

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**210****FAO-7620-2015 (O&M)
Date of decision: 22.03.2023****Balwinder Kaur & Others****...Appellant(s)****Vs.****Subegh Singh & Others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Kushagra Mahajan, Advocate for the appellants.

Mr. R.C. Gupta, Advocate for respondent No.3.

NIDHI GUPTA, J.

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.12,26,000/- awarded by Motor Accident Claims Tribunal, Amritsar (hereinafter referred to as "the learned Tribunal") vide Award dated 08.07.2015 passed in MAC Case No.40 of 2014 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Claimants are widow, two minor sons and mother of deceased-Sonu Singh.

2. Learned Tribunal on the basis of pleadings and evidence adduced before it concluded that deceased-Sonu Singh had died due to injuries suffered by him in a motor vehicular accident that took place on 16.09.2013 due to rash and negligent driving of Alto car bearing registration No.PB-02-BZ-8305 (hereinafter referred to as "the offending vehicle") being driven by respondent No.1, owned by respondent No.2 and insured by respondent No.3. Learned Tribunal awarded compensation as above along with interest @ 7.5% per annum from the date of filing the claim petition

till the date of Award. Respondents were held jointly and severally liable to pay the aforesaid compensation amount.

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

a) that income of the deceased has been taken as only Rs.5,000/- per month which is on lower side. It is submitted that the claimants/appellants had led exhaustive evidence before the learned Tribunal to prove that prior to his death, deceased was working as a driver-cum-labourer and earning Rs.20,000/- per month. Learned Tribunal has failed to correctly appreciate this evidence and has taken income of the deceased as that of a daily wager as only Rs.5,000/- per month. It is submitted that even as per Notification dated 01.09.2013 issued by Labour Department of State of Punjab, minimum wages admissible to an unskilled labourer were Rs.6,247/-; to a semi-skilled labourer were Rs.7,027/-; and to a skilled labourer were Rs.7,924/- per month. It is submitted that without admitting, however, for the sake of argument, even if it is assumed that employment of deceased as driver-cum-labourer was not sufficiently proven on record by the appellants, even then income of the deceased ought to have been taken as per minimum wages admissible to a skilled worker;

b) that age of the deceased was determined to be 35 years at the time of death on the basis of post mortem report (Exhibit P1). Accordingly, multiplier of 16 has been correctly applied and, it is very fairly

stated, that learned Tribunal has incorrectly added future prospects @ 50% whereas the same ought to have been 40%;

c) that it has come on record that after the accident, deceased had remained hospitalized at PGI, Chandigarh for one-and-a-half months and had ultimately succumbed to the injuries at PGI, Chandigarh. Despite that, only Rs.16,000/- had been granted towards medical expenses;

d) that nothing has been granted to the appellants towards consortium and as per law laid down by Hon'ble Supreme Court in **Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram, 2018 (18) SCC 130; Sarla Verma Vs. Delhi Transport Corporation (2009) AIR (SC) 3104; and National Insurance Company Limited Vs. Pranay Sethi and Others (2017) 16 SCC 680**, they are entitled to Rs.44,000/- each towards consortium/loss of love & affection.

4. Per contra, it is submitted by learned counsel for respondent No.3-Insurance Company that there is a categorical finding by learned Tribunal that though it has been claimed by claimants that deceased was working as a driver, however, even his driving licence has not been proved on record by the claimants. It is submitted that it has been admitted by PW6, purported employer of the deceased, in his cross-examination that he was not maintaining any record of employment of the deceased. It is stated that accordingly, employment of deceased has not been proven on record and therefore, notional income as assessed by learned Tribunal is fair and correct. At best, income of the deceased may be taken as that of an unskilled labourer as per minimum wages

admissible to an unskilled labourer. It is admitted that claimants are entitled to consortium of Rs.44,000/- each in view of above-referred decisions of the Hon’ble Supreme Court.

