IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 3100/2017 &
FAO 6100/2017

Date of decision: 20.04.2023.

FAO 3100/2017

New India Assurance Company Limited

………………Appellant

Vs.

Rajpati Devi and others

…………………Respondents

FAO 6100/2017

Rajpati Devi and others

……………..Appellants.

Vs.

Mahi Pal and others

……………..Respondents.

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ashwani Talwar, Advocate for the Appellant in FAO-3100/2017 and For the respondent in FAO 6100/2017

Mr. Sagar Aggarwal, Advocate for the appellants in FAO 6100/2017 and for the respondents in FAO 3100/2017.

Nidhi Gupta, J.

By this common order I shall dispose of two cross-appeals same being FAO No. 3100/2017 filed by Insurance Company; and FAO No.6100/2017 filed by claimants. Both appeals are being disposed of my common order as the facts, arguments, and questions of law involved in both these appeals are identical, and as both the Appeals arise from the one Award dated 12.1.2017 passed by the Motor Accident Claims Tribunal, Karnal (hereinafter referred to as 'the Tribunal') in claim petition MACT Petition No. 39/2014, filed u/s 166 and 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act').

For the sake of convenience, parties are being referred to as per their litigative status before the ld. Tribunal.

Vide impugned Award dated 12.01.2017, Ld. Tribunal granted compensation of Rs.37,67,500/- to the claimants, along with interest @ 9% per annum from the date of filing of claim petition till realization. Ld. Tribunal granted compensation as above on account of death of Amit Kumar aged 28 years. Ld. Tribunal on appraisal of the facts, pleadings and evidence adduced before it concluded that the deceased Amit Kumar had died due to the injuries suffered by him in a motor vehicular accident that took place on 2.3.2014, due to the rash and negligent driving of the Truck/Tralla bearing registration No. HR-61A-5515 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.1, owned by respondent no.2, and insured by the respondent no.3 Insurance Company. Claimants are the widow, minor son, and parents of the deceased Amit Kumar. Respondents were held jointly and severally liable to pay the compensation.

Ld. Counsel for the appellant Insurance Company assails the impugned Award primarily on the ground that the accident in question is head-on collusion between the car being driven by the deceased, and the offending truck-tralla which was insured by the present Insurance Company. It is submitted that the accident has taken place on 02.03.2014 at 5.00 PM in broad day light, and the same goes to show that there was contributory negligence of both the vehicles as the accident was a head-on collusion, and therefore, the deceased could have avoided the accident in question. Ld. Counsel submits that the Supreme Court in the case of ***Bijoy Kumar Duggar Vs. Bidyadhar Dutta & others 2006(3) SCC 242 (Para 12)***, has held that in case of head-on collision, both the drivers are at fault.

As far as quantum of compensation is concerned, it is submitted by the ld. Counsel for the Insurance Company that the deceased was stated to be an NRI who was alleged to be self-employed/ in partnership with PW1 Jasbir Singh in Italy. It is submitted that however, there is nothing on record to show that the deceased was working in Italy at the relevant time. It is stated that Residence Permit Ex. P-1 pertains to the year 2011-2012, and on the date of accident i.e. 2.3.2014, the deceased did not have a work permit.

It is further submitted that the deceased came back from Italy on 16.12.2013, and did not have a return ticket, and even no leave certificate of the deceased had been produced, so there was nothing to indicate when he would go back to Italy, if at all. It is further submitted that the statement of PW1 Jasbir Singh to the effect that work permit of the deceased had been renewed for unlimited period is only a bald statement, and the ld. Tribunal has correctly not relied upon said statement or, Ex. P-4 viz copy of Receipt regarding renewal of work permit. It is further submitted that statement of PW1 cannot be relied upon also for the reason that the Work Permit of PW1 or even the alleged Partnership Deed had not been produced.

