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

**FAO NO. 6134/2018(O&M)**

**Date of decision: 23.11.2022**

**Smt.Sudesh and others**

**………..Claimants**

**Vs.**

**Mukesh and others**

**………..Respondents**

**CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr.Saurabh Savara, Advocate for
Mr.Sandeep K.Sharma, Advocate for the claimants/appellants

Mr.Vinod Gupta, Advocate for the respondent no.3/
Insurance Company

**Nidhi Gupta,J.**

This is claimants' appeal seeking enhancement of compensation of Rs.11,37,500/- awarded by the Motor Accident Claims Tribunal, Rohtak in MACT Case No.22 of 2017 filed under Section 166 of the Motor Vehicles Act,1988. Claimants are widow, two minor children and mother of deceased Satish Grewal.

Brief facts of the case are that on 10.12.2016 Satish Grewal deceased along with 2nd deceased Surender were going from their Village Marodi to Village Girawar on a motorcycle and when they reached National Highway No.10 a car bearing registration No. HR-20S/1283 (offending vehicle) being driven by Mukesh-respondent no.1 at a very high speed in a rash and negligent manner came and struck into the motorcycle of the deceased because of which both of them i.e. deceased Satish Grewal and Surender received fatal injuries. While Satish Grewal died on the spot, Surender died on the way to hospital. At the time of his death, deceased Satish Grewal is stated to be 38 years of age and working as Salesman with Mahavir trading Company, Hisar Road, Rohtak and getting salary of Rs.12,000/- per month. It was also stated before the Tribunal by the claimants that deceased Satish Grewal was also an Agriculturist and did dairy farming and was earning additional Rs.10,000/- per month therefrom.

Learned Tribunal on considering the evidence on record concluded that deceased Satish had died due to rash and negligent driving of the offending vehicle by respondent no.1-Mukesh. However, Learned Tribunal held salary of the deceased to be only Rs.7500/- being that of a skilled worker at the relevant time and deducted 1/4$^{th}$ towards personal expenses in accordance with the judgment of Hon'ble Supreme Court in **Sarla Verma and others v Delhi Transport Corporation and another, 2009 ACJ 1298** and accordingly held that dependency of the claimants upon deceased came to Rs.5625/- per month. By applying multiplier of 15, the deceased being 38 years of age, the Tribunal calculated the compensation to be Rs.10,12,500/- (Rs.5625x12x15). Besides the above, the Tribunal held claimants entitled to Rs.1 lac on account of loss of consortium, Rs.25,000/- as funeral expenses, and granted a total compensation of Rs.11,37,500/- with interest @ 9% from the date of filing of claim petition till final realization to be paid by all the respondents jointly and severally.

Learned counsel for the claimants/appellants has argued that learned Tribunal is in patent error in not awarding future prospects which is in violation of judgment of Hon'ble Supreme Court in **National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680**. It is further submitted that the Tribunal has ignored the important evidence in the form of salary certificate Ex.P-15 produced on record by PW-4 Surender Kumar, who is proprietor of the firm Mahavir Trading Company where the deceased was working, who deposed that the deceased was working as Supervisor in their firm since last 10 years and was paid Rs.12,000/- per month as salary as is evident from the salary certificate of the deceased, placed on file as Ex.P-15. Counsel further submits that Ex.P-15 which is salary certificate shows that deceased was earning Rs.12,000/- per month. Appellant no.1- Smt. Sudesh, widow of the deceased appeared as PW2 and tendered in evidence her affidavit as PW2/A and deposed that the deceased was working in the firm aforementioned and was earning salary of Rs.12,000/- per month and also earning an additional sum of Rs.10000/- per month from agriculture and dairy farming.

Learned counsel for the respondent Insurance Company has vehemently opposed this assertion regarding the salary of the deceased and states that this evidence is unreliable as PW4 was not a summoned witness and no affidavit of PW4, Proprietor of the firm has been placed on record in support of his bald averment; and even no account statement of the firm has been produced in evidence to prove that salary to the tune of Rs.12,000/- per month was being disbursed to the deceased. Learned counsel for the respondent very fairly submits that future prospects ought to be given to the appellants/claimants in conformity with judgement of the Supreme Court in **Pranay Sethi supra**.

I have heard learned counsel for the parties and perused the file.

I find merit in the arguments advanced on behalf of the counsel for the respondent which have not been refuted by the counsel for the claimants/ appellants. Accordingly, the salary of the deceased is held to be Rs.7500/- per month and future prospects as follows are added to the compensation awarded by the ld. Tribunal. Accordingly, computation of compensation admissible to the claimants is re-worked out as under:-

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| Rs.7500x12x15x3/4 + 40% = | Rs.14,17,500/- |
| | Rs.70,000/- |
| | Rs.14,87,500/- |
| Less granted by the Tribunal | Rs.11,37,500/- |
| Enhancement | Rs. 3,50,000/- |
| Plus as per Magma Judgment | Rs.1,20,000/- |
| Total enhancement | Rs. 4,70,00/- |

As regards the payment of interest the same was ordered to be paid @ 9% per annum from the date of filing of the claim petition till final realization.

During the pendency of the present appeal, a Coordinate Bench of this Court passed the following order on 20.9.2019:-

> "To verify authenticity of alleged salary certificates of deceased issued by Shree Mahavir Trading Co., Opp. Old Sariya Mill, near PNB Bank, Hissar Road, Rohtak, appellant-claimants are directed to produce attendance register, income tax returns, wages register, muster roll, appointment letter and all other relevant documents pertaining to service of deceased Satish Grewal, failing which adverse inference would be drawn against them. Simultaneously, owner of aforesaid Shree Mahavir Trading Co. be summoned through Court notice for 9.12.2019 to produce the aforesaid record, if any.

On 9.12.2019, since the counsel for the appellant sought more time to comply with the aforesaid order dated 20.9.2019, the case was adjourned to 8.5.2020 for consideration with the direction that "It is made clear that in case of enhancement in compensation, appellants shall not be entitled to interest from today till next date of hearing. Registry is directed to give a note with red ink in this respect on the page of memo of parties." The Registry has duly complied with the said order. However, till date neither the appellants/claimants have produced the documents contained in the order dated 20.9.2019 nor the owner of Shree Mahavir Trading Company has put in appearance despite service.

In view of the above, the rate of interest is maintained @ 9% per annum from the date of filing of the claim petition till final realization, by excluding the period from 9.12.2019 to 23.11.2022.

Application(s),if any, also stand disposed of.

**(Nidhi Gupta)**
**Judge**

**23.11.2022**
Joshi

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| **Whether speaking/reasoned** | **Yes** |
| **Whether reportable** | **Yes/No** |