IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-3440-2016 (O&M)
Decided on : 11.10.2023

Darshan and another

. . . Appellant(s)

Versus

Satyendra Kumar and others

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Hari Om Sharma, Advocate
for the appellant(s).

Mr. Jitender Singh Kundu, Advocate
for respondent No.2.

Mr. Raj Kumar, Advocate
for respondent No.3 – Insurance Co.

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<u>SANJAY VASHISTH, J. (Oral)</u>

1. The present appeal has been filed by the appellants/petitioners/claimants (hereinafter referred as claimants) in MACT Case No. 142 of 2015, for modification of award dated 13.10.2015, passed by Ld. Motor Accidents Claims Tribunal, Sonepat (hereinafter referred to as 'Ld. Tribunal') by way of seeking enhancement of amount of compensation, on account of death of 'Tara Chand' in a motor vehicular accident.

2. Claimants in the MACT case were Smt. Darshan (widow of deceased), Bijender (son of deceased) and Anand (son of deceased). In the present appeal before this Court, all the claimants are party in the same order.

3. Briefly stated facts of the case are that on 11.01.2015, deceased had gone from his house to Kalupur Chungi for giving food to his son. At

12:40 p.m., when deceased was standing near the wall, then offending vehicle container/ truck TATA 1512 bearing registration No. HR-69-8245 which was being driven in a rash and negligent manner by Respondent No. 1, came from Rohtak side and struck the Tara Chand as well as another car bearing Registration No. HR-10V-4849. Deceased was taken to the hospital by his son who saw the horrible incident, where he was declared brought dead and a post-mortem examination was conducted.

For the said accident, FIR No. 21 dated 11.01.2015, was registered, under Sections 279/ 304-A IPC, at P.S Sonepat.

4. Claimants filed a claim petition under Section 166 of the Motor Vehicle Act, 1988 for seeking compensation to the tune of Rs. 35 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 61 years; his monthly income as Rs. 6,000/-; applied the multiplier of 7; deducted 1/3rd (one-third) of his income on account of his personal expenses; provided Rs. 25,000/- on account of funeral expenses; provided Rs. 1,00,000/- on account of loss of consortium and Rs. 1,00,000/- on account of loss of Estate. Accordingly, Learned Tribunal awarded an amount of compensation to the claimants to the tune of Rs. 5,61,000/- payable by respondents severally and jointly with interest @7.5% per annum from the date of filing of the petition till its actual realization.

5. Appellants/petitioners/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. Counsel for the appellants avers that the deceased was engaged in fodder business and was running a milk dairy. Further submits that deceased used to earn Rs. 35,000/- per month from the said business and to prove the same, even income tax returns of the deceased had been placed on record of the Learned Tribunal as Ex. P-3 and P-4. Further submits that even if the said returns are 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.

Counsel for the appellants further submits that Learned Tribunal has failed to provide any enhancement on account of future prospects; has granted only lump sum consortium that too on the lower side and has failed to grant consortium to the other claimants which is against the settled proposition of law as rendered by Hon'ble the Supreme Court. Consequently, prays for an augmentation of the compensation amount originally granted by the Learned Tribunal.

7. Alternatively, Counsel for Respondent No. 3, representing the Insurance Company, asserts that the Learned Tribunal has accurately assessed the deceased's salary and appropriately computed the compensation amount for the claimants. Consequently, there is no justification for intervening in the well-reasoned and precise award issued by the Learned Tribunal.

8. 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.

9. This Court has heard the arguments addressed by both the sides carefully and perused the record deeply. As far as argument of the Learned

counsel for the appellants regarding non-assessment of the income of the deceased on the basis of income tax returns is concerned, this Court is *ad-idem* with the reasoning rendered by the Learned Tribunal that in the absence of signatures of the income tax authority, any supporting document, as well as examination of any witness from the office of the income tax authority, such returns are spineless for the purpose of assessment of the salary of the deceased.

However, this Court is of the view that the 'notional income' of the deceased which is assessed as Rs. 6,000/- per month is worth to be enhanced in view of the ***Notification No.3/42/83-3 Lab of the Haryana Government, Labour Department, dated 21.10.2015***, as per which the prevailing minimum rate of wages of unskilled labourer at the time of accident was Rs. 7,600/- per month.

10. 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. 7,600/- per month in view of the notification of the Haryana Government.

11. This Court has already rendered a detailed judgment titled as ***Sangtari Muleem v. KarnailSingh, (FAONo.2538of2006D/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 form:

Sr. No.	**Head**	**Compensation awarded by Ld. Tribunal**	**Compensation awarded by High Court**
1.	Income	Rs. 6,000/-p.m.	Rs. 7,600/-p.m.
2.	Future Prospects	NIL	NIL
3.	Deduction towards personal expenses	Rs.2,000/- [i.e.1/3rd (one-third)ofRs. 6,000/-]	Rs. 2,534/- [i.e.1/3rd (one-third)ofRs. 7,600/-]
4.	Total Annual Income	Rs. 48,000/- (Rs. 4,000/- x12)	Rs. 60,792/- (Rs.5,066/- x12)
5.	Multiplier	07	07
6.	Loss of Dependency	Rs. 3,36,000 (i.e.48,000/-x 7)	Rs. 4,25,544/- (i.e.60,792/-x 7)
7.	Medical expenses	NIL	NIL
8.	Funeral Expenses	Rs. 25,000/-	Rs. 25,000/-
9.	Loss of Estate	Rs. 1,00,000/-	Rs. 20,000/-
10.	Loss of Spousal Consortium	Rs. 1,00,000/- (lump sum)	Rs. 44,000/-
11.	Loss of Parental Consortium	NIL	Rs. 88,000/- (Rs. 44,000/- each to the claimant No. 2 and 3)
12.	Total Compensation to be Paid	Rs. 5,61,000/-	Rs. 6,02,544/-

12. Counsel for the appellants further submits that the rate of interest awarded by the Ld. Tribunal i.e. at 7.5% 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.

However, learned counsel appearing on behalf of respondent No.3 -Insurance Co., submits that the rate of interest should not be over the awarded amount and therefore, it should be reduced to the rate of 6% per annum.

13. 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.

14. 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.6,02,544/-** 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).

15. 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 between the claimants in the same ratio as provided by the Ld. Tribunal.

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

17. Pending Miscellaneous applications, if any, also stands disposed of.

(SANJAY VASHISTH)
JUDGE

October 11, 2023
J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No