IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

208 **FAO-7894-2014 (O&M)**
Date of decision: 14.02.2023

TATA AIG General Insurance Co. Ltd. **...Appellant(s)**

Vs.

Jasbir Singh & Others **...Respondent(s)**

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Rajesh K. Sharma, Advocate for the appellant.

Mr. Ashit Malik, Advocate for the respondents.

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NIDHI GUPTA, J.

Present appeal has been filed by the Insurance Company against Award dated 06.05.2014 passed by Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as "the learned Tribunal") in MACT Case No.462 of 2013 filed under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act").

Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence placed before it concluded that deceased-Seema Devi had died due to the injuries suffered by her in a motor vehicular accident that took place on 30.09.2013 due to rash and negligent driving of car bearing registration No.DL-7CD-4252 (hereinafter referred to as "the offending vehicle") being driven by respondent No.4 herein who is the driver and owner of the offending vehicle, which was insured by the appellant. Claimants/respondents No.1 to 3 are husband and children of deceased-Seema Devi.

Learned Tribunal assessed compensation payable to the claimants as follows:-

a) Age of deceased-Seema Devi was taken as 28 years at the time of accident/death;

b) As no documentary evidence regarding income of the deceased was produced, therefore, her notional income was assessed as Rs.3,000/- per month/ Rs.36,000/- per annum;

c) Multiplier of 17 was applied;

d) Rs.1,00,000/- was awarded towards loss of consortium;

e) Rs.1,00,000/- was awarded towards loss of care and guidance of minor children;

d) Rs.25,000/- was awarded towards funeral expenses;

e) Total compensation was calculated as Rs.8,37,000/-.

f) Owner-cum-driver and Insurance Company were held jointly and severally liable to pay the amount of compensation.

It is submitted by learned counsel for the appellant that claimants/respondents No.1 to 3 herein had filed the claim petition under Section 163-A of the Act and therefore, it was incumbent upon the learned Tribunal to have followed the structured formula stipulated under Schedule-II of the Act. It is submitted that there is no dispute with notional income as assessed by the learned Tribunal to be Rs.3,000/- per month. However, learned Tribunal has not made any deduction towards personal expenses, and that deduction of 1/3rd ought to have been made towards personal expenses as stipulated in the Schedule. It is further submitted that even under conventional heads, excessive amounts have been granted which are not as per the Schedule-II. It is stated that as per the Schedule-II, only Rs.2,000/- can be granted towards funeral expenses whereas the learned Tribunal has granted Rs.25,000/-; for loss of estate only Rs.2,500/- can be granted; and even by way of consortium only Rs.5,000/- can be granted.

It is also submitted that as per the Schedule-II, claimants are not entitled to Rs.1,00,000/- towards loss of love and affection. It is fairly submitted that multiplier of 18 should have been applied instead of 17.

In response, it is submitted by learned counsel for the respondents/claimants that income of the deceased has been taken on lower side. It is submitted that as per law laid down by the Hon'ble Supreme Court, the claimants are entitled to consortium at the rate of Rs.40,000/-; and even no future prospects have been granted by the learned Tribunal. In support, learned counsel for the respondents/claimants relies upon judgment of the Hon'ble Supreme Court in ***Civil Appeal No.6902 of 2021 titled as "Kurvan Ansari @ Kurvan Ali & Another Vs. Shyam Kishore Murmu & Another"*** to submit that in the relied upon case, notional income of the seven-year-old deceased therein, was taken as Rs.25,000/- per annum; and even no dependency was deducted; and even consortium of Rs.40,000/- was granted to both the claimants therein, as also Rs.15,000/- was granted by way of funeral expenses.

I have heard learned counsel for the parties.

No doubt, it has been recommended that the structured formula provided in Schedule-II of the Act needs to be revisited, keeping in view the current inflation rates, costs of living etc. However, even in the judgment relied upon by the learned counsel for the respondents, in case of ***Kurvan Ansari (supra),*** the total compensation awarded therein is Rs.4,70,000/- which is within the stipulated limit of Rs. 5 lacs. It is an undisputed fact that as per Schedule-II, income of the deceased cannot be taken as more than Rs.40,000/- per annum; loss of estate has to be granted at the rate of Rs.2,500/-; only Rs.2,000/- can be granted under the head of funeral expenses; and maximum of Rs.5,000/-can be granted towards loss of consortium; and maximum compensation that can be awarded in a case of death, as per Schedule-II cannot exceed Rs.5,00,000/-.

Accordingly, I allow this appeal. It may be noticed that vide order dated 18.09.2014, while issuing Notice of Motion, this Court had stayed disbursement of compensation beyond 50%. Compensation as admissible to the claimants herein is re-worked as follows:-

Heads	**Awarded by MACT**	**Ought to be**
Income assessed	Rs.3,000/- per month	Rs.3,000/- per month
Deductions applied	Nil	1/3rd
Dependency	Rs.3,000/-	Rs.2,000/-
Age of deceased	28 years	28 years
Multiplier applied	17	18
General compensation	Rs.3,000/- x 12 x 17 = Rs.6,12,000/-	Rs.2,000/- x 12 x 18 = Rs.4,32,000/-
Loss of estate	Nil	Rs.2,500/-
Funeral expenses	Rs.25,000/-	Rs.2,000/-
Loss of consortium	Rs.1,00,000/-	Rs.5,000/-
Loss of love and affection	Rs.1,00,000/-	Nil
Total	Rs.8,37,000/-	Rs.4,41,500/-

Ratio of apportionment and manner of disbursement as determined by the learned Tribunal shall remain same.

Present appeal is disposed of accordingly in above terms.

Pending application(s) if any also stand(s) disposed of.

14.02.2023 **(Nidhi Gupta)**
Sunena **Judge**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No