IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 496/2017(O&M)

Date of decision: 18.05.2023.

United India Insurance Co.Ltd.

………………Appellant

Vs.

Rajni and others

………………Respondents

FAO 1188/2017(O&M)

Rajni and others

………………Appellants

Vs.

Dharam Pal Singh and others

………………Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Pardeep Goyal, Advocate for the appellant.

Mr.Paramveer Singh, Advocate for
Mr. Sangram Singh, Advocate for the claimants.

Nidhi Gupta, J.

By this common order I shall dispose of two cross-appeals bearing FAO No.496/2017 filed by the Insurance Company; and FAO No.1188/2017 filed by claimants. Both appeals are being disposed of by common order as facts, arguments and questions of law involved in both the appeals are common and both the appeals arise from the one Award dated 2.11.2016 passed by Motor Accident Claims Tribunal, SAS Nagar(Mohali), (hereinafter referred to as 'the Tribunal') in claim petition bearing MACT Case No.RT-179 dated 29.1.2016/29.9.2016 filed under Section 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act').

For the sake of convenience parties are being referred to by their litigative status before the Tribunal.

Vide impugned Award ld. Tribunal awarded a compensation of Rs.18,53,000/- to the claimants alongwith interest @ 6% per annum from the date of filing of the claim petition till realization. Ld. Tribunal granted compensation as above on account of death of Balwinder Singh aged 34 years. Claimants are the widow and two minor children of the deceased Balwinder Singh aged 34 years at time of death.

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 17.10.2015 due to rash and negligent driving of Swaraj 735 Tractor bearing registration No. HR-49-A-8052 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.1, owned by respondent no.2 and insured by respondent no.3. Liability to pay the compensation was joint and several.

Ld. counsel for the claimants seeks enhancement of compensation on the ground that prior to his death the deceased was working as a Carpenter. It is submitted that though cogent evidence was led by the claimants to the effect that the deceased was earning Rs.15000/- per month from his work as a carpenter, yet ld. Tribunal has taken income of the deceased as only Rs.9000/- per month. It is submitted that no doubt the ld. Tribunal has taken income of the deceased as that of skilled worker, however, as per judgment of the Hon'ble Supreme Court in **Chandra @ Chanda @ Chandraram v. Mukesh Kumar Yadav (SC) : Law Finder Doc Id # 1888548,** it has been held that merely because claimants were unable to produce documentary evidence to show monthly income of the deceased same does not justify adoption of lowest tier of minimum wage while computing income. In support ld. counsel also relies upon judgment of the Hon'ble Supreme Court in **Rajani v. Oriental Insurance Company Limited, (SC) : Law Finder Doc Id # 2051081**.

It is further submitted by the ld. counsel for the claimants that interest has been granted at a lower rate of 6% per annum and the same deserves to be 18% per annum. It is also submitted that the ld. Tribunal has awarded only Rs.1 lac towards loss of consortium whereas as per judgment of the Hon'ble Supreme Court in **United India Insurance Co. Ltd. v. Satinder Kaur @ Satwinder Kaur (SC) : Law Finder Doc Id # 1729112**, amount of Rs.44,000/- each has to be granted to claimants on account of consortium.

Per contra it is submitted by the ld. counsel for the Insurance Company that ld. Tribunal has added future prospects @ 50% whereas, as per judgment of the Hon'ble Supreme Court in **National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680**, keeping in view the fact that the deceased was aged 34 years at time of death, future prospects ought to have been added @ 40%. As regards income, it is submitted that no documentary proof has been produced by the claimants to prove alleged income of the deceased and therefore, income has to be maintained at Rs.9000/- per month.

No other argument has been raised.

Heard ld. Counsel for the parties.

Perusal of the record of the case shows that age of the deceased was determined to be 34 years old at the time of death on the basis of testimony of claimant no.1-widow of the deceased. As regards income of the deceased ld. Tribunal has assessed notional income of the deceased as Rs.9000/- on the basis of reasoning contained in para 17 of the impugned Award, which is reproduced below:-

