

FAO-1113-2018 (O&M) and other connected cases

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on:- 05.10.2023

Pronounced on:- 06.11.2023

(1) FAO-1113-2018 (O&M)

United India Insurance Company Limited

...Appellant

Versus

Sunil and others

...Respondents

(2) FAO-1114-2018 (O&M)

United India Insurance Company Limited

... Appellant

Versus

Kavita Devi and others

...Respondents

(3) FAO-1119-2018 (O&M) with
Cross-OBJ-64-2022 (O&M)

United India Insurance Company Limited

... Appellant

Versus

Manoj Devi and others

...Respondents

(4) FAO-1120-2018 (O&M)

United India Insurance Company Limited

... Appellant

Versus

Neelam Devi and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:-

Mr. D.P. Gupta, Advocate
for the appellant – Insurance Company.

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Mr. Atul Aggarwal, Advocate for
respondent No. 1 in FAO-1113-2018 and
for respondents No. 1 to 3 in FAO-1120-2018.

Mr. Jagjeet Beniwal, Advocate
for respondent No. 1 in FAO-1114-2018.

Mr. Suresh Nain, Advocate for
Mr. Manjeet Singh, Advocate for
respondent No. 3 in FAO-1114-2018.

Mr. R.P. Singh Ahluwalia, Advocate
for respondent No. 3 in FAO-1113-2018,
for respondent No. 6 in FAO-1114-2018,
for respondent No. 7 in FAO-1119-2018 and
for respondent No. 7 in FAO-1120-2018.

Mr. Shamsher Singh Tomar, Advocate
for cross-objectors No. 1 to 5 in FAO-1119-2018.

AMARJOT BHATTI, J.

1. The appellant – United India Insurance Company Ltd. has filed these appeals to challenge the common Award dated 30.10.2017, passed by the learned Motor Accident Claims Tribunal, Jind, in MACP case Nos. 11 to 14 (RBT), instituted on 04.01.2014/12.04.2016, whereby compensation of Rs. 12,59,600/- (on account of death of Munish Kumar in a motor vehicular accident), Rs. 1,36,336/- (on account of injuries suffered by Sunil @ Rohit in a motor vehicular accident), Rs. 10,66,550/- (on account of death of Ram Niwas in a motor vehicular accident) and Rs. 13,88,300/- (on account of death of Sultan Singh in a motor vehicular accident) along with the interest @ 9% per annum as detailed therein was awarded to the petitioners/claimants. All these appeals have arisen out of the common Award dated 30.10.2017, therefore, the appeals are taken up together for disposal.

The respondents No.1 to 5/cross-objectors in FAO No. 1119

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compensation along with interest till the realization of the amount.

2. Brief facts of the case are as follows :-

On the fateful day of 21.11.2013, at about 10:00 P.M., deceased Munish Kumar along with his friends Ram Niwas, Sultan and Sunil started their journey from Narwana to Vrindavan (U.P.) in a Maruti Car bearing Registration No. HR-99-QMTP-3245 which was owned by Sultan Singh. At about 11:30 P.M., Satish Kumar received a telephonic message from Sunil that they had met with an accident and all were in injured condition near a drain minor situated at Narwana road, Jind. On reaching the spot, Satish Kumar saw that Swift Maruti Car bearing Registration No. HR-99-QMTP-3245 was beneath a Truck bearing Registration No. HR-38-F-4365. His brother Munish Kumar was on driving seat and all of them were badly injured. The complainant identified the body of Munish and Sultan, who died in the car itself. Sunil and Ram Niwas were shifted to General Hospital, Jind by some passers-by. However, Ram Niwas succumbed to the injuries in the hospital. It has been alleged that the accident had taken place due to the rash and negligent driving of offending vehicle, being driven by respondent No. 1. In this regard, FIR bearing No. 938 dated 22.11.2013 under Sections 279, 337, 338 and 304-A of IPC was registered in Police Station City Jind on the statement of Satish Kumar.

3. The claim petition bearing MACP No. 11 (RBT) instituted on 04.01.2014/12.04.2016 titled as 'Manoj Devi etc. vs. Sandeep etc.' was filed by claimants i.e. petitioner No. 1 (wife), petitioner No. 2 and 3 (minor children), petitioner No. 4 (mother) and petitioner No. 5 (father) under Section 166 of Motor Vehicles Act for grant of compensation on account

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Kumar was 32 years of age at the time of accident. He was a diploma holder of Multipurpose Health Worker and was a private practitioner and doing his private practice in his clinic at Narwana and was earning Rs.25,000/- per month. Therefore, on account of death of Munish Kumar in a motor vehicular accident, it was prayed that the respondents No. 1 to 3 are jointly and severally liable to compensate the claimants to the extent of Rs. 25.00 lacs, along with interest @ 18% p.a. from the date of accident till its realization.

