IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 2052/2016(O&M)

Date of decision: 18.05.2023.

Reshma Devi and others

………………Appellants

Vs.

Dara Singh and others

………………Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. Akansha, Advocate for
Mr. Mohit Mehra, Advocate for the appellants.

Mr. Yagyasree Singh, Advocate for
Mr. Rajneesh Malhotra, Advocate for respondent no.3.

Nidhi Gupta, J.

CM 7843-CII/2016

Since there is delay of 101 days in refiling the appeal, aforesaid application has been filed seeking condonation of said delay.

2. For the reasons stated in the application, the same is allowed and delay in refiling the appeal is condoned.

CM 7844-CII/2016

3. Since there is delay of 318 days in filing the appeal, aforesaid application has been filed under Section 5 of the Limitation Act,1963 seeking condonation of said delay.

4. For the reasons stated in the application, the same is allowed and delay in filing the appeal is condoned.

Main Appeal

5. Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.5.24 lacs granted by the Motor Accident

Claims Tribunal, Narnaul (hereinafter referred to as 'the Tribunal') vide Award dated 18.7.2014 passed in MACT Case NO.7/2014 u/s 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act'). Claimants are widow and two sons of deceased Dharampal.

6. Brief facts of the case are that ld. Tribunal on the appraisal of facts, pleadings and evidence on record held that the deceased had died due to injuries suffered by him in motor vehicular accident that took place on 13.12.2013 due to rash and negligent driving of truck Haiwa bearing registration No. HR-66-A-0881 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.1, owned by respondent no.2 and insured by respondent no.3. The Tribunal awarded compensation as above along with interest @ 7.5% per annum from the date of filing of the claim petition till realization. Liability to pay the compensation was joint and several.

7. Ld. counsel for the appellants seeks enhancement of compensation inter alia, on the ground that at the time of death the deceased was 45 years of age and was working as a Mason from which occupation he was earning Rs.20,000/- per month. It is submitted that despite the fact that the claimants had produced cogent evidence in support of their claim, ld. Tribunal has assessed notional income of the deceased as Rs.4500/- per month. It is submitted that nothing has been granted by way of future prospects either, and amounts under the conventional heads are also on the lower side.

8. In response, it is submitted by the ld. counsel for the Insurance Company that deceased was 43 years of age at the time of death and therefore,

future prospects may be added to the extent of 25%. It is further submitted that there is no proof of income of the deceased and therefore the notional income as assessed by the ld. Tribunal is correct.

9. No other argument has been raised.

10. Heard ld. counsel.

11. Perusal of the record of the case shows that though in the claim petition age of the deceased has been mentioned as 43 years, however, in the Postmortem Report Ex.P7 age of the deceased has been mentioned as 45 years. Accordingly, ld. Tribunal has taken age of the deceased as 45 years. As regards income of the deceased, the appellants had produced on file the Identity Card, Ex.P8 of the deceased in proof of the fact that he was working as a Mason. Even otherwise, as per relevant Minimum Wage Notification minimum wages admissible to unskilled labourer at the time is Rs.5500/- per month. Accordingly, in my view, ld. Tribunal has erred in assessing the notional income of the deceased as only Rs.4500/- per month, and the same is taken as Rs.5500/- per month.

12. Further, as age of the deceased was 45 years at time of death, as per **National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680**, future prospects have to be added @ 25%. As claimants are three in number, ld. Tribunal correctly made deduction of 1/3rd towards personal expenses and as deceased was aged 45 years of age, ld. Tribunal correctly applied multiplier of 14. However, perusal of the impugned Award shows that ld. Tribunal has granted only Rs.10,000/- on account of loss of consortium/loss of love and affection; and Rs.10,000/- on account of funeral expenses. As per latest judgment of Hon'ble Supreme Court in **Shri Ram**

General Insurance Company Limited v Bhagat Singh Rawat & anr; others,C.A.No.2410-2412/2023, followed in **Mehmooda Bee and others v National Insurance Co. Ltd., SLP (C) No.16767 of 2022** and **Bebi Giri vs. National Insurance Co. Ltd., Civil Appeal No.6551 of 2022 (SLP(C) No.8768 of 2018,** the appellants are entitled to a sum of Rs.77,000/- under the conventional heads.

13. Accordingly, present appeal is allowed and compensation payable to the appellants is reworked as under:-

Sr.No.	Head	Compensation awarded by the Tribunal (in Rupees)	Compensation reworked in present appeal (in Rupees)
1	Income	4500	5500
2	Future prospects	Nil	@ 40% = 2200/- (5500+2200=7700)
3.	Deduction 1/3rd	4500-1500=3000	7700-2567=-5133
4.	Multiplier	14	14
5.	Total loss of dependency	3000x12x14= 5,04,000/-	5133x12x14= 8,62,344/-
6.	Conventional Heads	20,000/-	77,000/-
7.	Total compensation	5,24,000/-	9,39,344/-

14. Rate of interest of 7.5% as granted by the ld. Tribunal is maintained. Ratio of apportionment and mode of disbursement of compensation, as determined by the ld. Tribunal remains unchanged.

15. Pending Application(s), if any, stand disposed of.

18.05.2023. **(Nidhi Gupta)**
Joshi **Judge**

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