It is stated that accordingly, since employment of neither PW1, nor deceased was proven on record, therefore, the Tribunal was in error in taking notional income of the deceased as Rs.15,000/- per month, which is on the higher side and, as per notification of minimum wages dated 19.08.2014 issued by the State of Haryana, even the highly skilled worker was earning an amount of Rs.6289.50. It is submitted that PW1-Jasbir Singh while deposing before the Tribunal, coupled with deposition of RW2 - investigator of Insurance Company, would highlight that there is no reliability qua the avocation or income of deceased and further, it is not forthcoming as to what the deceased was actually earning. It is stated that even no bank statements of the deceased were produced to show as to how much amount, if any, was the deceased remitting back to India. It is submitted that accordingly, ld. Tribunal was in patent error in taking income of the deceased as Rs. 15,000/- pm, and income of the deceased ought to have been taken as per Indian standards, i.e. should have been taken as Rs. 6300/- pm as per relevant Minimum Wage Notification.

It is submitted that therefore, notional income needs to be restricted to Rs.6300/- per month and accordingly, fresh calculations as per latest law comes to Rs.6300 x ¾ (1/4th deduction) x (40% future prospects) x 12 (Annual Income) x 17 (Multiplier) = Rs.13,49,460+2,09,000 (under conventional heads) = Rs.15,58,460/-.

It is submitted that the above-said amount needs to be further abated at least upto 50% on account of contributory negligence of the deceased himself and accordingly, the compensation to which claimants are entitled is Rs.7,79,230/- only.

It is further submitted that insofar as FAO NO.6100 OF 2017 preferred by claimants for enhancing compensation by considering the deceased to be an NRI is concerned, this Court in ***Krishna Devi vs. Sandeep Singh & Others, FAO No. 7613 of 2015***, while considering the similar proposition of law, has remanded the matter back to MACT so as to adjudicate the following questions:-

> *"i) Whether evidence is available on record to show that original salary certificate/slip (Ex.A-8) was produced before the tribunal and whether same is 'per se' admissible document?*
>
> *ii) Whether there is any evidence to show that salary (7000 Dirhams) per month as mentioned in Ex.A-8 was actually being withdrawn by the deceased, whether any corresponding bank statement or other document has been produced to corroborate the salary?*
>
> *iii) Whether salary certificate from a foreign country can be taken into consideration despite the fact that same was merely tendered and not proved by adopting the due procedure of evidence?*
>
> *iv) Whether any bank statement or other evidence is available on record to show that out of 7000 Dirhams stated to be earned by the deceased, part thereof was being transmitted to India to his family?*
>
> *v) Whether value of Dirhams, stated to be earned by the deceased in terms of Indian currency, was calculated by adopting some method; whether any evidence in this regard is on record?"*

Learned counsel for the Insurance Company submits that the present case is also similar to the aforesaid ***Krishna Devi's (supra)*** case, in fact, on a better footing, and therefore, the claimants' appeal deserves to be dismissed.

It is lastly submitted that the ld. Tribunal has granted future prospects @ 50% which should be 40%; and even consortium of Rs. 3 lacs granted to the 4 claimants is on the higher side.

Per contra, ld. Counsel for the claimants submits that insofar as argument on behalf of the Insurance Company regarding contributory negligence is concerned, no such plea was ever taken by the insurance company in their written statement filed before the Ld. Tribunal. It is submitted that it is for the first time such a plea/argument has been raised in the present appeal.

It is submitted that in any event, said plea of contributory negligence is belied by the undisputed facts on record. Ld. Counsel submits that in this regard, the testimony of PW2 Dilbagh Singh is very clear with respect to the negligence on part of respondent no. 1 driver of the offending vehicle. PW2 has clearly stated that driver of the offending vehicle was driving his vehicle in a rash, negligent & careless, zig zag manner and hit the car of the deceased by coming on the wrong side of the road. Moreover, in the cross-examination PW2 has also stated that the accident occurred on the pucca portion of the road, on his due left side, which shows that driver of the offending vehicle was negligent.

It is further submitted that it cannot be taken as a uniform rule that merely because there was a head-on collision between two vehicles it would amount to contributory negligence. In this regard, ld. Counsel relies upon judgment of this Court in ***Shriram General Insurance Co. Ltd vs Idris & ors FAO No. 347-2022.***

Regarding income of the deceased, ld. Counsel for the claimants submits that the Ld. Tribunal had wrongly taken the income of the deceased as only Rs.15000/-PM whereas, as per the given records, the income of the deceased should have been considered as per the ITR's produced.