4. The claim petition bearing MACP No. 12 (RBT) instituted on 04.01.2014/12.04.2016 titled as 'Sunil @ Rohit vs. Sandeep etc.' was filed by injured Sunil @ Rohit himself under Section 166 of Motor Vehicles Act for grant of compensation on account of injuries suffered by him in a motor vehicular accident. Injured Sunil @ Rohit was 25 years of age at the time of accident. He was working as private investigator and also doing the work of private trading and was earning Rs. 20,000/- per month. Therefore, on account of injuries suffered by him in a motor vehicular accident, he had claimed compensation of Rs. 10.00 lacs along with interest @ 18% p.a. from the respondents jointly and severally.

5. The claim petition bearing MACP No. 13 (RBT) instituted on 04.01.2014/12.04.2016 titled as 'Neelam Devi etc. vs. Sandeep etc.' was filed by claimants i.e. petitioner No. 1 (wife), petitioner No. 2 (unmarried daughter), petitioner No. 3 (minor son) and petitioners No. 4 and 5 (parents of deceased Ram Niwas) under Section 166 of Motor Vehicles Act for grant of compensation on account of death of Ram Niwas in a motor vehicular accident. Late Ram Niwas was 46 years of age at the time of accident. He was an agriculturist and used to cultivate the field of other farmers on contract basis and was earning Rs. 20,000/- per month.

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Therefore, on account of death of Ram Niwas, it was prayed that the respondents No. 1 to 3 are jointly and severally liable to compensate the claimants to the extent of Rs. 20.00 lacs, along with interest @ 18% p.a. from the date of accident till its realization.

6. The claim petition bearing MACP No. 14 (RBT) instituted on 04.01.2014/12.04.2016 titled as 'Kavita Devi etc. vs. Sandeep etc.' was filed by claimants i.e. petitioner No. 1 (wife), petitioner No. 2 (minor daughter) and petitioners No. 3 and 4 (parents of deceased) under Section 166 of Motor Vehicles Act for grant of compensation on account of death of Sultan Singh in a motor vehicular accident. Late Sultan Singh was 22 years of age at the time of accident. He was a Steno-Typist working in a Civil Court Compound, Narwana and was doing the work of Typing, Photostat, Lamination etc. and was also doing the work of driving on part time basis and was earning Rs. 18,000/- per month. Therefore, on account of death of Sultan Singh, it was prayed that the respondents No. 1 to 3 are jointly and severally liable to compensate the claimants to the extent of Rs. 22.00 lacs, along with interest @18% p.a. from the date of accident till its realization.

7. All the claim petitions were contested by respondents No. 2 and 3 i.e. Richpal Singh, owner of Truck bearing Registration No. HR-38-F-4365 and insurance company and they filed their separate written statements in all the claim petitions taking the same stand.

In the written statements filed by respondent No. 2 in all the claim petitions, preliminary objections regarding cause of action and misjoinder of parties were taken. On merits, it was alleged that petitioners/claimants may be put to strict proof of the facts stated in their

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version regarding education and earning of the deceased/injured. In fact, no accident took place with offending Truck bearing Registration No. HR-38-F-4365. The FIR is based on concocted version. It was admitted that the alleged Truck was insured with respondent No. 3 on the day of alleged accident. The claim of the claimants/petitioners regarding compensation is also denied. It was prayed that the claim petitions filed by the petitioners may kindly be dismissed qua the answering respondent.

The insurance company – respondent No. 3 also filed separate written statements in all the claim petitions, whereby taking the preliminary objections regarding petition being false and frivolous; cause of action; locus standi; maintainability; non-joinder of necessary parties etc. On merits, it was pleaded that the claimants/petitioners be put to strict proof regarding the salary of injured/deceased. A false FIR has been registered in collusion with the local police by the petitioners. In fact, no such accident had taken place with the involvement of Oil Tanker No. HR-38F-4365 or due to fault of its driver at the given date, time and place. No alleged injuries have been suffered by the deceased or the injured. All the facts were denied with the prayer that the claimants/petitioners may be put to strict proof of age, income and regarding the claim for compensation. It was prayed that the claim petitions filed by the petitioners may kindly be dismissed qua the answering respondent – Insurance Company.

8. From the pleadings of the parties, following consolidated issues were framed by the Tribunal on 04.11.2015 :-

(1) Whether the accident in question took place on 21.11.2013 resulting in the death of Munish, Ram Niwas, Sultan Singh and injuries on the person of petitioner Sunil @ Rohit due to rash and negligent driving of Truck bearing registration No. HR-38F-4365 driven by respondent No. 1, as alleged in the petition? *OPP*

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(2) If issue No. 1 is proved in the affirmative, what amount of compensation the petitioners are entitled to and from whom?

OPP

(3) Whether the respondent No. 1 was not holding a valid and effective driving license at the time of accident and respondent No.2 has violated the terms and conditions of insurance policy?

OPR

(4) Relief.

9. In order to prove their respective claim petitions, the claimant Kavita Devi (in MACP No. 14) stepped into the witness box as PW-1, claimant Krishna Devi (in MACP No. 11) stepped into the witness box as PW-2, claimant Neelam Devi (in MACP No. 13) stepped into the witness box as PW-3, claimant Sunil @ Rohit (in MACP No. 12) stepped into the witness box as PW-5. The claimants also examined Satish Kumar as PW4.

