

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARHFAO 3644/2017 (O&M)
Date of decision: 15.05.2023.

The Oriental Insurance Company Limited

.....Appellant

Vs.

Paramjit Kaur and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sanjiv Pabbi, Advocate for the appellant-Insu.Co.

Mr. Vishal Gupta, Advocate for respondents 1 to 5-
claimantsMs. Rishu Madan, AAG Punjab for respondent no.7-
PUNBUS**Nidhi Gupta, J.**

Present appeal has been filed by the Insurance Company against the Award dated 23.2.2017 passed by Motor Accident Claims Tribunal, Ludhiana, (hereinafter referred to as 'the Tribunal') in MACT No.49 dated 2.12.2015 filed under Section 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act'), by claimants/respondents 1 to 5 herein. Vide the impugned Award Id. Tribunal awarded compensation of Rs.29 lacs to the Claimants, who are the widow, three minor children and mother of the deceased-Avtar Singh.

Ld. Tribunal on the appraisal of facts, pleadings and evidence on record held that the deceased had died due to injuries suffered by him in motor vehicular accident that took place on 27.10.2015 due to rash and negligent driving of Bus bearing registration No. PB-05S-9562 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.6, owned

by respondent no.7 and insured by appellant. The Tribunal awarded compensation as above along with interest @ 7.5% per annum from the date of filing of the claim petition till realization. Liability to pay the compensation was joint and several.

Ld. counsel for the appellant Insurance Company submits that the ld. Tribunal has awarded an exorbitant amount of Rs.29 lacs as compensation on a mis-appreciation of evidence on record. It is submitted that as per the claim petition filed by respondents No. 1 to 5 herein, deceased was 37 years at the time of accident. It is submitted that however, the ld. Tribunal has taken the age of the deceased as 30 years; and has therefore, incorrectly applied multiplier of 17. It is submitted that in view of the fact that the deceased was 37 years, multiplier of 15 ought to have been applied. Ld. counsel further submits that ld. Tribunal has added future prospects @ 50% whereas, as per **National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680**, the same ought to be 40%.

It is further submitted that the ld. Tribunal has granted a huge sum of Rs.3.75 lacs under the conventional heads whereas, as per latest judgment of the Hon'ble Supreme Court in **Shri Ram General Insurance Company Limited v Bhagat Singh Rawat & anr; others, C.A.No.2410-2412/2023, Mehmooda Bee and others v National Insurance Co. Ltd., SLP (C) No.16767 of 2022 and Bebi Giri vs. National Insurance Co. Ltd., Civil Appeal No.6551 of 2022 (SLP(C) No.8768 of 2018**, a total sum of Rs.70,000/- could be granted under the conventional heads.

Per contra, it is submitted by the ld. counsel for the claimants that compensation awarded by the ld. Tribunal is as per law and present appeal deserves to be dismissed.

No other argument has been raised.

Heard ld. counsel.

Perusal of the record of the case reveals that it was the pleaded case of the claimants themselves in the claim petition, that the deceased was 37 years of age at the time of accident. Memo of Parties before the Tribunal shows the age of claimant no.1/ widow-Paramjit Kaur to be 35 years. Learned Tribunal has taken the age of the deceased as 30 years on the basis of his Postmortem Report Ex.P7 wherein age of the deceased is mentioned as 30 years. However, it is well known that age as mentioned in the Postmortem Report is an approximation and may not always be reliable. In my view, learned Tribunal was in error in ignoring the categoric averment made by the claimants in the claim petition that the deceased was 37 years a time of accident. Accordingly, age of the deceased is taken as 37 years.

It therefore, follows that as per **Sarla Verma vs. Delhi Transport Corporation (2009) AIR (SC) 3104**, multiplier of 15 is applicable. Further, there can be no dispute that as deceased was less than 40 years of age, then as per judgment of the Hon'ble Supreme Court in **Pranay Sethi** (supra) future prospects @ 40% have to be added.

Ld. Tribunal has further granted each of the 5 claimants Rs.50,000/- for loss of love and affection; and has further awarded Rs.1 lac towards loss of consortium; and a sum of Rs.25,000/- towards funeral expenses. It remains undisputed that as per latest judgment of the Hon'ble

Supreme Court in **Bhagat Singh’s** case (supra), a total sum of Rs.77,000/- only can be granted under the conventional heads.

Accordingly, in view of the discussion hereinabove, compensation payable to the claimants is reworked as under. It may be pointed out that vide order dated 25.5.2017, at the time of issuance of Notice of Motion this Court had stayed recovery of compensation beyond Rs. 15 lacs.

Sr.No.	Head	MACT (in Rupees)	IN APPEAL (in Rupees)
1.	Monthly income	11,000/-	11,000/-
2.	Future prospects	5500% @ 50%	4400/- @ 40%
3.	Annual income	16500x12= 1,98,000/-	15,400x12= 1,84,800/-
4.	Deduction	1/4 th (1,98,000 – 49,500= 1,48,500/-)	1/4 th (1,84,800 – 46,200 = 1,38,600/-)
5.	Multiplier	17	15
6.	Total dependency	1,48,500x17= 25,24,500/-	1,38,600x15= 20,79,000/-
7.	Conventional heads	3,75,000/-	77,000/-
8.	Total compensation	28,99,500/-	21,56,000/-

Present appeal is accordingly, **allowed** in above terms. Interest @ 7.5% as awarded by the Tribunal is maintained. Further, ratio and manner of apportionment of compensation as determined by the Id. Tribunal is also maintained.

Pending Application(s), if any, stand disposed of.

15.05.2023.
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No