IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

260 **FAO-3235-2017 (O&M)**
X-OBJC-187-CII-2017
Date of decision: 09.03.2023

SBI General Insurance Co. Ltd. ...Appellant(s)

Vs.

Rinku & Others ...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Rajneesh Malhotra, Advocate for the appellant.

Mr. Jarnail S. Saneta, Advocate for respondents No.1 to 4/cross objectors.

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NIDHI GUPTA, J.

By this common order I shall dispose of FAO No.3235/2017 filed by the Appellant-Insurance Company; and Cross Objections No.187-CII of 2017 filed by the claimants. Both the Appeal, as well as the Cross Objections arise from the one Award 03.02.2017 passed by Motor Accident Claims Tribunal, Karnal (hereinafter referred to as "the learned Tribunal") in MACT Case No.29 of 2016 filed under Sections 166 and 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act").

2. For the sake of convenience, parties are being referred to as per their litigative status in the Appeal filed by the Insurance Company, same being FAO No.3235 of 2017.

3. Learned Tribunal on the basis of facts, pleadings and evidence placed before it concluded that deceased-Ram Kumar had died

due to injuries suffered by him in a motor vehicular accident that took place on 11.11.2015 due to rash and negligent driving of truck bearing registration No.UP-13T-8247 (hereinafter referred to as "the offending vehicle") being driven by respondent No.5/driver, owned by respondent No.6, and insured by the appellant. Claimants are the widow, two major children, and mother of the deceased-Ram Kumar.

4. Vide the impugned Award, claimants/respondents No.1 to 4 herein have been granted compensation of Rs.18,02,780/- along with interest @ 9% per annum from the date of filing the petition till realization. Respondents No.5 and 6 and appellant were held jointly and severally liable to pay amount of compensation.

5. Vide order dated 11.05.2017, this Court had directed that there shall be stay regarding recovery of amount of compensation beyond Rs.9.50 lakh.

6. Learned Tribunal awarded compensation in following manner:-

HEADS	**AMOUNT**
Income	Rs.9,560/-
Future prospects	30%
Multiplier	15
Deduction	1/4th
Total dependency	Rs.16,77,780/-
Funeral expenses	Rs.25,000/-
Consortium to respondent No.1	Rs.1,00,000/-
Total compensation along with interest @ 9% per annum	**Rs.17,02,780/-**

7. Learned counsel for the appellant-Insurance Company inter alia, submits;

a) that income of the deceased has been taken as Rs.9560/- on the basis of Deputy Commissioner rates, which is on higher side. Special wages as per DC rates cannot be granted as these are given only for any special work done by the DC or when labour is employed in some emergency. It is submitted that it has been established on record that deceased was a casual labourer and therefore, his notional income ought to have been assessed as Rs.5,900/- per month as per relevant Minimum Wage notification. It is stated that Minimum wages as declared by the State are applicable to the whole State and should be considered. In support of his contention, learned counsel relies upon judgment of Hon'ble Supreme Court in ***Civil Appeal No.9014 of 2011 titled as "Govind Yadav Vs. The New India Insurance Co. Ltd."***;

b) that as per PMR (Exhibit P2) age of the deceased has been shown to be 40 years at the time of death. Therefore, learned Tribunal is in error in adding future prospects @ 30%, whereas, as per judgment of Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Others (2017) 16 SCC 680,** future prospects should have been granted @ 25%;

c) that consortium of Rs.1,00,000/- has been granted to respondent No.1/widow of the deceased which is on higher side;

d) that funeral expenses of Rs.25,000/- are also on higher side;

e) it is fairly stated that nothing has been granted by way of loss of estate and claimants are entitled to Rs.15,000/- towards this head.

8. Per contra, it is submitted by learned counsel for respondents No.1 to 4/cross objectors;

a) that there is no error in the assessment of income as made by learned Tribunal on the basis of DC rates. Learned counsel relies upon judgment of this Court in ***FAO-5294-2016 titled as "New India Assurance Co. Ltd. Vs. Geeta Devi @ Kavita & Others"*** to submit that even in the said case, this Court had held that minimum wages *"cannot be the sole criteria to assess the income of the victim and the computation of the income on the basis of minimum wages rates fixed by the Deputy Commissioner is also a valid criteria….."*;

b) that even if above argument on behalf of claimants is not accepted, then as per relevant Minimum Wage notification dated 25.11.2015, minimum wages admissible to an unskilled worker with effect from 01.11.2015 was Rs.7,600/-;

c) that nothing has been granted by way of consortium to claimant/respondent No.4, who is mother of deceased.

9. No other argument is made on behalf of the parties.

10. I have heard learned counsel for the parties.

11. I find some merit in the arguments advanced on behalf of both the parties. As regards income of the deceased, needless to say, as per judgment of Hon'ble Supreme Court in ***Govind Yadav (supra)***

relied upon by learned counsel for the appellant, it has been clearly held that where claimants are unable to prove monthly earnings of the deceased, in such cases, compensation has to be assessed on basis of minimum wage payable to a worker at the relevant time. There is no doubt that DC rates are special rates given by the Deputy Commissioner for his district, which rates are restricted to his district only, and are therefore, different for each district of the State; whereas Minimum Wage rates issued by the Government, are uniformly applicable throughout the State and therefore, constitute a better measure for assessing notional income of the victim. Learned counsel for the appellant-Insurance Company has not been able to support his argument that minimum wage was Rs.5,900/- per month at the relevant time; whereas learned counsel for the claimants has produced notification dated 25.11.2015 which shows that minimum wage admissible to an unskilled worker with effect from 01.11.2015 is Rs.7,600/-. Therefore, notional income of the deceased is taken to be Rs.7,600/- per month.

12. Further, it is undisputed that as per PMR (Exhibit P2), age of the deceased was 40 years at the time of accident. Accordingly, future prospects have to be granted @ 25%.

13. In view of the above submissions made by learned counsel for both the parties, and in accordance with the law laid down by the Hon'ble Supreme Court in **Pranay Sethi (supra), Sarla Verma Vs. Delhi Transport Corporation (2009) AIR (SC) 3104, and Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram, 2018 (18) SCC 130,** compensation admissible to claimants is re-worked as follows:-

HEADS	**AMOUNT**
Income	Rs.7,600/-
Future prospects	25%
Multiplier (age is 40 years)	15
Deduction	1/4th
Annual dependency	Rs.12,82,500/-
Consortium	Rs.80,000/-
Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-
Total	**Rs.13,92,500/-**
Awarded by MACT	**Rs.18,02,780/-**

14. Rate of interest shall be 6% per annum from the date of filing the claim petition till realization. Ratio of apportionment and manner of disbursement of compensation as determined by learned Tribunal is maintained.

15. Accordingly, present appeal, as well as cross objections, stand **disposed of** in above terms.

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

09.03.2023 **(Nidhi Gupta)**
Sunena **Judge**

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

SUNENA
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I attest to the accuracy and
integrity of this document