IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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Date of decision: 15.05.2023

FAO-1764-2018 (O&M)

Jasmine Thaper & Others

...Appellant(s)

Vs.

Bhupinder Singh & Others

...Respondent(s)

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FAO-805-2018 (O&M)

National Insurance Company

...Appellant(s)

Vs.

Jasmine Thaper & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Achin Gupta, Advocate
for the appellants (in FAO-1764-2018)

Mr. Rajneesh Malhotra, Advocate
for the appellant (in FAO-805-2018)

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NIDHI GUPTA, J.

By this common order, I shall dispose of FAO-1764-2018 filed by the claimants; and FAO-805-2018 filed by the Insurance Company. Both the appeals are being disposed of by common order as facts, arguments, and questions of law involved in both the Appeals are identical, and as both the appeals arise from one Award dated 15.09.2017 passed by Motor Accident Claims Tribunal, Faridkot (hereinafter referred to as "the learned Tribunal") in MACT Case No.08

of 08.03.2017, filed under Section 166 read with Section 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act").

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

3. Vide the impugned Award dated 15.09.2017, learned Tribunal has awarded compensation of Rs.49,25,000/- to the claimants along with interest @ 6% per annum from the date of filing the petition till realisation. Learned Tribunal awarded compensation as above on account of death of Swaranjit Kaur aged 35-36 years. The learned Tribunal on the basis of pleadings and evidence adduced before it concluded that deceased-Swaranjit Kaur had died due to injuries suffered by her in a motor vehicular accident that took place on 30.11.2016 due to rash and negligent driving of car bearing registration No.PB-04U-0963 (hereinafter referred to as "the offending vehicle"), being driven by respondent No.2, owned by respondent No.1 and insured by respondent No.3. The three claimants are the two minor children and widower of deceased-Swaranjit Kaur. Respondents were held jointly and severally liable to pay the compensation.

4. Learned counsel for the Insurance Company challenges the impugned Award and inter-alia submits:

a) that compensation awarded by the learned Tribunal is very much on the higher side. It is submitted that learned Tribunal has taken income of the deceased as Rs.40,000/- per month which is on higher side;

b) that no deductions have been made for various allowances such as house rent allowance, medical allowance, conveyance allowance, etc. which are included in the said income of the deceased. In fact, even no deduction has been made on account of income tax from the salary of the deceased while assessing the dependency;

c) that sum of Rs.1,25,000/- has been granted under conventional heads whereas, as per law only a sum of Rs.77,000/- could have been granted.

5. Per contra, learned counsel for the claimants seeks enhancement of compensation by submitting:

a) that prior to her death, the deceased was working as a Principal in a school and her gross salary was Rs.43,600/- per month. It is submitted that however, the learned Tribunal has taken her income on lower side as only Rs.40,000/- per month;

b) that as per post-mortem report (Exhibit P1) the deceased was 36 years of age at the time of death. It is submitted that therefore, as per **National Insurance Company Limited Vs. Pranay Sethi and Others (2017) 16 SCC 680,** learned Tribunal ought to have made an addition of 40% towards future prospects. However, nothing has been granted by learned Tribunal by way of future prospects;

c) that it is incorrect submission on part of learned counsel for the Insurance Company to submit that income tax has not been deducted while assessing the income of the deceased. It is submitted that as per income tax returns Exhibit P22 to Exhibit P24, it is clear that self-tax has been paid by the deceased.

6. In rebuttal, it is submitted by learned counsel for Insurance Company that as per Exhibit P23 income tax return of the deceased for the year 2016-17, total annual income of the deceased was shown to be Rs.4,56,356/- which when divided by 12 shows that income of the deceased was only Rs.38,029.60/- per month. However, learned Tribunal has taken it as Rs.40,000/- per month.

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

8. I have heard learned counsel for the parties.

9. Perusal of record of the case shows that in Exhibit P1 post-mortem report of the deceased (available at page 121 of the LCR), age of the deceased is mentioned as 35 years; whereas in the claim petition in column 3 (at page 91 of the LCR), age of the deceased has been mentioned as 36 years. Accordingly, learned Tribunal took age of the deceased to be between 35 to 36 years at the time of accident.

10. It is proven on record that the deceased was employed as a Principal in Sant Mohan Dass Memorial Senior Secondary School, Kot Sukhia. Perusal of record further reveals that Exhibit PW3/1 to Exhibit PW3/39 is the salary record of the deceased, and Exhibit PW3/40 and Exhibit PW3/41 are the copies of statement of account. Exhibit PW3/40 reveals that at the relevant time i.e. in the month of October, 2016, the deceased was drawing salary at the rate of Rs.40,000/- per

month. Accordingly, learned Tribunal correctly took income of the deceased as Rs.40,000/- per month.

11. However, learned Tribunal failed to grant anything by way of future prospects. There can be no disputing that as per **Pranay Sethi (supra),** an addition of 40% ought to have been made towards future prospects.

12. As the claimants were 3 in number, learned Tribunal correctly made a deduction of 1/3rd towards personal expenses. As the deceased was 35 to 36 years of age, learned Tribunal correctly applied the multiplier of 15. However, under the conventional heads learned Tribunal has granted an excessive sum of Rs.1,25,000/– whereas, as per the latest judgement of the Hon'ble Supreme Court in **Shri Ram General Insurance Co. Ltd. Vs. Bhagat Singh Rawat & Others Civil Appeal Nos.2410-2412/2023,** a total sum of Rs.77,000/– only, can be awarded under the conventional heads.

13. Accordingly, compensation as admissible to the claimants is re-worked as follows:-

Heads	**Awarded by MACT**	**Awarded by this Court**
Income	Rs.40,000/- per month	Rs.40,000/- per month
Future prospects	Nil	(40%) Rs.40,000/- + Rs.16,000/- = Rs.56,000/-
Deduction	1/3rd	(1/3rd) Rs.56,000/- - Rs.18,667/- = Rs.37,333/-
Multiplier	15	(15) Rs.37,333/- x 12 x 15 = Rs.67,19,940/-
Conventional heads	1,25,000/-	Rs.77,000/-
Total	**Rs.49,24,700/-**	**Rs.67,96,940/-**

	rounded off to Rs.49,25,000/-	

14. Rate of interest of 6% per annum as granted by learned Tribunal is maintained. Ratio of apportionment and manner of disbursement of compensation as determined by the learned Tribunal is also maintained. Both the appeals stand **partly allowed** in above terms.

15. Pending application(s) if any also stand(s) disposed of.

15.05.2023 **(Nidhi Gupta)**
Sunena **Judge**

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