

FAO-1927-2023 (O&M)

- 1 -

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

121

FAO-1927-2023 (O&M)

Decided on : 19.10.2023

Neeta and another

. . . Appellant(s)

Versus

Sanjay and others

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Bhisham Kumar Majoka, Advocate
for the appellant(s).

Mr. Sachin Ohri, Advocate
for respondent No.3 – Insurance Co.

SANJAY VASHISTH, J. (Oral)

CM-7367-CII-2023

- i. Prayer in this civil miscellaneous application is for condoning the delay of 21 days in filing the present appeal.
- ii. Notice of this application was issued.
- iii. After hearing learned counsel for the parties and in view of the grounds mentioned in the application, the delay of 21 days in filing the appeal is hereby condoned.

Civil Misc. application stands disposed of.

FAO-1927-2023 (O&M)

1. The present appeal has been filed by the appellants/claimants (hereinafter referred as 'claimants') in MACT Case No. 70 registered on 26.05.2021, for modification of award dated 16.11.2022, passed by Ld. Motor Accidents Claims Tribunal, Palwal (hereinafter referred to as 'Ld. Tribunal') by way of seeking enhancement of amount of compensation, on account of death of 'Manoj @ Anmol' in a motor vehicular accident.

2. Claimants in the MACT case were Smt. Neeta (mother of deceased), Kumar Pal (father of deceased) and Mohit Sharma (brother of deceased). In the present appeal before this Court, mother and father of the deceased, are appellants No.1 & 2, respectively, while brother of deceased has been arrayed as a proforma respondent i.e. respondent No.4.

3. Briefly stated facts of the case are that on 24.02.2021, deceased along with his brother Mohit were going to Faridabad for their personal work. At around 11:00 p.m., they were crossing the service road, and Manoj @ Anmol was going ahead of his brother Mohit, when suddenly, a motorcycle bearing Registration No. HR-50H-3805 being driven in a rash and negligent manner at a very high speed, hit the deceased due to which he suffered multiple injuries and died on the spot.

For the said accident, FIR No.47 dated 25.02.2021 was registered against the Respondent No. 1 at Police Station, Hodal.

4. Claimants filed a claim petition under Section 166 of the Motor Vehicle Act, 1988 for seeking compensation to the tune of Rs. 50,00,000/- (Fifty lakhs). However, after going through the record, appreciating the evidence, examining the witnesses, and hearing the arguments of both the sides, Ld. Tribunal assessed the age of the deceased as 25 years; his monthly income as Rs.9,000/-; applied the multiplier of 18; deducted half of his income on account of monthly expenses; provided a lump sum amount of Rs. 70,000/- on account of funeral expenses, loss of estate and loss of consortium to petitioner No. 1; Rs. 40,000/- as consortium to petitioner No. 2 and deducted 25% on account of contributory negligence. Accordingly, Learned Tribunal awarded an amount of compensation to the claimants to the tune of Rs.11,03,100/- payable by respondents severally and jointly with

interest @6% per annum from the date of filing of the petition till its actual realization.

5. Appellants/claimants have filed the present petition seeking enhancement of the compensation as awarded by the Ld. Tribunal.

6. While addressing arguments, Counsel representing the appellants asserts that there was a substantial error on the part of the Learned Tribunal in its assessment of the deceased's income. It is noteworthy that the deceased was self-employed and was engaged in doing agriculturist work and dairy farming was earning Rs. 50,000/- per month. Further submits that even if the said argument is not accepted, even then the notional income of the deceased has been assessed to be that of an 'unskilled labourer' that too on the lower side.

7. Learned Counsel for the appellants further states that Ld. Tribunal has erred in holding contributory negligence of the deceased in the said accident as deceased was totally cautious and careful while crossing the road and was followed by his brother, when suddenly the offending motorcycle being driven in a rash and negligent manner struck the deceased that led to fatal injuries. Thus, deduction of 25% on account of contributory negligence of the deceased in the accident in question as held by the Ld. Tribunal is unsustainable in law.

8. Learned counsel for the appellants further submits that Learned Tribunal has awarded compensation on account of funeral expenses, loss of consortium as well as loss of estate on the lower side. Consequently, prays for an augmentation of the compensation amount originally granted by the Learned Tribunal.

9. Alternatively, Counsel for Respondent No. 3, representing the

Insurance Company, asserts that the Learned Tribunal accurately assessed the deceased's salary and appropriately computed the compensation amount for the claimant. Consequently, there is no justification for intervening in the well-reasoned and precise award issued by the Learned Tribunal.

10. The primary and pivotal issue before this Court, essential for the determination of the compensation due to the claimants, revolves around the assessment of the deceased's monthly salary.

11. This Court has heard the arguments addressed by both the sides carefully and perused the record deeply. This Court is *ad-idem* with the reasoning rendered by the Learned Tribunal that in the absence of documentary proof of income of the deceased, it is the notional income of the deceased which is to be assessed to ensure that ends of justice are met.

However, this Court is of the view that the 'notional income' of the deceased which is assessed as Rs. 9,000/- per month is worth to be enhanced in view of the **Notification of the Labour Commissioner, Haryana Government 01.09.2021**, vide which the minimum wages in the State of Haryana has been increased. As per the said notification, the prevailing minimum rate of wages of unskilled labourer at the time of accident was Rs. 9,703.68/- per month.