Thereafter, learned counsel for the petitioners tendered documents i.e. copy of Postmortem Report of Sultan as P-3, certified copy of report under Section 173 Cr.P.C. as P-4, charge sheet as Ex.P-5, copy of Income Tax Return as P-6, copy of Medical as Ex.P-7, copy of annual examination of medical council as Ex.P-8, copy of statement of marks DEHM course as Ex.P-9, copy of diploma in Electro Homeo Medicine Certificate as Ex.P-10, medicine bills as Ex.P-11 to Ex.P-14, discharge card as Ex.P-15, diagnose certificate as Ex.P-16, OPD card as Ex.P-17, copy of experience certificate as Ex.P-18 and copy of experience certificate Mark-A, photocopy of DL of Ram Niwas Mark B and closed the evidence.

10. In order to rebut the case of the petitioners/claimants, learned counsel for respondents No. 1 and 2 tendered documents i.e. insurance policy as Ex.R-1, copy of DL of respondent No. 1 as Ex.R-2, copy of DL

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verification report as Ex.R-3, copy of route permit as Ex.R-4 and closed the evidence.

11. On the other hand, learned counsel for respondent No. 3 tendered documents i.e. DL verification report as Ex.R-5 and Ex.R-6 and certified copy of insurance policy as Ex.R-7 and closed the evidence.

12. In rebuttal evidence, learned counsel for the petitioners tendered documents i.e. certified copies of Postmortem Report of deceased Munish Kumar, Postmortem Report of deceased Ram Niwas, MLR of injured Sunil @ Rohit, RC of Tractor bearing No. HR-38-F-4365, copy of RC of Tractor bearing No. HR-32-F-9894, copy of jamabandi, original DL of Munish Kumar, original identity card of Munish and Income Tax Returns as Ex.P-19 to Ex.P-29, respectively.

13. After hearing the arguments advanced by learned counsel for all the parties, the claim petitions filed by the claimants were allowed by passing common Award dated 30.10.2017, as referred above.

Feeling aggrieved of this Award, the present four appeals bearing FAOs No. 1113, 1114, 1119 and 1120 of 2018 have been preferred by appellant/United India Insurance Company Limited, whereas, the respondents No. 1 to 5/cross-objectors have filed cross-objections bearing No. 64 of 2022 in FAO-1119-2018.

14. I have heard the arguments advanced by learned counsel for the insurance company as well as the arguments advanced by learned counsel for the respondents/claimants. No arguments were advanced regarding the findings pertaining to Issue No. 1. The learned counsel for insurance company advanced arguments pertaining to the quantum of compensation and validity of driving license of respondent No. 1 Sandeep

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learned counsel for the insurance company regarding the quantum of compensation awarded by the learned Motor Accident Claims Tribunal, Jind in the aforesaid MACP cases regarding which Issue No. 2 has been framed.

FINDINGS IN FAO-1113-2018

15. In FAO-1113-2018 Sunil @ Rohit was awarded compensation to the tune of Rs. 1,36,336/- along with interest on account of injuries suffered by him in the said accident. It is argued by the learned counsel for insurance company that compensation awarded in favour of Sunil @ Rohit is towards the higher side. The learned Tribunal has wrongly granted Rs. 79,186/- on account of expenses incurred on medical bills. In fact, the said medical bills were never proved on record nor the claimant examined any doctor to prove the injuries suffered by him in the accident. Even the prescription slips for the said medicines were not produced on record. The compensation awarded on account of pain and agony, for special diet, transportation are also towards the higher side.

16. On the other hand, learned counsel for respondent No.1/claimant argued that the facts of the case are duly proved on record by the claimant Sunil @ Rohit as PW-5. He has placed on record the relevant documents pertaining to medical treatment and the bills regarding purchase of medicine. The compensation has been awarded to Sunil @ Rohit as per the documents proved on record by him. Therefore, the quantum of compensation awarded in favour of Sunil @ Rohit does not require any interference.

17. I have considered the quantum of compensation awarded in favour of Sunil @ Rohit on account of injuries suffered by him in the

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5 to prove his own version. He claimed that he was admitted in Oscar Super Specialty Hospital and Trauma Centre, Rohtak, where he remained under treatment from 22.11.2013 to 29.11.2013. During this period, he had spent money on purchase of medicine. He incurred expenditure for his treatment in the hospital. The discharge card/certificate of Oscar Super Specialty Hospital and Trauma Centre, Rohtak is Ex.P-15 and Ex.P-16. The bill of the hospital is Ex.P-13 and the bill regarding purchase of medicines are Ex.P-11, Ex.P-12 and Ex.P-14. Apart from this, the injured claimant also placed on record his MLR, which is Ex.P-21. Considering the aforesaid bills of the hospital as well as for purchase of medicine, the compensation on account of medical expenditure to the tune of Rs.79,186/- is fully justified. The injured remained in the hospital for 8 days. He suffered pain and agony. His family members must have spent money on special diet as well as on transportation. Even after accident, he must have visited hospital for follow-up treatment. At the time of accident, the claimant Sunil @ Rohit was not earning income. He was a student as per his cross-examination. Therefore, his education must have suffered adversely. Considering all aspects of the case, the compensation on account of pain and suffering to the tune of Rs. 25,000/-, expenditure for transportation and special diet to the tune of Rs. 25,000/- are fully justified. Since, the injured was a student, therefore instead of loss of income, the compensation for loss of education to the tune of Rs. 7,150/- is also justified. It cannot be said that compensation awarded by learned Motor Accident Claims Tribunal, Jind, to the tune of Rs.1,36,336/- is towards the higher side or unjustified. Therefore, I do not find any merits in the arguments advanced by learned counsel for the insurance company