It is submitted that the Ld. Tribunal had wrongly relied upon the report Ex.R8 submitted by the Insurance Company Investigator RW2 V.K.Vashisht, as RW2 in his cross-examination has admitted that he had not visited the Embassy of Italy in India or the office of Consulate General of India at Milan. This shows that the report prepared by him was false, with an intent to help the insurance company by merely sitting in his office and without even verifying any facts/ documents.

It is further submitted that in this regard the Ld. Tribunal had wrongly discarded the testimony of PW1 Jasbir Singh only on the ground that he/ PW1 had not produced his own documents regarding his work permit or residence in abroad. It is submitted that this should not be the ground to reject the testimony, as PW1 is in Court to submit regarding the avocation of the deceased and not himself. Moreover while deposing in the cross-examination, PW1 had also given the User-ID and password of the deceased which can be verified from the Website of police department of Milan with regard to work permit and visa of the deceased.

Ld. Counsel counters the argument raised by the counsel for the insurance co. that deceased was not having any work permit for the year 2012 onwards, by submitting that the document Ex.P1/A is the translated copy of the work/residence permit of the deceased which was valid till 20.11.2012 and thereafter, the same was renewed vide Ex.P4 dated 10.11.2012 for unlimited period by paying 30 Euros as fees. It is submitted that this fact has also been verified by PW1 Jasbir Singh. As far as receipt is concerned, it is submitted that the same is valid till the receiving of the work permit on physical card. Moreover, the deceased was paying the income tax to the Government of Milan, which can only happen when he is permitted to work there. The income tax returns were duly exhibited on record along with its translation and the same have been duly counter-signed by the Consulate General of India at Milan.

Further, that the documents produced on record by PW1 Jasbir Singh from Ex. P1 to P9 show that the deceased was residing and working in Milan, Italy. That all the documents Ex. P1 to Ex.P9 were counter-signed by the Consulate General Of India, Milan, who was so empowered under section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948. Therefore, these documents were authentic and are per se, admissible in evidence as per Section 79 of Indian Evidence Act. Ld. Counsel further elaborates:

1. That Ex.P1 is the residence/Work permit of the deceased and its translation is Ex.P1/A which was valid from 20.11.2012.
2. That Ex.P2 is the ID Card issued by Govt. of Milan which is valid till 26.01.2024 and its translation is Ex.P2A. It shows that he was permitted to reside there till 26.01.2024.

3. Ex.P4 is the copy of the receipt issued to the deceased on 10.11.2012 by the Govt. of Milan for the renewal of his work permit for unlimited period.
4. Ex.P5 is the passport of the deceased.
5. Ex. P6 is the copy of the ITR of the deceased for the year Assessment Year 2013 wherein the income is shown as 15250 Euros, and the tax is also paid as 3518 Euros. Its translation is Ex.P6A.
6. Ex. P8 is the copy of the ITR of the Assessment Year 2014 wherein the income is shown as 16764 and the tax is also paid as 3926 Euros. Its translation is Ex.P8A.

It is further submitted that there was an argument raised by counsel for the insurance company that there was no return ticket presented of the deceased. To this it is answered that deceased was not an employee rather as per statement of the PW1 Jasbir Singh, he was a partner in a firm. Therefore, he was under no obligation to return back within a month to Italy. Moreover, even if it is presumed that he was working under someone, then also there is no mandatory instruction to book the return ticket in advance.

That there was an argument of insurance co. with regard to non-presentation of bank details/ account summary so as to show how much amount was in fact, transferred to claimants' banks account to show their dependency. It is submitted that claimants were the only family of the deceased and whatever the deceased was earning or earned would have gone to the claimants only. It was unfortunate fate of the deceased that he died in the accident.

