IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

214 **FAO-3149-2017 (O&M)**

Date of decision: 04.05.2023

Smt. Arshida & Others

...Appellant(s)

Vs.

Salman & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Digvijay, Advocate for
Mr. Ashish Gupta, Advocate
for the appellants.

Mr. Rajneesh Malhotra, Advocate
for respondent No.3/Insurance Company.

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NIDHI GUPTA, J.

Mr. Rajneesh Malhotra, Advocate puts in appearance on behalf of respondent No.3/Insurance Company and files Power of Attorney which is taken on record.

2. Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.12,62,934/- granted by Motor Accident Claims Tribunal, Mewat (hereinafter referred to as "the learned Tribunal") vide Award dated 09.01.2017 passed in MACT Case No.683 of 2016 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Four claimants are the widow, two minor children, and mother of the deceased-Wasim.

3. Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence adduced before it concluded that deceased-Wasim had died due to injuries suffered by him in a motor

vehicular accident that took place on 31.08.2015 due to rash and negligent driving of motorcycle bearing registration No.HR-28F-4156 (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 @ 9% per annum from the date of institution of the petition till realisation. Respondents were held jointly and severally liable to pay the amount of compensation.

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

a) that nothing has been granted by way of consortium to the claimants;

b) that learned Tribunal has made deduction of 1/4th towards personal expenses whereas the same ought to have been 1/10th;

c) that amount of Rs.25,000/- given towards funeral expenses is on the lower side and the same should have been Rs.50,000/-;

d) that claimants are entitled to Rs.4,00,000/- towards loss of love & affection. In support of his contention, learned counsel relies upon judgment of Hon'ble Supreme Court in **United India Insurance Co. Ltd. Vs. Satinder Kaur @ Satwinder Kaur (SC) Law Finder Doc ID # 1729112.**

5. In response, it is submitted by learned counsel for respondent No.3/Insurance Company that learned Tribunal has made

deduction of 1/4th towards personal expenses keeping in mind that claimants are four in number. It is submitted that as per the law laid down by the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Others (2017) 16 SCC 680,** deduction of 1/3rd ought to have been made towards personal expenses as dependent family members are three in number. It is very fairly admitted that claimants are entitled to addition of 40% towards future prospects. It is next submitted that learned Tribunal has granted a huge amount of Rs.2,25,000/- under conventional heads, which ought to be Rs.77,000/-.

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

7. I have heard learned counsel for the parties.

8. Perusal of record of the case shows that the learned Tribunal determined age of the deceased as 25 years as per his School Leaving Certificate wherein his date of birth is mentioned as 10.02.1991.

9. Though, it was the pleaded case of the claimants before the learned Tribunal that deceased was working as a Conductor at the time of death and was earning Rs.15,000/- per month, however, no documentary proof was produced by the claimants regarding income of the deceased. Accordingly, learned Tribunal took the deceased as a casual labourer and determined his notional income as Rs.6,407/- per month on the basis of relevant Minimum Wage notification for the year 2015. There can be no dispute that as per law laid down by Hon'ble Supreme Court in **Pranay Sethi (surpa)**, an addition of 40% is required to be made towards future prospects. As regards dependency, deduction of

1/4th was correctly made by the learned Tribunal, as all four claimants being widow, 2 minor children, and widowed mother of the deceased would be held to be dependent on the deceased. As regards consortium, this Court is of the view that even as per judgment of Hon'ble Supreme Court in **Satinder Kaur (supra)** relied upon by the claimants, Rs. 40,000/- was granted as consortium to the claimants therein. Therefore, argument on behalf of the appellants that they are entitled to Rs. 4 lacs towards loss of love and affection/ consortium, is rejected.

10. Therefore, compensation awarded to the claimants is re-worked as follows:-

Heads	**Awarded by MACT**	**Awarded by this Court**
Income	Rs.6,407/- per month	Rs.6,407/- per month
Future prospects	---	(40%) Rs.6,407/- + Rs.2,562.8/- = Rs.8,969.8/-
Deduction	(1/4th) Rs.6,407/- - Rs.1,601.75/- = Rs.4,805.25/-	(1/4th) Rs.8,969/- - Rs.2,242/- = Rs.6,727/-
Multiplier	(18) Rs.4,805.25/- x 12 x 18 = Rs.10,37,934/-	(18) Rs.6727/- x 12 x 18 = Rs.14,53,032/-
Loss of consortium	Rs.1,00,000/-	Rs.1,20,000/-
Loss of love & affection	Rs.1,00,000/-	
Transportation & funeral expenses	Rs.25,000/-	Rs.30,000/-
Total	**Rs.12,62,934/-**	**Rs.16,03,032/-**
Enhanced by	**Rs.3,40,098/-**	

11. Rate of interest shall be 6% per annum. Ratio of apportionment and mode of disbursement of compensation, as determined by the learned Tribunal is maintained. In view of the above facts, present appeal accordingly stands **partly allowed** in above terms.

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

04.05.2023 **(Nidhi Gupta)**
Sunena **Judge**

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