IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

213 **FAO-6688-2015 (O&M)**

Date of decision: 25.04.2023

Smt. Neelam Soni & Others

...Appellant(s)

Vs.

Surender @ Lilu & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Kulvir Narwal, Advocate
for the appellants.

Mr. Rajneesh Malhotra, Advocate
for respondent No.3.

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NIDHI GUPTA, J.

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.17,81,250/- granted by Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as "the learned Tribunal") vide Award dated 15.04.2015 passed in MACT Case No.189 of 2013 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Claimants are the widow, three minor children, and father of deceased-Pardeep Soni.

2. Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence adduced before it concluded that deceased-Pardeep Soni had died due to injuries suffered by him in a motor vehicular accident that took place on 02.03.2013 due to rash and negligent driving of tractor trolley bearing registration No.HR-16A-6383 (hereinafter referred to as "the offending vehicle") being driven by respondent No.1, owned by respondent No.2 and insured by respondent

No.3. Learned Tribunal awarded compensation as above along with interest @ 7.5% per annum from the date of filing the petition till realisation.

3. Learned counsel for the appellants seeks enhancement of compensation inter alia on the grounds:

a) that income of the deceased has been taken as Rs.2 lakh per annum whereas as per income tax return for the year 2012-13, gross income of the deceased was Rs.2,45,454/-. It is submitted that the learned Tribunal is in error in taking into account only the taxable income of the deceased whereas gross total income of the deceased ought to have been taken into account;

b) that nothing has been granted by way of future prospects;

c) that learned Tribunal was in error in holding the deceased liable to contributory negligence in the ratio of 25:75 i.e. to the extent of 25%. It is submitted that there is sufficient evidence on record to prove that there was no negligence on the part of the deceased. It is stated that the accident occurred as the offending vehicle, which was going in the right lane, suddenly moved to the left lane, and admittedly, at that time the deceased was overtaking the offending vehicle from the left side. However, as there was no signalling device on the offending vehicle deceased was unable to anticipate this movement on part of the offending vehicle. It is submitted that moreover, the offending vehicle was laden with sugarcane as a result of which any wide hand signal was not visible while deceased was changing the lane.It is submitted that accordingly, no contributory negligence on part of the deceased is made out.

4. In response, it is submitted by learned counsel for respondent No.3/Insurance Company that it cannot be denied that in accordance with law laid down by the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Others (2017) 16 SCC 680,** claimants are entitled to addition of 40% towards future prospects as the deceased was 39 years of age at the time of death. It is submitted that however, contributory negligence on part of the deceased is proven on record and therefore, finding of the learned Tribunal that the deceased and respondent No.1 are held liable for accident in the ratio of 25:75 be maintained.

5. No other argument is raised on behalf of the parties.

6. I have heard learned counsel for the parties.

7. Age of the deceased has been taken as 39-and-a-half years at the time of death on the basis of his income tax return Ex. P-3 on record where his date of birth is mentioned as 29.09.1973. Perusal of the impugned award shows that there is no reasoning assigned by the learned Tribunal, as to why income of the deceased be not taken as per his gross total income. It is established position in law that only income tax deduction has to be made from the gross total income of the

deceased. Thus, in my view, Learned Tribunal was in error in not assessing income of the deceased as per gross total income. Perusal of record shows that as per Exhibit P3, gross total income of the deceased for financial year 2011-12 was Rs.2,45,454/-. Accordingly, income of the deceased is assessed as Rs.2,45,454/- per annum.

8. As the deceased is proven to be 39-and-a-half years old, learned Tribunal ought to have added 40% towards future prospects in accordance with law laid down by Hon'ble Supreme Court in **Pranay Sethi (supra).** Learned Tribunal has correctly applied multiplier of 15. Learned Tribunal has further granted Rs.1,00,000/- towards loss of consortium and Rs.25,000/- towards funeral expenses as per judgments of Hon'ble Supreme Court in **Vimal Kanwar & Others Vs. Kishore Dan & Others 2013 ACJ** and **Rajesh & Others Vs. Rajbir & Others 2013 (3) Civil Court Cases 15.**