That in view of the ITR's for the Year 2012 & 2013/ Ex.P-6 & Ex.P-8 respectively, which are duly countersigned by Consulate General of India at Milan, same should be considered for the computation of the income of the deceased. Ex.P8A shows that net income of the deceased for the relevant year was 12838 Euros (16764 - 3926 Euros). That at the relevant month the rate of Euro was 84.30/- to the Indian rupees.

In support, ld. Counsel relies upon ***Jiju Kuruvila and ors. vs Kunjujamma Mohan and Ors., Civil Appeal S.C. 4945-4946 of 2013*** (on fixation of rate of exchange in case of foreign nationals in MACT Cases.)

Heard ld. Counsel.

I shall consider each argument raised by the parties as follows. The two main contentions of both the parties/ issues arising in the present case are regarding 'Contributory negligence', and 'Quantum of compensation'.

As regards the issue of contributory negligence, I find no merit in the argument raised on behalf of the Insurance Company that, as the accident in question was a case of head-on collision therefore, there was contributory negligence on part of the deceased. The following evidence on record shows to the contrary.

A perusal of Ex. PW2/A, Affidavit in evidence of PW2 Dilbagh Singh complainant/ author of the FIR (<u>available at page 221 of the LCR</u>) shows that PW2 has categorically stated therein that:

> *"Amit Kumar was ahead of me and when Amit Kumar reached the bus stop of Village Thari then all of a sudden the offending truck bearing registration No. HR-61A-5515 came from opposite side i.e. from Assandh side, which was being driven by its driver i.e. respondent no. 1 in a rash, negligent, and careless, zigzag manner and hit the car of Amit Kumar <u>by</u>*

coming on the wrong side of the road and because of that hit Amit Kumar received serious injuries all over his body, and he was referred to Govt. Hospital, Karnal but he succumbed to his injuries on the way." (emphasis supplied)

Even in his cross-examination (available at page 227 of the LCR), PW2 Dilbagh Singh has reiterated that:

> *"The driver side of the truck was hit to driver side of the car of Amit. The said accident had taken place on the pucca portion of the road, but on his due left side."* (emphasis supplied)

Even in the FIR no. 85 of 2014 (at page 107 of the LCR), PW2 Dilbagh Singh, author of the FIR has narrated the same sequence of events as noticed above. Admittedly, abovesaid evidence of PW2 Dilbagh Singh remains uncontroverted.

Therefore, in my view, merely because the accident is a head-on collision does not always, without exception, imply negligence on part of both the parties. In the present case, from the above facts, it is clear that respondent no. 1/ driver of the offending truck had come on the wrong side of the road and hit into the driver side of the car which the deceased was driving. Therefore, clearly, there was no fault on part of the deceased.

Even otherwise, besides the above undisputed evidence, a perusal of the Written Statement (at Page no. 27 to 33 of the LCR), shows that no such plea was ever taken by the Insurance Company before the Ld. Tribunal, and it is for the first time that such a plea/argument has been raised in the present appeal. Further, judgment relied upon by the ld. Counsel for the Insurance Company in case of ***Bijoy Kumar Dugar*** (supra), is distinguishable on facts. Accordingly, I find no merit in the plea of contributory negligence raised on behalf of the Insurance Company.

Now moving on to the issue of quantum, it is the pleaded case of the claimants that prior to the accident, the deceased was a partner with PW1 Jasbir Singh in the construction firm of PW1 in Italy, and was earning handsomely, and therefore, income of the deceased could not have been taken as a mere Rs. 15,000/- per month. In support of said contention, claimants have primarily relied upon Ex. P-1/ 'Work Permit' of the deceased (which is available at page 51 of the LCR); Translation of Ex. P-1 which is stated to be 'Work' Permit of the deceased is available at page 55 of the LCR; Ex. P-2/ ID Card of the deceased; and Ex. P-4/ Copy of Receipt regarding renewal of Work Permit of the deceased; and Ex. P-6 ITR of the deceased for the Assessment Year 2013; and Ex. P-8 ITR of the deceased for the Assessment Year 2014.