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Rohit on account of injuries suffered by him in the motor vehicle accident. Therefore, the quantum of compensation awarded by the learned Motor Accident Claims Tribunal, Jind vide Award dated 30.10.2017 in favour of Sunil @ Rohit is accordingly, upheld.

FINDINGS IN FAO-1114-2018

18. The learned counsel for insurance company argued that quantum of compensation awarded in favour of Kavita Devi and others on account of death of Sultan in a motor vehicle accident is towards the higher side. The learned Motor Accident Claims Tribunal, Jind has wrongly assessed the compensation by considering the income of deceased as Rs. 7,150/- per month as per DC Rate. The learned Motor Accident Claims Tribunal, Jind could not have considered his income as per the wages fixed for the employees of various Government departments, rather, the income of deceased should have been considered as provided under Minimum Wages Act. To support his arguments, the learned counsel for insurance company has relied upon the judgment passed by Coordinate Bench in ***FAO-303-2018 (O&M), decided on 19.01.2018***, case titled **“United India Insurance Company Limited versus Smt. Ram Vati and others”**, where it was observed in that case that *the learned Motor Accident Claims Tribunal wrongly assessed income of deceased on the basis of Deputy Commissioner’s rates, as against the minimum wages fixed by the State of Haryana*. It was further observed in that case that *Deputy Commissioner’s rates are available when the person is actually employed on daily wage basis in a Government department*. Therefore, in that case, the compensation was re-assessed by considering the income of deceased on the basis of minimum wages fixed by the State of Haryana. It

is argued that there was no evidence led by the claimants to prove the

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income of deceased victim Sultan who was 22 years of age at the time of accident. Under these circumstances, the income of deceased being unskilled worker should have been considered which was prevailing at the time of accident, which took place on 21.11.2013. The learned Motor Accident Claims Tribunal, Jind has wrongly awarded compensation of Rs. 1 lac on account of loss consortium, Rs. 1 lac for loss of care and guidance for minor children and highly excessive compensation of Rs. 25,000/- was granted for funeral expenses. Therefore, the compensation awarded by the learned Motor Accident Claims Tribunal, Jind is highly excessive and unjustified.

19. On the other hand, learned counsel representing the respondents/claimants pointed out that compensation awarded by the learned Motor Accident Claims Tribunal, Jind is in-fact towards the lower side, as while calculating compensation, the future prospects have not been considered. The learned Tribunal was not bound to consider the income of deceased as provided under Minimum Wages Act. The Tribunal is to consider the relevant facts and circumstances of each case. The claimant Kavita Devi, minor child and the parents are also entitled to receive compensation under the head of loss of consortium/filial consortium. Therefore, by no means the compensation awarded by the learned Motor Accident Claims Tribunal, Jind is towards the higher side or excessive. In-fact, the claimants are entitled to receive enhanced amount of compensation.

20. I have considered the arguments advanced by learned counsel for the insurance company and the point raised by learned counsel for the respondents/claimants. In the case in hand, the deceased victim is namely

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case, he was running a shop of typing, photostat, lamination, fax, scanning, printing etc. and it was alleged that he was earning Rs. 18,000/- per month. However, Kavita PW-1 during her cross-examination admitted that she does not have any proof regarding the income of her husband. The learned Motor Accident Claims Tribunal, Jind has considered the income of late Sultan as Rs. 7,150/- per month. It is matter of record that while assessing the quantum of compensation, no enhanced income has been considered on account of future prospects. The learned counsel for insurance company has mainly argued on the point that the income of deceased victim should have been considered on the basis of Minimum Wages Act instead of rate of wages fixed by the Deputy Commissioner. I have considered this aspect of the present case. In my opinion, there cannot be any fixed rule in all the situations where there is no documentary evidence regarding income of the deceased nor there is any fixed rule that income of the deceased has to be taken only as per minimum wages revised from time to time. The income provided in Minimum Wages Act, revised from time to time can be a basic criteria or guideline to assess the income of deceased or injured, as the case may be. The facts and circumstances of each case has to be evaluated. No restriction can be imposed in assessing the income of deceased or the injured in order to assess just and fair compensation for the dependents. The provision to grant compensation under Motor Vehicles Act is a beneficial legislation and in such like situation, the restriction to assess the income of deceased victim as provided under Minimum Wages Act is unjustified. Therefore, the arguments advanced by learned counsel for the insurance company on this point does not hold ground. The accident took place on 21.11.2013. The deceased victim was 22 years of age.