12. This Court has even asked the Counsel for the appellants to provide the Court with the prevailing DC rates for unskilled workers at the time of the accident, as this Court is of the view, that in consonance with the aim of this beneficial legislation, the higher prevailing wage rates should be applied for assessing the income of the deceased as applied by this Court in **FAO-10667-2018**, titled as, "**Kamla and Ors. V. Kashmir Chand @ Kashmira and Ors.**". However, the learned counsel for the appellants has

failed to provide the prevailing DC rates for unskilled workers at the time of the accident, thus, the monthly income of the deceased is assessed as Rs. 9703.68/- per month in view of the notification of the Haryana Government.

13. This Court has gone through the finding of issue No. 1 rendered by the Ld. Tribunal deeply and *ad-idem* with the view of the Learned Tribunal as the accident occurred at dead night that too in the middle of the road. Deceased was a grown-up man and should also have been careful while crossing the road. However, in the investigation, it transpired that the motorcycle was being driven in a rash and negligent manner, thus leading to the accident. Thus, this Court is of the view that the fatal accident occurred due to **contributory negligence and thus, maintains the deduction of 25% in the amount of compensation on account of contributory negligence of the deceased.**

14. This Court has already rendered a detailed judgment titled as **Sangtari Muleem v. Karnail Singh, (FAO No. 2538 of 2006 D/d. 07.07.2023) : Law Finder Doc Id # 2270482**, in consonance with the settled proposition of law laid down by the Apex Court in **National Insurance Company Limited v. Pranay Sethi and Ors., 2017(4) RCR (Civil) 1009 : Law Finder Doc Id #918174**, and **Smt. Sarla Verma and others v. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77 : Law Finder Doc Id #188882**, and **Smt. Anjali and others v. Lokendra Rathod and others, 2023 (1) R.C.R. (Civil) 22 : Law Finder Doc Id # 2081014**. Therefore, in the case in hand, same parameters as laid down by the Hon'ble Apex Court are applied for the purpose of calculation of compensation. For the sake of convenience, a comparative table of the compensation as assessed and calculated by Ld. Tribunal and this Court is produced below in a tabular

FAO-1927-2023 (O&M)

form:

Sr. No.	Head	Compensation awarded by Ld. Tribunal	Compensation Awarded by High Court
1.	Income	Rs. 9,000/-p.m.	Rs. 9,704/-p.m.
2.	Future Prospects	Rs. 3,600/- (40% of the income of the deceased)	Rs. 3882/- (40% of the income of the deceased)
3.	Deduction towards personal expenses	Rs. 6,300/- [i.e. half of Rs.12,600/-]	Rs. 6,793/- [i.e. half of Rs. 13,586/-]
4.	Total Annual Income	Rs. 75,600/- (Rs. 6,300/- x12)	Rs. 81,516/- (Rs.6,793/- x12)
5.	Multiplier	18	18
6.	Loss of Dependency	Rs. 13,60,800/- (i.e.75,600/- x 18)	Rs. 14,67,288/- (i.e.Rs. 81,516//- x 18)
7.	Loss of estate, funeral expenses and Consortium for petitioner No. 1	Rs. 70,000/-	NIL
8.	Loss of Consortium to petitioner No. 2	Rs. 40,000/-	NIL
9.	Funeral Expenses	NIL	Rs. 25,000/-
10.	Loss of Estate	NIL	Rs. 20,000/-
11.	Loss of filial Consortium	NIL	Rs. 88,000/- (Rs. 44,000/- X 2)
12.	Deduction for Contributory Negligence @ 25%	Rs. 3,67,700/-	Rs. 4,00,072/-
13.	Total Compensation to be Paid	Rs. 11,03,100/-	Rs. 12,00,216/-

15. Counsel for the appellants further submits that the rate of interest awarded by the Ld. Tribunal i.e. at 6% per annum from the date of filing of the claim petition till its realization is worth to be enhanced to 9% per annum in view of the settled proposition of law established by the Apex Court and applied by this Court.

FAO-1927-2023 (O&M)

- 7 -

However, learned counsel appearing on behalf of respondent No.3 -Insurance Co., submits that the rate of interest of 6% per annum as awarded by the Ld. Tribunal is worth to be maintained.

16. I have gone through the judgments cited by counsel for the appellants (claimants) and thus, I deem it appropriate to grant the rate of interest at 7.5% per annum.

17. Thus, keeping in view the aims and objects of this beneficial legislation of providing relief to the victims or their families, the total compensation payable to the appellants (claimants) is Rs. 12,00,216./-along with interest at 7.5% per annum from the date of filing of claim petition till the date of payment of compensation to the appellants (petitioners/claimants).

18. Needless to mention that out of the total payable compensation amount, already paid amount (if any) in compliance to the impugned award, would be adjusted and the amount of compensation awarded shall be distributed to the claimants i.e. parents of the deceased in the same ratio as was held by the Ld. Tribunal.

19. Therefore, by partly modifying the award, appeal is allowed with the terms indicated here-above.

20. Pending Miscellaneous application(s), if any, also stands disposed of.

(SANJAY VASHISTH)
JUDGE

October 19, 2023

J.Ram

Whether speaking/reasoned: ✓Yes/~~No~~

Whether Reportable: ✓Yes/~~No~~