9. As regards contention of learned counsel for the appellants that no contributory negligence is made out on part of the deceased, I do not find merit in the said contention. Findings of the learned Tribunal in this respect are contained in paras 15 and 16 of the impugned Award and the same are reproduced hereinbelow:-

> *"15. On the other hand, it is submitted by learned counsel for respondents that although the factum of accident and involvement of the offending vehicle in the accident are not in dispute, but from the evidence on the file it is borne out that it was the deceased who was at fault for the accident. Learned counsel explained that in fact the deceased had hit his car in the back side of the offending vehicle from which*

fact no other conclusion except that he was at fault for the accident can be drawn. Learned counsel further explained that if for the sake of arguments it was assumed to be true that the accident had taken place when the deceased was overtaking the offending vehicle then also he was at fault for the accident because it was his duty to overtake the offending vehicle from the right side of the offending vehicle and that too after proper signal and he should have waited till the time the signal to him was passed on by the offending vehicle to cross, but the deceased tried to overtake the offending vehicle in haste from the left side which resulted into the accident.

16. After hearing learned counsel for the parties and going through the evidence on the file, it is borne out that the deceased had not hit his car in the back side of the offending vehicle, but the accident had taken place while over taking the offending vehicle by the deceased from left side. This fact is borne out from the site plan of the place of accident prepared by the police during investigation, copy of which has been placed on the file as Ex.P6. In the said site plan, the car of the deceased is shown lying ahead of the offending vehicle. Had the deceased hit his car behind the offending vehicle then in that eventuality the car of the deceased would have been found stationed behind the offending vehicle and not in front of the offending vehicle, but at the same time it cannot be said that it was respondent No.1 alone who was at fault for the accident. The deceased was also at fault to some extent because it was his duty to overtake the offending vehicle from its right side. If the offending vehicle was being driven in first lane and the deceased wanted to overtake the offending vehicle from left lane, then it was his duty to overtake the offending vehicle only after getting signal to that effect from respondent No. 1. It suggests that he was overtaking the offending vehicle in haste from left lane and when respondent No.1 moved to said lane to leave the right lane open for overtaking by the deceased accident took place. Therefore the deceased and respondent No.1 are held liable for the accident in the ratio of 25:75. It is pertinent to mention that the offending vehicle being slow moving vehicle was required to be driven in left lane of the road, but it was being driven in *the right lane and for the said reason respondent No.1 has been held to be more responsible for the accident."*

10. Learned counsel for the appellants is unable to dispute the above said findings or show anything to controvert the same. Accordingly, finding of the learned Tribunal that the deceased and respondent No.1 herein are liable for the accident in the ratio of 25:75 is maintained.

11. As per the discussion above, compensation admissible to the claimants is re-worked as follows:-

HEADS	**AMOUNTS**
Income	Rs.2,45,454/- per annum
Future prospects (40%)	Rs.98,181.6/- (rounded off to Rs.98,182/-) Rs.2,45,454/- + Rs.98,182/- = Rs.3,43,636/-
Multiplier (15)	Rs.3,43,636/- x 15 = Rs.51,54,540/-
Deduction (1/4th)	Rs.51,54,540/- - Rs.12,88,635/- 38,65,905/-
Conventional Heads	Rs.1,25,000/- Rs.38,65,905/- + Rs.1,25,000/- = Rs.39,90,905/-
Total as re-worked	Rs.39,90,905/-
After incorporating 25% contributory negligence	Rs.39,90,905/- - 25% = Rs.9,97,726.25/-
Total	**Rs.39,90,905/- - Rs.9,97,726.25/- = Rs.29,93,178.75/- (rounded off to Rs.29,93,179/-**

12. A deduction of 25% will be made from the enhanced compensation of Rs.39,90,905/- towards contributory negligence attributed to the deceased. Ratio of apportionment and mode of disbursement of enhanced compensation as determined by the learned

Tribunal is maintained. Rate of interest @ 7.5% per annum is maintained. Present appeal stands **disposed of** in above terms.

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

25.04.2023 **(Nidhi Gupta)**
Sunena **Judge**

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