A perusal of Ex. P-1 at page 51 of the LCR, and the translation thereof Ex. P-1/A at page 55 of the LCR shows that in actual fact, Ex. P-1 is the 'Residence' Permit (Permesso di Soggiorno), of the deceased which was issued on 9.11.2011 and bore a validity only upto 20.11.2012. Be that as it may, a perusal of the abovesaid documents/ exhibits, unequivocally reveals that the deceased had right of residence/ work in Italy only upto 20.11.2012. Thus, by the claimants' own showing, the residence/ work permit of the deceased was valid upto 20.11.2012.

It has however, been argued for the claimants that as per Receipt Ex. P-4, deceased was entitled to work for unlimited period. It has been submitted that the deceased was initially issued a work permit in 2010; which was thereafter, renewed in 2011 with validity upto 20.11.2012; whereafter, the deceased had again applied for renewal of work permit, in respect of which he was issued a receipt Ex. P-4, as per which, work permit of the deceased had been renewed for unlimited period.

In my view, such assumption on part of the claimants is wholly misplaced. Perusal of Ex. P-4 (<u>at page 61 of the LCR</u>) shows the same to be simpliciter a receipt dated 10.11.2012. There is nothing whatsoever in Ex. P-4 to indicate that the permit of the deceased had been renewed, let alone for unlimited period. It has been submitted that the said receipt Ex. P-4 is valid till the actual work permit on physical card is received. However, this submission too doesn't seem plausible as the application for renewal is of November, 2012, and in case permit had indeed, been renewed, it is unlikely that a physical card in respect thereof is not issued till March, 2014.

Moreover, the said submission is also contrary to the other evidence/ facts on record. At this juncture, it will be useful to notice that the Internet Copy of 'A Guide to Permesso di Soggiorno', shows that " IN THIS GUIDE YOU WILL FIND INFORMATION CONCERNING THE DIFFERENT KIND OF PERMITS ON HOW TO APPLY FOR AND RENEW THEM, ON THE OTHER DOCUMENTS YOU NEED (RESIDENZA, CARTA D'IDENTITA,/ TITOLO DI VIAGGIO), ON SWITCHING BETWEEN DIFFERENT TYPES OF PERMIT.

> *WORK PERMITS: There are three types of work permit: 1. LAVORO SUBORDINATO (if you are employed by somebody); This permit is renewable, and it lasts for: one year if you have a fixed term contract (contratto a tempo determinato) that lasts for at least six months, two years if you have an open-ended contract (contractto a tempo indeterminato)*

2. LAVORO STAGIONALE (seasonal labour) this permit lasts for 9 months maximum, it is not renewable, but it can be converted.

3. LAVORO AUTONOMO (self-employed workers); this permit lasts for one or two years and it is renewable".

Co-relating the above-said information with the evidence on record, in particular, Ex. P-1/ Residence-Work Permit of the deceased (at page 51 of the LCR), shows that the deceased was issued a permit in the category of "LAV SUBORDINATO" meaning thereby, that as per the abovesaid guidelines, the same was renewable upto two years in case of an open-ended contract. Admittedly, the deceased was initially issued a work permit in 2010; which was thereafter, renewed in 2011 with validity upto 20.11.2012 i.e. work permit of the deceased already stood renewed twice. Thus, it stands affirmed that the deceased was not issued a work permit beyond 20.11.2012/ did not possess a work permit at the time of accident.

It is also to be borne in mind that even the earlier work permits as alleged to have been issued to the deceased for the years 2010, 2011, and 2012, have not been placed on record by the claimants.

In my view, upon consideration of the evidence in totality i.e. work permit which was initially issued to the deceased in 2010 and was renewed on 9.11.2011 upto 20.11.2012, along with the undisputed fact that a "LAV SUBORDINATO" that lasts for upto two years, it leads to the unassailable conclusion that the deceased did not possess a work permit beyond 20.11.2012. No doubt, deceased had applied for renewal in respect of which he was issued Receipt Ex. P-4, but there is nothing to show that work permit of deceased was renewed thereafter. This conclusion is further fortified by the fact that as per guidelines of Permisso di Soggiorno/ Permit of Stay, for an unlimited period work permit, the deceased was required to live in Italy for at least 5 consecutive years. As per visa stamps borne on Ex. P-5 the passport of the deceased, he did not fulfill this requirement. Thus, even if evidence of RW2 Insurance Investigator in respect of Work Permit is to be discarded, there is enough other evidence on record to show that deceased did not possess a work permit beyond 20.11.2012.