Considering these facts, in my opinion, the income assessed by the learned

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Motor Accident Claims Tribunal, Jind as Rs. 7,150/- per month is neither excessive nor unjustified. Rather, while calculating the quantum of compensation, no future prospects have been considered. By relying upon the authority cited in “National Insurance Company Limited versus Pranay Sethi and Ors.”, *2017(4) R.C.R.(Civil) 1009*, the future prospects have to be considered in case of deceased Sultan, who was 22 years old, which is to the extent of 40%. The claimants/respondents have not filed cross-objections in this appeal. The quantum of compensation is agitated by the insurance company. There is a glaring mistake that the Tribunal has not considered future prospects while calculating the quantum of compensation and the same cannot be ignored. Therefore, the compensation awarded by the learned Motor Accident Claims Tribunal, Jind requires re-calculation. Thus, 40% increase in monthly income, as assessed by the learned Motor Accident Claims Tribunal, Jind to the tune of Rs. 7,150/- comes out to be Rs. 2860/- and the total monthly income comes out to be Rs. 10,010/-, round figure Rs. 10,000/- and the annual income comes out to be Rs. 1,20,000/-. Considering the number of family members i.e. wife, minor child and the parents, 1/4th income is deducted towards personal expenditure and the annual dependency of the family is taken as Rs. 90,000/-. Considering the age of the deceased victim as 22 years, multiplier of 18 is appropriate and with this multiplier, the amount of compensation comes out to be Rs.16,20,000/-. The wife, minor child and the parents are also awarded compensation of Rs. 40,000/- each on account of loss of consortium/filial consortium, which comes out to be Rs. 1,60,000/-. The claimants are granted Rs. 15,000/- towards loss to estate, Rs. 15,000/- towards funeral expenditure and the total amount of compensation comes out to be Rs. 18,10,000/-, which the claimants are

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entitled to receive from the respondents. After adjusting Rs. 13,88,300/-, in case already deposited, the difference is of Rs. 4,21,700/-, which the dependents are entitled to receive with interest, as per the terms of Award passed by the Tribunal. Therefore, considering these facts, the quantum of compensation awarded in favour of the claimants in MACP No. 14 of 04.01.2014/12.04.2016 titled as Kavita Devi etc. Vs. Sandeep etc. stands modified in favour of the claimants and against the respondents in MACP case.

FINDINGS IN FAO-1119-2018 & CROSS-OBJ-64-2022

21. The learned counsel for insurance company raised the same arguments which were raised in FAO-1114-2018. He argued that the quantum of compensation awarded in favour of Manoj Devi and others on account of death of Munish in a motor vehicle accident is towards the higher side. The learned Motor Accident Claims Tribunal, Jind has wrongly assessed the compensation by considering the income of deceased as Rs. 7,150/- per month as per DC Rate. The learned Motor Accident Claims Tribunal, Jind could not have considered his income as per the wages fixed for the employees of various Government departments, rather, the income of deceased should have been considered as provided under Minimum Wages Act. During these arguments also, he has relied upon the judgment passed by Coordinate Bench in **United India Insurance Company Limited versus Smt. Ram Vati and others**” (supra), where in that case, the compensation was re-assessed by considering the income of deceased on the basis of minimum wages fixed by the State of Haryana. It is argued that the evidence led by the claimants to prove the income of deceased victim Munish who was 32 years of age at the time of accident

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being unskilled worker should have been considered under Minimum Wages Act which was prevailing at the time of accident, which took place on 21.11.2013. The learned Motor Accident Claims Tribunal, Jind has wrongly awarded compensation of Rs. 1 lac on account of loss consortium, Rs. 1 lac for loss of care and guidance for minor children and highly excessive compensation of Rs. 25,000/- was granted for funeral expenses. Therefore, the compensation awarded by the learned Motor Accident Claims Tribunal, Jind is highly excessive and unjustified.

22. On the other hand, learned counsel for respondents/claimants/cross-objectors No. 1 to 5 took the stand that while awarding compensation on account of death of late Munish, his income was not considered which was duly proved on record at the time of leading evidence. The compensation is grossly inadequate. Munish, the deceased victim was 32 years old at the time of accident. He was a diploma holder of multipurpose health worker and was a private practitioner at Narwana. The certificates placed on record were Ex.P-7 to Ex.P-10. Krishna, mother of the deceased victim also stepped into the witness box as PW-2 to prove the aforesaid facts. His Income Tax Returns were also proved on record which are Ex.P-27 to Ex.P-29. As per record, his date of birth is 10.12.1980. While granting compensation, his income was wrongly assessed as Rs. 7,150/- per month. While calculating the quantum of compensation, future prospects were not considered. As per the latest Income Tax Return Ex.P-27, his gross income was mentioned as Rs. 2,40,380/- and after deduction of income tax, his annual income was Rs. 2,36,053/-. Considering his age, the compensation should have been granted by giving 40% increase in income on account of future prospects.

