

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-353-2018 (O&M)
DATE OF ORDER: 13.12.2022

Shakuntla Devi and others

.....Appellants

Vs.

Deepak Kumar and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: Mr. Vinay Puri, Advocate
for the appellants.

Mr. Karm Inder Singh, Advocate for
respondent No.3-Insurance Company.

Nidhi Gupta, J.

This appeal has been filed by the claimants seeking enhancement of compensation of Rs.3,45,000/- awarded to them by the Motor Accident Claims Tribunal, Rupnagar (hereinafter referred to as "the Tribunal") in MACT Case No.341 of 29.07.2016 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'). Claimants before the Tribunal were Smt. Shakuntla Devi, widow of the deceased-Tejpal Singh; Dhanshu Ram 23-year-old son of the deceased; Kamlesh 19-year-old daughter of the deceased; and Ramji 15-year-old minor son of the deceased. Appellants before this Court are the claimants mentioned hereinabove.

Learned Tribunal on the basis of pleadings of the parties and evidence led by them concluded that deceased-Tejpal Singh had died in a motor vehicular accident that took place on 08.06.2016 due to the rash and

negligent driving of respondent No.2-driver of the truck bearing registration No.PB-08-CB-5967 (hereinafter referred to as 'the offending vehicle') owned by respondent No.1 and insured by respondent No.3 herein.

The Tribunal took the age of deceased at the time of death to be 62 years on the basis of his driving licence Exhibit RX. The income of the deceased was taken to be Rs.6,000/- per month as admissible to an unskilled labour as per the minimum wage notification issued by State of Punjab at the relevant time. Deduction of 1/3 was applied keeping in view the dependency of the deceased, accordingly, annual income of the deceased was taken as Rs.48,000/-. The learned Tribunal applied the multiplier of 7 as the age of the deceased was proven to be 62 years as per his driving licence Exhibit RX. As such, the claimants were held entitled to compensation of Rs.3,36,000/-. Rs.4,000/- was further awarded as funeral expenses and Rs.5,000/- due to loss of love and affection, totaling to Rs.3,45,000/-.

It is submitted by learned counsel for the appellants-claimants that the deceased worked as a Diesel Engine Mechanic and was earning Rs.30,000/- per month and therefore, the Tribunal is in error in taking his salary to be only Rs.6000/- per month. It is further submitted that no future prospects have been awarded by the learned Tribunal, and even no consortium has been awarded. Learned counsel for the appellants further assails the above said Award on the ground that the Tribunal is in error in taking the age of the deceased to be 62 years whereas as per the Post-Mortem Report of the deceased, his age is shown to be 55 years only. It is stated that accordingly, even the multiplier has been applied incorrectly. It is

further submitted that there is no dispute regarding the deduction of 1/3 on account of dependency.

Learned counsel for respondent-Insurance Company submits that the learned Tribunal is not in error in taking the age of the deceased to be 62 years in view of the incontrovertible proof presented on record by way of driving licence Exhibit RX. It is stated that PMR is not reliable proof of age especially when driving licence of the deceased is available. Learned counsel for the Insurance Company very fairly submits that the claimants are entitled to future prospects of 10% since the age of the deceased is 62 years, and also submits that they are entitled to consortium of Rs.40,000/- each in conformity with the judgments of the Hon'ble Supreme Court in **Sarla Verma Vs. DTC (2009) AIR SC 3104; National Insurance Co. Ltd. Vs. Swaran Singh (2004) 3 SCC 297 and National Insurance Co. Ltd. Vs. Pranay Sethi (2017) 16 SCC 297.**

I have heard learned counsel for the parties. A perusal of the record shows that the claimants' contention that the deceased was working as a Diesel Engine Mechanic and was earning Rs.30,000/- per month, has not been proven on record. In this regard, findings of the learned Tribunal as recorded in Para 9 of the impugned Award are relevant and are reproduced here under:-

"At this point, learned counsel for the petitioners has argued that deceased was Diesel Engine Mechanic but petitioners have not examined any witness to prove the said fact by way of evidence. The petitioners have not been able to prove the income of deceased as Rs.30000/- per month. It is pleaded by petitioners that deceased was doing the job of repairing diesel engines, but petitioners have not produced any photographs regarding the shop where deceased was working as such mechanic. The

petitioners have not produced any income tax return or any other document to show that deceased was earning the amount of Rs.30,000/- per month. No bank account of the petitioners has been produced and proved on the record.”

Even now, the claimants-appellants are unable to controvert the above said findings of the learned Tribunal. As such, I find no error in the assessment of the learned Tribunal in taking the salary of the deceased to Rs.6,000/- per month. In my view, driving licence of the deceased is a more reliable proof of age than the PMR Report. As such, age of deceased is held to be 62 years. Learned counsel for the parties are in agreement that deduction of 1/3 by way of personal expenses has been correctly applied. Further, keeping in view the above facts I maintain the multiplier of 7 as applied by the Id. Tribunal. However, appellants are held entitled to future prospects at the rate of 10%, and consortium of Rs.40,000/- each is also admissible to the claimants.

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

Salary Add:- Future Prospects Total Amount	Rs. 6,000/- Rs. 600/- Rs. 6,600/-
(-) Deduction @ 1/3	(-) Rs. 2,200/- Rs. 4,400/-
Multiplier	7
Total Amount	Rs. 3,69,600/-
Conventional Head	(+) Rs. 80,000/-
Total amount of compensation	Rs.4,49,600/-
+ Interest @ 6% per annum from the date of filing the petition before the learned Tribunal till date of realization	Rs. 1,75,344/-
Total amount of compensation	Rs. 6,24,944/-

(-) Compensation granted by the learned Tribunal	Rs. 3,45,000/-
Compensation enhanced by	Rs. 2,79,944/-

Ratio of apportionment as well as manner of disbursement of compensation amongst the claimants in the claim petition as determined by the learned Tribunal shall remain the same.

The appeal is accordingly disposed of in above terms. Pending applications if any, stand disposed of.

13.12.2022

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No