IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 1960/2018(O&M)

Date of decision: 25.05.2023.

Kamla and others

………………Appellants

Vs.

Dinesh Kumar and others

………………Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Aayush Gupta, Advocate for the appellants.

Mr. DK Prajapati, Advocate for the respondents.

Nidhi Gupta, J.

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.14,73,000/- granted by the Motor Accident Claims Tribunal, Ambala (hereinafter referred to as 'the Tribunal') vide Award dated 17.8.2017 passed in MACP No.92/2016 u/s 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act'). Claimants are the widow and two minor children of deceased Mohinder Singh who was 49 years of age at the time of accident.

2. 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 3.9.2016 due to rash and negligent driving of Car bearing registration No. HR-04C-7895 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.1, owned by

respondent no.2 and insured by respondent no.3. 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.

3. Ld. counsel seeks enhancement of compensation on the ground that the ld. Tribunal has granted nothing by way of future prospects. It is submitted that deceased being 49 years of age at the time of death, an addition of 25% ought to have been made to words future prospects, in accordance with the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680**. It is further submitted that nothing has been granted towards loss of estate and appellants are entitled to a sum of Rs.16,500/- towards loss of estate. It is further submitted that only Rs. 1 lac has been granted by way of consortium however, appellants are entitled to Rs.44,000/- each towards loss of consortium.

4. In response, it is submitted by the ld. counsel for the Insurance Company that ld. Tribunal has taken income of the deceased on the higher side as Rs.12,000/- per month. It is argued that it was the appellants' case that the deceased was working as a Mason and was also running a dairy, however, no evidence in support of the said claim was produced by the appellants. It is submitted that despite that, even assuming the same to be true, income of the deceased could not have been taken as Rs.12,000/– per month as, as per relevant Minimum Wage Notification dated 1.7.2016 notional income of the deceased could have been assessed as Rs.8070/- for unskilled labourer; and even if it is taken as skilled labourer it would have been Rs.9342.51 only per

month. It is submitted that however, ld. Tribunal has taken the income of the deceased as per Collector Rate as Rs.12,000/- per month. It is submitted that therefore, future prospects are already included in the income so assessed by the ld. Tribunal and therefore, no addition deserves to be made in this regard. In support, ld. counsel relies upon judgments of this Court in **FAO 406/2021, Royal Sundaram General Insurance Co. Ltd. V Guddi and others; FAO 5410/2018, National Insurance Company Limited v Shri Ram Chander and others;** and **The New India Assurance Co. Ltd. V Ms. Sheela Devi and others**.

5. It is further submitted by the ld. counsel for the Insurance Company that ld. Tribunal has granted Rs. 1 Lac towards loss of consortium whereas as per latest judgment of the Hon'ble Supreme Court in **Shri Ram General Insurance Company Limited v Bhagat Singh Rawat & 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,** total sum of Rs. 70,000/- could have been granted under the conventional heads.

6. No other argument has been raised.

7. Heard ld. counsel.

8. Perusal of the record of the case shows that it was pleaded case of the appellants that deceased was working as a Mason and also ran a dairy and that he was earning Rs.30,000/- per month from said occupations. However, as appellants had failed to produce any evidence in support of their aforesaid claim, ld. Tribunal had taken the deceased to be doing the work of labourer and accordingly, assessed notional income of the deceased as

Rs.12,000/- per month on the basis of prevalent Collector rate. Ld. Counsel for the respondent Insurance Company has not been able to show any legal bar as to why income of the deceased could not have been assessed on the basis of Collector rate. Accordingly, I find no error in the assessment of notional income as made by the learned Tribunal as Rs.12,000/– per month.

9. Perusal of the Award further shows that ld. Tribunal has made no addition towards future prospects. It is undisputed that deceased was 49 years of age at time of death. Therefore, as per judgment of the Hon'ble Supreme Court in **Pranay Sethi** (supra), an addition of 25% is liable to be made towards future prospects. Claimants being three in number, ld. Tribunal correctly made deduction of 1/3rd towards personal expenses. As the deceased was 49 years of age, ld. Tribunal correctly applied multiplier of 13. Perusal of the Award further shows that ld. Tribunal has granted Rs.25,000/- towards funeral expenses; Rs. 1 lac to appellant no.1/widow of the deceased towards loss of consortium; and a further sum of Rs.50,000/- each i.e. Rs. 1 lac in total to two minor children of the deceased towards loss of love and affection. No doubt, as per latest judgement of the Hon'ble Supreme Court in **Bhagat Singh Rawat (supra),** Rs.40,000/– 'in toto' can be granted by way of consortium, and a total amount of Rs.70,000/– only can be granted under the conventional heads, however, the said pronouncement also held that an increase of 10%, every three years is permissible. No judgment to the contrary has been cited by learned counsel for the appellants.

10. In view of the above discussion, compensation awarded to the appellants is reworked as under:-

Sr.No.	HEAD	MACT(In Rupees)	APPEAL (in Rupees)
1.	Income	12,000/-	12,000/-
2.	Future prospects	Nil	3000(being 25%)
3.	Deduction 1/3rd	(4000) 8000/-	(5000) 10,000/-
4.	Multiplier	13	13
5.	Loss of total dependency	8000x12x13 =12,48,000/-	10,000x12x13 = 15,60,000/-
6.	Conventional heads	2,25,000/-	77,000/-
7.	Total compensation	14,73,000/-	16,37,000/-

11. Claimants shall be entitled to interest at the rate of 7.5% per annum on enhanced compensation from the date of filing of claim petition till realization. Ratio of apportionment and manner of disbursement of compensation as determined by the ld. Tribunal is maintained.

12. Disposed of as above.

13. Pending applications, if any, stand disposed of.

25.05.2023. **(Nidhi Gupta)**
Joshi **Judge**

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