The claimants were entitled to compensation on account of loss of

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consortium, funeral expenditure and loss to estate. The learned Motor Accident Claims Tribunal, Jind has totally ignored the oral evidence as well as the documents which were exhibited on the record and meager compensation of Rs. 12,59,600/- was granted by the learned Motor Accident Claims Tribunal, Jind. It is argued that the claimants were entitled to receive enhanced compensation on account of death of Munish in a motor vehicle accident. Therefore, the cross-objections filed by the claimants be accepted accordingly.

23. I have considered the arguments advanced before me. In this case, Munish the deceased victim died in motor vehicle accident. In the claim petition, it was alleged that he was 32 years old and was earning Rs.25,000/- per month. In order to establish the facts of the case, Krishna mother of the deceased victim stepped into the witness box as PW-2. She has placed on record the certificates of Munish as multipurpose health worker, which are Ex.P-7 to Ex.P-10. In order to establish the income, the respondents/claimants/cross-objectors No. 1 to 5 have placed on record the Income Tax Returns Ex.P-27 to Ex.P-29 and as per the latest Income Tax Return Ex.P-27 his gross income is mentioned as Rs. 2,40,380/-. After deduction of income tax, the net income is mentioned as Rs. 2,36,053/-. With this annual income, the monthly income comes out to be approximately Rs. 19,671/-. The learned Motor Accident Claims Tribunal, Jind has failed to justify as to why the aforesaid ITRs exhibited on the file were ignored. The learned Motor Accident Claims Tribunal, Jind has wrongly considered the income of deceased victim to the tune of Rs. 7,150/- per month by wrongly ignoring the income of deceased as per his ITRs. Therefore, the quantum of compensation awarded by the learned

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without any basis and it requires recalculation. After considering the ITR Ex.P-27, the monthly income of the deceased is taken as Rs. 19,000/- (round figure). Considering his age as 32 years, he is given 40% increase in income on account of future prospects as provided in **National Insurance Company Limited versus Pranay Sethi and Ors. (supra)** and 40% increase is Rs. 7600/- and the monthly income is taken as Rs.26,600/- and the annual income comes out to be Rs. 3,19,200/-. Considering the number of family members, 1/4th income is deducted towards personal expenditure and the annual dependency of the family comes out to be Rs.2,39,400/-. By relying upon the authority cited in ***2009 ACJ 1298 Supreme Court of India***, in case titled “**Smt. Sarla Verma and others Vs Delhi Transport Corporation and another**”, considering his age as 32 years, multiplier of 16 is appropriate to be applied in this case and with this multiplier, amount of compensation comes out to be Rs. 38,30,400/-. The respondents/claimants/cross-objectors No.1 to 5 who are widow, two minor children and old parents, they are granted Rs. 40,000/- each on account of loss of consortium/filial consortium, which comes out to be Rs.2,00,000/-. The respondents/claimants/cross-objectors No. 1 to 5 are further granted Rs. 15,000/- towards funeral expenditure, Rs. 15,000/- towards loss to estate. Thus, total amount of compensation comes out to be Rs. 40,60,400/-, which the respondents/claimants/cross-objectors No. 1 to 5 are entitled to receive from the respondents in MACP case. After adjusting the compensation of Rs. 12,59,600/- in case already deposited, the difference is of Rs. 28,00,800/- which the dependents are entitled to receive with interest as per the terms of Award passed by the Tribunal.

With this observation, the cross-objections filed by the respondents/claimants/cross-objectors No. 1 to 5 are accepted.

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FINDINGS IN FAO-1120-2018

24. The learned counsel for insurance company raised the same arguments which were raised in FAO-1114-2018 and FAO-1119-2018. He argued that the quantum of compensation awarded in favour of Neelam Devi and others on account of death of Ram Niwas in a motor vehicle accident is towards the higher side. The learned Motor Accident Claims Tribunal, Jind has wrongly assessed the compensation by considering the income of deceased as Rs. 7,150/- per month as per DC Rate. The learned Motor Accident Claims Tribunal, Jind could not have considered his income as per the wages fixed for the employees of various Government departments, rather, the income of deceased should have been considered as provided under Minimum Wages Act. During these arguments also, he has relied upon the judgment passed by Coordinate Bench in **United India Insurance Company Limited versus Smt. Ram Vati and others**" (supra), where in that case, the compensation was re-assessed by considering the income of deceased on the basis of minimum wages fixed by the State of Haryana. It is argued that there was no evidence led by the claimants to prove the income of deceased victim Ram Niwas who was 46 years of age at the time of accident. Under these circumstances, the income of deceased being unskilled worker should have been considered which was prevailing at the time of accident which took place on 21.11.2013. The learned Motor Accident Claims Tribunal, Jind has wrongly awarded compensation of Rs.1 lac on account of loss consortium, Rs. 1 lac for loss of care and guidance for minor children and highly excessive compensation of Rs. 25,000/- was granted for funeral expenses. Therefore, the compensation awarded by the learned Motor Accident Claims

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25. On the other hand, learned counsel representing the respondents/claimants pointed out that compensation awarded by the learned Motor Accident Claims Tribunal, Jind is in-fact towards the lower side, as while calculating compensation, the future prospects have not been considered. The claimant, minor children and the old parents are also entitled to receive compensation under the head of loss of consortium/filial consortium. Therefore, by no means the compensation awarded by the learned Motor Accident Claims Tribunal, Jind is towards the higher side or excessive. In-fact, the claimants are entitled to receive enhanced amount of compensation.