Moving further, the claimants have placed great reliance on the Income Tax Returns (ITRs) of the deceased for the financial years 2012 and 2013/ Ex. P-6 and Ex. P-8 respectively. As per Ex. P-6 ITR for the financial year 2012 (translation Ex. P-6/A, at page 77 of the LCR), the deceased is shown to have earned a total sum of 15,250 Euros of which tax of 3518 Euros was deducted. Similarly, as per Ex. P-8 ITR for the financial year 2013 (translation Ex. P-8/A, at page 91 of the LCR), the deceased is shown to have earned a total sum of 16,764 Euros, of which tax of 3926 Euros was deducted. The said ITRs do not bear the name of the deceased, but as per testimony of PW1 Jasbir Singh, the said ITRs are stated to have been filed by the deceased on basis of the unique "Tax Identification Number" the same being "KMRMTA86A26Z222Y" issued to the deceased by the authorities, which are duly borne on the said Ex. P-6 and Ex. P-8.

However, in this respect, the cross-examination of RW2 VK Vashist, Insurance Investigator, is important and relevant excerpt is reproduced hereinbelow: -

> *" I am B.A.LL.B (Academic). I have no Diploma whatsoever in Computer side or the side of investigation. It is correct that the Company had provided me the statement of PW-1, and all the documents referred in his statement. It is correct that the documents which were*

provided by the Company to me were read over by me. Volunteered that to my knowledge, there is no such Diploma in Investigation. The Income Tax code No. was mentioned or provided in the documents. I try to search this income Tax Code of Amit Kumar but the link was not traceable. It is incorrect to suggest that the Income Tax Code number mentioned in ITR is still on the website of the concerned Department of Govt. of Italy. (Emphasis supplied)

A perusal of the above shows that save for the bald statement of PW1 Jasbir Singh, there is nothing on record to prove the veracity of the above evidence/ ITRs. Even no evidence in rebuttal was led by the claimants in this regard.

Much reliance has been placed by the claimants upon the statement of PW1 Jasbir Singh. Said statement and cross-examination of PW1 Jasbir Singh (at page 211 to page 217 of the LCR) is reproduced hereinbelow: -

"Statement of Jasbir Singh son of Baljit Singh, age 35 years, resident of village Kharak Panday, District Kaithal at present residing at Gavardo Via, G. Quarena 118, Brescia Italy on SA.

Stated that I am having work permit of Italy for unlimited period. I am partner in DF FER SNC VIA DALMAZIA 49 BRESCIA ITALY which is a construction company. The deceased Amit Kumar was also one of the partner in the said firm up to death and he was officially retired from the firm on 24.4.2014 as hedied in a road side accident in India on 2.3.2014.

Amit Kumar was having a work permit in Italy. Initially in the year 2010. He was again issued work permit upto

9.11.2011 and then 20.11.2012 and then he applied for renewal of the said work permit and his permit was renewed unlimited. The copy of the work permit in Ex. Pl. The correct English translation of the same is Ex-PI/A. Amit Kumar was also having an Identity card of Italy which in Ex.P2, correct English translation of the sano is The said translations and the documents Ex.P1 and Ex.P2 were verified and authenticated by the Consulate Genera) of India and Court of Brescia. The certificate in this regard is Ex. 23. The receipt regarding the renewal of work permit for unlimited period Ex:14 The passport of said Amit Kumar is Ex.P5 original seen and returned1. According to the entry at page no.7 on the passport of Amit Kumar he took de flight from Milan, Italy for path! on 16.12.2013 and reached Delhi on 17.12.2013 according to page no.13 of the passport. Both the pages having stamps of the Airport.

