

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
245 **FAO-588-2018 (O&M)**
Date of decision: 15.05.2023

Smt. Ramesh Rani & Others

...Appellant(s)

Vs.

The New Malwa Bus Service & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Sushil Saini, Advocate
for the appellants.

Ms. Madhu Sharma, Advocate
for respondent No.2/Insurance Company.

NIDHI GUPTA, J.

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.9,49,151.24/- granted by Motor Accident Claims Tribunal, Amritsar (hereinafter referred to as "the learned Tribunal") vide Award dated 14.07.2017 passed in MACP Case No.119 of 2016 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Five claimants are the widow, two daughters and two sons of deceased-Balwant Rai.

2. Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence adduced before it concluded that deceased-Balwant Rai had died due to injuries suffered by him in a motor vehicular accident that took place on 08.04.2016 due to rash and negligent driving of bus bearing registration No.PB-02-BK-9985 (hereinafter referred to as 'the offending vehicle'), being owned by respondent No.1, insured by respondent No.2 and driven by respondent

No.3 herein. Learned Tribunal awarded compensation as above along with interest @ 7% per annum from the date of filing the claim petition till realisation. Respondents were held jointly and severally liable to pay the amount of compensation.

3. Learned counsel for the appellants seeks enhancement of compensation inter alia on the grounds:

a) that deceased was a tailor and earning Rs.15,000/- per month. However, learned Tribunal has taken income of the deceased as that of a skilled labourer as only Rs.8,324/- per month;

b) that nothing has been granted by way of future prospects;

c) that learned Tribunal incorrectly took age of the deceased as 51 years at the time of death and has therefore, incorrectly applied multiplier of 11. It is submitted that as per matriculation certificate (Exhibit P7), date of birth of the deceased was shown therein to be 02.06.1966. Therefore, at the time of accident/death, the deceased was 49 years 10 months old i.e. below 50 years of age and therefore, learned Tribunal ought to have applied multiplier of 13; and awarded future prospects @ 25%.

4. In response, it is submitted by learned counsel for respondent No.2/Insurance Company:

a) that learned Tribunal has granted a sum of Rs.1,25,000/- under conventional heads whereas, as per latest law of Hon'ble Supreme Court in **Shri Ram General Insurance Co. Ltd. Vs.**

Bhagat Singh Rawat & Others Civil Appeal Nos.2410-2412/2023, the same ought to be Rs.77,000/-;

b) that though this is not an appeal filed by Insurance Company. However, as per provisions of Order 41 Rule 33, it is mandatory that law of the land be followed.

5. No other argument is raised on behalf of the parties.

6. I have heard learned counsel for the parties.

7. Perusal of record of the case shows that as per matriculation certificate of the deceased (Exhibit P7), it has been proven on record that date of birth of the deceased was 02.06.1966. And, the accident had taken place on 08.04.2016. Thus, the deceased was 49 years 10 months old at the time of death. Despite this incontrovertible evidence on record, in para 22 of the impugned Award, learned Tribunal has inexplicably held that the *“deceased was more than 50 years old at the time of accident. As such, the age of deceased is taken as 51 years at the time of accident.”* It is patent error of fact on record. In view of the undisputed fact that date of birth of the deceased was 02.06.1966, age of the deceased is taken as 49 years 10 months. Therefore, as per judgment of Hon’ble Supreme Court in **Sarla Verma Vs. Delhi Transport Corporation (2009) AIR (SC) 3104**, multiplier of 13 has to be applied; and as per judgment of Hon’ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others (2017) 16 SCC 680**, an addition of 25% has to be made towards future prospects.

8. Though it is the pleaded case of the appellants that the deceased was doing the work of stitching and tailoring and was earning Rs.15,000/- per month, however, the claimants produced no record regarding said vocation of the deceased. Even before this Court, claimants have produced nothing whatsoever in support of their contention that the deceased was running a Boutique in Amritsar. Accordingly, I find no error in notional income as assessed by learned Tribunal on the basis of rates issued by Labour Commissioner as Rs.8,324.75/- per month, rounded off to Rs.8,325/-.

9. As regards conventional heads, there can be no dispute that as per latest judgment of Hon’ble Supreme Court in **Bhagat Singh Rawat (supra)** reiterated by the Hon’ble Supreme Court in **Mehmooda Bee & Others Vs. National Insurance Co. Ltd. (@ SLP (C) No.16767 of 2022)** and **Bebi Giri Vs. National Insurance Co. Ltd. Civil Appeal No.6551 of 2022**, total sum of Rs.77,000/- can be granted under the conventional heads. No judgment to the contrary has been cited by learned counsel for the appellants.

10. In view of above discussion, compensation as admissible to the appellants is re-worked as follows:-

Heads	Awarded by MACT	Awarded by this Court
Income	Rs.8,324.75/- per month	Rs.8,325/- per month
Future prospects	NIL	(25%) Rs.8,325/- + Rs.2,081/- = Rs.10,406/-
Deduction	(1/4 th) Rs.8,324.75/- -	(1/4 th) Rs.10,406/- -

	Rs.2,081.18/- Rs.6,243.57/-	= Rs.2,601/- = Rs.7,805/-
Annual income	Rs.6,243.57/- x 12 = Rs.74,922.84/-	Rs.7,805/- x 12 = Rs.93,660/-
Multiplier	(11) Rs 74,922.84/-x 11 = Rs.8,24,151.24/-	(13) Rs.93,660/- x 13 = Rs.12,17,580/-
Conventional heads	Rs.1,25,000/-	Rs.77,000/-
Total	Rs.9,49,151.24/-	Rs.12,94,580/-

11. Appellants shall be entitled to interest at the rate of 7% per annum on enhanced compensation from date of filing of claim petition till realisation. Ratio of apportionment and manner of disbursement of compensation as determined by the learned Tribunal is also maintained.
12. Present appeal accordingly, stands **allowed** in above terms.
13. Pending application(s) if any also stand(s) disposed of.

15.05.2023
Sunena

(Nidhi Gupta)
Judge

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