26. I have considered the arguments advanced by learned counsel for the insurance company and the point raised by learned counsel for the respondents/claimants. In the case in hand, the deceased victim Ram Niwas was 46 years old at the time of accident. As per the facts of the case, he was an agriculturist and having a tractor which was used for the work of earth filling, cultivating the fields of other farmers on contract basis along with his own fields and it was alleged that he was earning Rs.20,000/- per month. However, Neelam PW-3 during her cross-examination admitted that she does not have any proof regarding the income and occupation of her husband. The learned Motor Accident Claims Tribunal, Jind has considered the income of late Ram Niwas as Rs.7,150/- per month. It is matter of record that while assessing the quantum of compensation, no enhanced income has been considered on account of future prospects. The learned counsel for insurance company has mainly argued on the point that the income of deceased victim should have been considered on the basis of Minimum Wages Act instead of wages fixed by the Deputy Commissioner.

However, as discussed above in the findings given in FAO-1114-2018,

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there cannot be any fixed rule in all the situations where there is no documentary evidence regarding income of the deceased nor there is any fixed rule that income of the deceased has to be fixed only as per minimum wages revised from time to time. The income provided in Minimum Wages Act revised from time to time can be a basic criteria or guideline to assess the income of deceased or injured, as the case may be. The facts and circumstances of each case has to be evaluated. No restriction can be imposed in assessing the income of deceased or the injured in order to assess just and fair compensation for the dependents. The provision to grant compensation under Motor Vehicles Act is a beneficial legislation and in such like situation, the restriction to assess the income of deceased victim as provided under Minimum Wages Act is unjustified. Therefore, the arguments advanced by learned counsel for the insurance company does not hold any ground. The accident took place on 21.11.2013. The deceased victim was 46 years of age. Considering these facts, in my opinion, the income assessed by the learned Motor Accident Claims Tribunal, Jind as Rs.7,150/- per month is neither excessive nor unjustified. Rather, while calculating the quantum of compensation, no future prospects have been considered. By relying upon the authority cited in **National Insurance Company Limited versus Pranay Sethi and Ors.** (supra), the future prospects have to be considered in case of deceased Ram Niwas, who was 46 years old, to the extent of 25%. The claimants/respondents have not filed cross-objections in this appeal. The quantum of compensation is agitated by the insurance company. There is a glaring mistake that the Tribunal has not considered future prospects while calculating the quantum of compensation and the same cannot be ignored.

Therefore, the compensation awarded by the learned Motor Accident

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Claims Tribunal, Jind requires re-calculation. Thus, 25% increase in monthly income, as assessed by the learned Motor Accident Claims Tribunal, Jind to the tune of Rs. 7,150/- comes out to be Rs. 1787/- and the total monthly income comes out to be Rs. 8937/-, round figure Rs. 8900/- and the annual income comes out to be Rs. 1,06,800/-. Considering the number of family members i.e. wife, two children and the old parents, 1/4th income is deducted towards personal expenditure and the annual dependency of the family is taken as Rs. 80,100/-. Considering the age of the deceased victim as 46 years, multiplier of 13 is appropriate and with this multiplier, the amount of compensation comes out to be Rs.10,41,300/-. The wife, both children and the parents are also awarded compensation of Rs. 40,000/- each on account of loss of consortium/filial consortium, which comes out to be Rs. 2,00,000/-. The claimants are granted Rs. 15,000/- towards loss to estate, Rs. 15,000/- towards funeral expenditure and the total amount of compensation comes out to be Rs.12,71,300/-, which the claimants are entitled to receive from the respondents in MACP case. After adjusting Rs. 10,66,550/-, in case already deposited, the difference is of Rs. 2,04,750/- which the dependents are entitled to receive with interest as per the terms of Award passed by the Tribunal. Therefore, considering these facts, the quantum of compensation awarded in favour of the claimants in MACP No. 13 of 04.01.2014/12.04.2016 titled as Neelam Devi etc. Vs. Sandeep etc. stands modified in favour of the claimants and against the respondents in MACP case.