Amit Kumar was an income tax assessee in Italy. <u>In Italy the accounting/financial year is from Ist January to 31st December of every year and the assessment year is thereafter.</u> Amit Kumar had deposited a sum 3518 Euro as income tax against his income, 15250 Euro for the financial year 2012 and assessment year 2013 according to his ITR Ex.P6. The correct English translation of the same is Ex. P6/A and a certificate in this regard issued by the Consulate General of India Milan Italy and Court Berscia Ex.P7. Amit Kumar had also deposited a sum of 3926/- Euro as income tax against his income 16764 Euro for the financial year 2013 and assessment year 2014 according to his ITR Ex. P8. The correct English translation of the same is Ex.P8/A. A certificate in this regard has been *issued by the Consulate General of India and the court at Berscia Italy, which is Ex.P9.*

Amit Kumar was having a Tax Identification Number KMRMTA86A262222Y which was issued by the Govt. of Italy and every tax payer in Italy is having such type of tax identification number. (All the documents objected on the ground of mode of proof).

Xxxned by Shri Vijay Goswami and Shri Naveen Khetarpal, Advocates for respondents.

The address of Italy which I have been given in my examination in chief, this property owned by me. But I have not brought any documentary proof in this regard. I am having a work permit for the last 15 years in Italy. I have no work permit with me today, but I can produce the same later on. I have a partnership deed of our above mentioned firm, but I have not brought the same today in the court and can produce the same. It is incorrect to suggest that I have no work permit, nor I have possessed any property in Italy or that I am not a partner to the deceased Amit Kumar or that there was no partnership firm with the name and style of above mentioned firm, It is incorrect to suggest that the document Ex P4 is forged one. Volunteered this is work permit issued by the of Italy to the deceased Amit Kumar unlimited period and one can see the authenticity of this document on inter net by using the user 290000545919 and password 06127545459-7A This is the web site of police department (importale immgrati). It is correct that the permit of deceased was expired on 20.11.2012. Volunteered the same renewed by the Govt. of Italy for unlimited period, which was issued on 10.11.2012 and the meaning of this Ex. P4 is untill the card of work permit was not issued till then this receipt Ex.P4 is valid *for the said purpose. The procedure of the issuance of work permit in Italy is one year for the first time, one year for the second time and third time for unlimited period or for ten years.*

The deceased Amit Kumar was residing in Italy since 2007. The tax (income tax) identification number is permanent one for every assessee in the Italy. The firm has having their bank account in Italy. Ex.P6 and Ex.P7 ITR are the individual ITR as income tax assessee of Amit Kumar which is mentioned on the documents Ex.P6 and Ex.P7. It is incorrect to suggest that there was no work permit with Amit Kumar or that he was not working in Italy or that he was not partner in any firm or that he was not earning hand or that he was not having any permanent tax identification number or that he was not income tax payee or assesee. It is incorrect to suggest that all the documents produced today are forged, fabricated and have been got prepared with a view to fetch maximum false claim. It is incorrect to suggest that I am deposing falsely".

However, a perusal of the record shows that, notwithstanding the abovesaid deposition by PW1 to the effect that he will produce the relevant supporting documents later, PW1 Jasbir Singh failed to produce any record whatsoever to prove his employment, or even employment of the deceased in Italy. Another discrepancy in statement of PW1 Jasbir Singh is that according to him "*The deceased Amit Kumar was residing in Italy since 2007.*" PW1 Jasbir Singh has further deposed that "*Amit Kumar was having a work permit in Italy. Initially in the year 2010.*"

As regards the income of the deceased, the following observations of the Hon'ble Supreme Court in case of **Chanderi Devi v. Jaspal Singh (SC) : Law Finder Doc Id # 661520** are relevant:

> *"The courts below have considered the evidence produced on record by the appellants, particularly the passport, salary certificate, income-tax certificates and whether or not the deceased was employed in Germany at the time of the accident to ascertain the annual income of the deceased at the time of his death and the courts below found that the same cannot be assessed on the basis of the documents referred to above. The High Court found it to be just and reasonable to take the income of the deceased at the time of his death at L 8,333/- per month, which in our considered view is definitely on the lower side keeping in view that the deceased was employed as a cook in an Indian restaurant in Germany. At the same time, to consider the income of the deceased at L 62,975/- per month (i.e. 1145 Euros) as contended by the appellants to calculate the loss of dependency of the appellants would definitely be on the higher side. Hence, on considering the facts, circumstances of the case and plausibly estimating as to how much a cook of similar nature as the deceased would have earned in India in the year 2006, we are of the view that it would be just and reasonable for us to ascertain the income of the deceased at the time of his death at L 15,000/- per month."* *(Emphasis supplied).*

Reference may also be made to a Division Bench judgment of the Madras High Court in case of ***M/s United India Insurance Company ltd. vs. Asmabi and others Civil Misc. Appeal No. 673 of 2009*** wherein in Head Note 'B', it has been held that:

> *"B. Motor Vehicles Act, 1988, Section 166 – Death Claim – Income of the deceased – Deceased working in Saudi Arabia*

– Held, the income as it is cannot be fixed based upon the salary drawn in Saudi Arabia – It has to be struck between the salary drawn in abroad and Indian standards. ...” (Emphasis supplied_.

I am in complete concurrence with the above observations of the Hon’ble Supreme Court and High Court of Madras. Income of deceased working abroad has to be assessed in a fair and reasonable manner, according to Indian standards, and cannot be assessed as per exact conversion of currency amount which deceased was earning abroad. A balance has to be drawn between the two.

Thus, in view of the facts and evidence as noticed above, what may at best be concluded is that the deceased had worked in Italy for a couple of years. Accordingly, in conformity with the abovesaid judgments, I find no error in the assessment of notional income of the deceased of Rs. 15,000/- as made by the ld. Tribunal.

Further, Ld. Tribunal has awarded compensation to the present claimants in the following manner:-

Sr.No.	Head	Amount (in Rupees)
1.	Monthly income	15,000/-
2.	Annual income	1,80,000/-
3.	Age of the deceased -28 years	
4.	Multiplier-17	
5.	Total dependency	1,80,000x17= 30,60,000/-
6	1/4th Deduction in terms of Sarla Verma’s case	30,60,000 – 7,65,000= 22,95,000/-
7	Future prospects @ 50%	22,95,000 + 11,47,500= 34,42,500/-

8	Last Rites	25,000/-
9	Spousal consortium	1,00,000/-
10.	Consortium to minor son	1,00,000/-
11.	Consortium to parents	1,00,000/-
12	Total compensation	37,67,500/-

For the reasons recorded hereinabove, in the facts and circumstances of the present case, I find the above compensation awarded by the ld. Tribunal to be just, fair and reasonable, and no case for interference is made out. No doubt, Chapter-12 of the Motor Vehicles Act, 1988 is a beneficial legislation yet, as cautioned by the Hon'ble Supreme Court, the same cannot be allowed to be treated as a windfall or a source of profit. Moreover, compensation awarded upon the death of a near and dear loved one cannot be made a market negotiation, where every penny has to be calculated and drawn. All that has to be determined in the facts of a given case is, that the compensation accorded is "just". In my considered view, in the present case, the learned Tribunal has awarded a very "just" compensation, which is in accordance with the law laid down by the Hon'ble Supreme Court and therefore, does not warrant the interference of this Court. In case of ***KSRTC Versus Susamma Thomas 1994 Volume-II SCC 176,*** the Hon'ble Supreme Court has held that misplaced sympathy, generosity and benevolence cannot be the guiding factor for determining the compensation. Reliance may also be placed upon the decisions of the Hon'ble Supreme Court in ***State of Haryana v. Jasbir Kaur, (1999)1 SCC 90*** and ***Divisional Controller K.S.R.T.C. v. Mahadev Shetty, (2003) 7 SCC 197***, wherein it is held that the amount of compensation should be just and reasonable, it should neither be a bonanza nor a source of profit but at the same time it should not be a pittance.

Both appeals, accordingly, stand **dismissed.**

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

A copy of this order be placed on the file of connected appeal.

20.04.2023. **(Nidhi Gupta)**
Joshi **Judge**

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