the appellants has assailed the finding on issue No.2 by contending that the deceased was employed in Yashodha Motors Private Limited, Patiala as Supervisor, drawing salary of Rs.12,000/- per month, yet the Tribunal has wrongly assessed the income of the deceased @ Rs.4,500/- believing him to be a casual unskilled labour. He claims that the salary certificate of the deceased has been proved on record as Ex.P-1 and the last paid salary for the month of March 2011-12 of the deceased has also been proved as Ex.P-2. Both of the said documents go on to prove that the deceased was earning Rs.12,000/- per month. Thus, the error committed by the Tribunal is apparent and the income of the deceased needs to be enhanced from Rs.4500/- to Rs.12,000/- per month for the purpose of computing compensation payable to the claimants. He further asserts that nothing has been paid as future prospects and a meager amount of Rs.1,25,000/- has been paid under the conventional heads which also needs modification.

8. Per contra counsel for respondent No.3 asserts that the Tribunal has rightly assessed the income of the deceased @ Rs.4500/- per month as no evidence has been produced to show that the deceased was in fact employed as alleged, rather PW-3 Krishan Pal Walia was examined to prove Ex.P-1 and P-2 admitting that the originals do not bear any seal/stamp of the firm and it was also admitted by him that the deceased was only a temporary employee of the firm and no documentary proof regarding his income was available.

9. Having heard learned counsel for the parties and after perusing the records of the case carefully, this Court is of the considered opinion that award passed by the MACT needs to be modified. Counsel for the respondent-insurance company is right in asserting that Exs.P-1 and P-2 cannot be relied upon to assess the income of the deceased in the absence of original record of

the employer. However, at the same time, it cannot be denied that evidence with respect to the deceased being employed in capacity as a Supervisor is on record. Thus, the income of the deceased has to be assessed by deeming him to have been employed as Supervisor at the time of his death. Even if the deceased is taken as temporary employee of the firm, it cannot be denied that he was employed in his capacity as Supervisor and thus he cannot be treated as labourer to assess income. The income assessed @ Rs.4,500/- per month which was being earned by unskilled labour as per the notification under Minimum Wages Act needs to be enhanced to the wages being earned by more than that of skilled labour. Thus, the income of the deceased is assessed @ 7,500/- per month which is more than what was being earned by skilled labour at the relevant period of time as per the notification issued under the Minimum Wages Act. The deceased being 30 years of age, the claimants are entitled for 40% future prospects as per the guidelines issued by the Apex Court in **National Insurance Company Limited vs. Pranay Sethi and others 2017 (16) SCC 680**. Loss of dependency has been calculated after applying 1/4th deduction which needs no modification. For loss of consortium, the appellants No.2 and 4 are entitled for Rs.40,000/- each. Multiplier of 17 has been rightly applied as per **Sarla Verma and others vs. Delhi Transport Corporation and another 2009 (6) SCC 121.** Rs.25,000/- has been awarded towards funeral expenses which needs no modification. Rs.15,000/- needs to be granted for loss of estate to appellants No.2 to 4.

10. As a sequel of the discussion made hereinabove, the appeal preferred by the appellants is allowed. The award passed by the Tribunal is modified to the aforesaid extent. The amount shall be apportioned in the manner as held by the Tribunal in para 27 of the award. The claimants shall further be entitled for

the interest calculated @ 8% per annum from the date of application till the date of actual realization as awarded by Tribunal. Needless to say what has already been paid shall be adjusted.

(PANKAJ JAIN)
JUDGE

10.05.2022

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Whether speaking/reasoned	Yes
Whether Reportable :	No