5. No other argument is made on behalf of the parties.
6. I have heard learnedcounsel for the parties.
7. a) Perusal of record of the case shows that deceased had claimed to be working as driver-cum-labourer at brick kiln, Hetampura and earning Rs.20,000/- per month therefrom. In support of their contention, claimants had produced PW6-Baldev Krishan Kakkar, proprietor of HBM Brick Udyog, Hetampura as witness. PW6 had proved on record certificate Exhibit PW6/A which certifies that deceased*“used to work as a driver and a labourer on my tractor in my brick kiln. As a labourer he used to load and unload bricks. His monthly wages of both as a driver and labourer combined used to be about Rs.14,000/-.”* Exhibit PW6/B to Exhibit PW6/G are the attested copies of register maintained by HBM Bricks Udyog regarding salary of workers and details as contained therein, in respect of deceased-Sonu Singh, are reproduced hereinbelow:-

Exhibit	Page of LCR	Month & Year	Wages month per (as Driver)	Charges of loading & unloading the bricks (as labourer)	Total
PW6/B	185 & 187	April, 2013	Rs.7,000/-	Rs.6,800/-	Rs.13,800/-
PW6/C	188-189	May, 2013	Rs.7,000/-	Rs.6,900/-	Rs.13,900/-
PW6/D	190-191	June, 2013	Rs.7,000/-	Rs.6,900/-	Rs.13,900/-
PW6/E	192-193	July, 2013	Rs.7,000/-	Rs.6,800/-	Rs.13,800/-
PW6/F	194-195	Aug, 2013	Rs.7,000/-	Rs.6,900/-	Rs.13,900/-
PW6/G	196-197	Sep, 2013	Rs.7,000/-	Rs.3,400/-	Rs.10,400/-

b) Further, daily attendance register of HBM Bricks Udyog is available at pages 199 to 209 of the LCR as Exhibit PW6/H to Exhibit PW6/M from the month of April, 2013 to September, 2013, as per which attendance of deceased-Sonu Singh is shown to be regularly present. Accordingly, in my view, there is sufficient cogent, un-rebutted and reliable evidence on record to prove deceased was a skilled worker. No doubt, claimants had failed to prove driving licence of deceased, yet in my view, there is ample material on record in form of the above said testimony of PW6, as also the Exhibits PW6/B to Exhibit PW6/M to merit that income of the deceased be taken as that of a skilled labourer i.e. at the rate of Rs.7,924/- per month which is as per minimum wage Notification dated 01.09.2013 issued by State of Punjab.

8. Accordingly, in my view, it will be just and proper in the facts and circumstances of the present case, if compensation as admissible to claimants/appellants is re-worked as follows:-

Heads	Awarded by MACT	Re-worked Amount
Income	Rs. 5000/-	Rs.7,924/-
Deduction of 1/4th	Rs. 3750/-	Rs.5,943/-
Annual income	Rs. 45,000/-	Rs.71,316/-
Future prospects	+50% = Rs. 67,500/-	+40% = Rs.99,842/-
Multiplier of 16	Rs. 10,80,000/-	Rs.15,97,478/-
Consortium	Rs. 1 lac	(Rs.44,000/-x4) =Rs.17,73,478/-
Medical Expenses	Rs. 16,000/-	Rs. 16,000/-
Funeral Expenses	Rs. 25,000/-	Rs. 16,500/-
Loss of Estate	Rs. 5000/-	Rs. 16,500/-
Total	Rs. 12,26,000/-	Rs.18,22,478/- (rounded off to Rs.18,22,500/-)
Enhanced by		Rs.5,96,500/-

9. Rate of interest shall be 7.5% per annum on enhanced compensation from the date of filing the petition till realization. Ratio of apportionment and manner of disbursement of compensation, as determined by learned Tribunal is maintained.
10. Present appeal accordingly, stands **allowed** in above terms.
11. Pending application(s) if any also stand(s) disposed of.

22.03.2023
Sunena

(Nidhi Gupta)
Judge

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