COMMON FINDING ON ISSUE NO. 3

27. The learned counsel for the insurance company raised the

Issue that the findings given by the learned Motor Accident Claims

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Tribunal, Jind pertaining to issue No. 3 are erroneous and against the provisions of law. It is wrongly held by the learned Motor Accident Claims Tribunal, Jind that the driver was having valid Driving License. It is duly proved on record that the vehicle involved in this case was a Tanker. For driving a Tanker, it requires special endorsement that the driver was competent to drive a vehicle carrying dangerous or hazardous goods. As per Rule 132 (5) of Central Motor Vehicles Rule, 1989, it is the duty of the owner to ensure that the driver of the goods carriage carrying dangerous or hazardous goods holds a driving license as per the rule 9 of the aforesaid Central Motor Vehicles Rules. The learned Motor Accident Claims Tribunal, Jind has failed to appreciate the legal position in this regard. To support his arguments, the learned counsel for the insurance company has relied upon the judgment of Coordinate Bench of our own High Court in ***FAO-5232-2013 (O&M)***, titled “**Hardeep Singh versus Rajesh Singh and others**”, where it was rightly concluded that “*special endorsement is required for driving a goods carriage vehicle meant for transporting dangerous or hazardous goods, as provided under Section 14(2) of the Motor Vehicles Act read with the rules provided under Central Motor Vehicles Rule, 1989.*” It is argued that once it was established that there was no such endorsement on the driving license of the driver of offending Tanker, then it was a clear cut case of violation of terms and conditions of the insurance policy which entitled the insurance company to recover the amount of compensation awarded by the Tribunal from the insured. He has relied upon the authority cited in ***(2018) AIR(SCW) 592, Supreme Court of India***, in case titled “**Pappu versus Vinod Kumar Lamba**”, where in that case on account of breach of terms

and conditions of insurance policy, the insurance company was given

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liberty to recovery this amount of compensation from the owner of the vehicle in accordance with law. Therefore, the findings given by the learned Motor Accident Claims Tribunal, Jind pertaining to issue No. 3 are liable to be reversed, giving liberty to the insurance company to recover the amount of compensation awarded in this case from the insured.

28. The learned counsel for the owner of offending vehicle pointed out that the findings given by the learned Motor Accident Claims Tribunal, Jind pertaining to issue No. 3 are fully justified. As per the driving license Ex.R-2, Sandeep – respondent No. 1 in the claim petition was having valid driving license to drive MC, LMV, HGV, HTV and the driving license was valid from 15.01.2010 to 14.01.2016 and renewed on 23.04.2013. The verification report of the driving license under RTI is Ex.R-3 and the verification report of Gita Ram Parmar, Advocate is Ex.R-5. The driving license standing in the name of Sandeep – respondent No. 1 was found to be genuine. The vehicle was duly insured with the insurance company vide insurance policy Ex.R1/R7. Therefore, the insurance company cannot escape its liability to make the payment of compensation awarded by the learned Motor Accident Claims Tribunal, Jind.

29. I have considered the arguments advanced pertaining to issue No. 3 and have gone through the record carefully. There is no dispute regarding findings given pertaining to issue No. 1. The accident took place on 21.11.2013 due to rash and negligent driving of Truck/Tanker bearing Registration No. HR-38F-4365, driven rashly and negligently by respondent No. 1 in the MACP case. As per the copy of RC, the offending Truck bearing Registration No. HR-38F-4365 is a Tanker. This fact is further clarified from the copy of insurance policy proved on record as

Ex.R-1. The driving license of Sandeep is Ex.R-2, according to which he

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was competent to drive MC, LMV, HGV, HTV only. The driving license was valid from 15.01.2010 to 14.01.2016 and further renewed on 23.04.2013 and the verification reports are also placed on record as Ex.R-5 and Ex.R-6. Since, the offending vehicle was a Tanker, therefore, as per the rules prescribed under Central Motor Vehicles Rule, 1989, special endorsement was required for driving a goods carriage vehicle carrying dangerous or hazardous goods. As per Rule 9, special educational qualification is required to drive such vehicle. Such driver is required to have driving license to drive transport vehicle as well as ability to read and write atleast one Indian language and English and also possess a certificate of having successfully passed a course with a syllabus prescribed under the rules. Thereafter, the holder of driving license is required to file application along with his driving license and relevant certificate to the licensing authority in whose jurisdiction he resides for making necessary endorsement in his driving license and thereafter, the licensing authority will make endorsement on his driving license that he is authorized to drive goods carriage vehicle carrying goods of dangerous or hazardous nature to human life. Apart from this, as per Rule 132 and 133 responsibility is cast upon the transporter or owner of goods carriage vehicle as well as responsibility is also imposed on the driver. Therefore, considering the provisions of Motor Vehicles Act read with the Central Motor Vehicles Rule, 1989, a special endorsement is required on the driving license for driving a vehicle carrying dangerous or hazardous goods. In the case in hand, there is no such endorsement on the driving license of Sandeep. Therefore, he was not competent to drive Truck/Tanker and there is clear cut violation of the terms and conditions of insurance policy. No doubt, the

aforesaid Truck/Tanker was duly insured with the insurance company,

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therefore, the insurance company cannot escape its liability to make payment of compensation awarded in favour of the claimants. Once the payment is made, the insurance company has right to recover the same from the insured.

With this observation, the findings given by the learned Motor Accident Claims Tribunal, Jind on issue No. 3 are accordingly, reversed, by partly accepting the aforesaid appeals.

All the four appeals along with cross-objections are accordingly, disposed of.

The copies of records received from the Tribunal be sent back to the concerned quarter.

Pending application(s), if any, shall also stands disposed off.

Photocopy of this order be placed on the connected files.

06.11.2023

lalit

(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:	Yes
Whether reportable:	Yes