> "17. Now coming to the avocation of the deceased. As per the version of the claimants, deceased Balwinder Singh was working as a Carpenter, at the time of accident and his monthly earnings were Rs. 15,000/- per month. Even, claimant no.1 Rajni, widow of the deceased, in her affidavit Ex.PW1/A, had stated about the avocation of Carpentry followed by her deceased husband Balwinder Singh, during his lifetime and his earnings to be Rs. 15,000/- per month. Even, PW-2 Harminder Singh has deposed the same fact in his affidavit Ex.PW2/A. Besides the same, even, the claimants have examined Tara Chand PW-4, who is working as Carpenter and this witness in his affidavit Ex.PW4/A has deposed about having employed Balwinder Singh, who assist him in Carpentry work, on contract. Even, PW-3 Surinder Singh in his affidavit Ex.PW3/A has deposed about the services of Balwinder Singh deceased having availed by him, while he started the process of construction of his house. Balwinder Singh along with Tara Chand and his sons had assisted in the construction of his house. Thus, from the testimonies of the aforesaid witnesses, it stands amply established that deceased Balwinder Singh was working as a Carpenter. However, the earnings of the deceased are claimed on a higher side. Though, the claimant no.1 as well as the other witnesses examined by the claimants have stated the

deceased to be earning Rs.15,000/- per month, but however, no documentary proof relating to this extent of earnings, has been brought on record. One has to keep in mind that there is always an effort made by the claimants to show exaggerated earnings of the deceased, so as to seek enhanced compensation. Keeping the same in mind, in the modest estimate, when the earning of the daily wager are taken as Rs.6000/- per month, the earnings of deceased Balwinder Singh as a skilled worker, are taken to be Rs.9000/- per month".

Perusal of the above reasoning shows that ld. Tribunal has ignored vital testimonies of - PW2 Harminder Singh; PW4 Tara Chand; and PW3 Surinder Singh - all of whom had led evidence and deposed that the deceased was earning Rs.15,000/-per month as a Carpenter. Admittedly, no documentary evidence was produced by the claimants. However, keeping in view the fact that this is unorganized sector, where documentary record is not always maintained, in my view, learned Tribunal was an error in taking income of the deceased as only Rs.9000/– per month. In this regard, support may also be drawn from judgment cited by the ld. counsel for the claimant in case of **Chanda (supra)**, wherein it has been held that:

"Merely because claimants were unable to produce documentary evidence to show monthly income of deceased, same does not justify adoption of lowest tier of minimum wage while computing income - No reason to discard oral evidence of wife of deceased who deposed that deceased was earning around Rs.15000/- per month - Deceased aged about 32 years on date of accident and…"

Clearly, therefore, as per the facts and law as noticed here in above, income of Rs.9000/- as assessed by the ld. Tribunal is on lower side. Accordingly, considering the oral evidence on record, in my view, it will serve the ends of justice to take income of the deceased as Rs.12,000/– per month for the purpose of loss of dependency.

Further, there can be no dispute that as the deceased was 34 years at the time of his death, then as per judgment of the Hon'ble Supreme Court in **National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680**, future prospects were to be added @ 40% and not 50%. As the claimants are three in number deduction of 1/3rd has been correctly made. Further, multiplier of 16 has also been correctly applied. As regards consortium, as per 3-Judge Bench decision of Hon'ble Supreme Court in **Satinder Kaur's** case (supra), claimant no.1 is entitled to spousal consortium of Rs.44,000/-, and claimants no. 2 and 3 being minor daughters of the deceased are entitled to parental consortium of Rs.44,000/- each. Claimants are further entitled to an amount of Rs.16,500/- towards loss of estate, and Rs.16,500/- towards funeral expenses.

In view of the above discussion, compensation payable to the claimants is reworked as under:-

Sr. No.	Head	MACT (Amount in Rupees)	IN APPEAL (Amount in Rupees)
1.	Income	9000/-	12000/-
2.	Future prospects	50%=4500/-=13,500/-	40% = 4800/- =16,800/-
3.	Deduction	1/3rd = 9000/-	1/3rd =11,200/-
4.	Multiplier	9000x16x12= 17,28,000/-	11200x16x12 = 21,50,400/-
5.	Consortium	1,00,000	44000x3=1,32,000

6.	Funeral expenses	25,000/-	16,500/-
7.	Loss of estate	Nil	16,500/-
8.	Total	18,53,000/-	23,15,400/-

Claimants are further held entitled to interest @ 9% per annum on enhanced compensation from the date of filing of the claim petition till realization.

Ratio of apportionment and manner of disbursement of compensation, as determined by the learned Tribunal, shall remain unchanged.

Both appeals are accordingly, **partly allowed** and disposed of in above terms.

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

18.05.2023. **(Nidhi Gupta)**
Joshi **Judge**

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