

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**252****FAO-491-2019 (O&M)****Date of decision: 16.03.2023****Seema Rani & Others****...Appellant(s)****Vs.****Mrs. Panchi Yadav & Others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Naveen Sharma, Advocate for the appellants.

Mr. Dinesh Kumar Prajapati, Advocate
for respondent No.3.

NIDHI GUPTA, J.

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.13,70,000/- awarded by Motor Accident Claims Tribunal, Rupnagar (hereinafter referred to as "the learned Tribunal") vide Award dated 10.09.2018 passed in MACT No.90/11.05.2017 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Claimants are wife and two minor sons of deceased-Rinku Kumar.

2. Learned Tribunal on the basis of pleadings and evidence adduced before it concluded that deceased-Rinku Kumar had died due to injuries suffered by him in a motor vehicular accident that took place on 07.03.2017 due to rash and negligent driving of truck trailer bearing registration No.RJ-01GB-4579 (hereinafter referred to as "the offending vehicle") being driven by respondent No.2, owned by respondent No.1 and insured by respondent No.3. Learned Tribunal awarded compensation as above along with interest @ 7% per annum from the date of filing the claim

petition till realization. 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 learned Tribunal has taken age of the deceased as per post mortem report (Exhibit P5) wherein his age is mentioned to be 47 years at the time of accident. However, as per driving licence of the deceased (Exhibit P6) his date of birth has been mentioned as 28.02.1978 and therefore, age of the deceased was 39 years at the time of accident. Accordingly, learned Tribunal has incorrectly applied multiplier of 13, whereas multiplier of 15 is required to be applied. Due to incorrect assessment of age of the deceased, learned Tribunal has also granted future prospects @ 25% whereas the same should be @ 40%;

b) that income of the deceased has been taken as only Rs.10,000/- per month on the basis of the minimum wage admissible to a skilled employee; whereas it has been amply proven on record that the deceased was a driver by profession and was earning Rs.15,000/- per month. Learned counsel further refers to Notification No.S.O.94/C.A. 11/1948/Ss.3and5/2012 dated 15.11.2012 issued by Department of Labour, Government of Punjab, wherein "*heavy vehicle drivers i.e. truck, tempo, tractor, bus, bulldozer, crane operator, road roller.....*" have been classified as 'highly skilled workers'. It is submitted that as per relevant Notification No.ST/24931 dated 11.10.2017, issued by Office of Labour Commissioner, Punjab, minimum wages admissible for highly skilled worker was

Rs.10,277.52/- per month with effect from 01.03.2017, and accordingly, income of deceased should have been assessed as above. It is submitted that even in the FIR Exhibit P4, it has been un-refutedly stated by complainant/author of the FIR Raj Kumar, that the truck No.PB-02BV-8088 in which the complainant was riding along with the deceased, was being driven by deceased-Rinku Kumar at the time of accident. Learned counsel refers to FIR wherein complainant has recorded that *"...On 07.03.2017, when our trailer reached Parbatsar Bypass near Kadwa Hotel at 3:30 am, at that time trailer bearing registration No.RJ-01-GB-4579 which was being driven at great speed and in a rash and negligent manner hit into our trailer which was being driven by Rinku Kumar s/o Chaman Lal aged 38 years resident of Kukar Majara, Tehsil Garhshankar, District Hoshiarpur (Punjab) as a result of which he got serious and grievous injuries on his head and body because of which he died on the spot, and I was injured on my head, knee and body internally and externally.....At the time of accident, I and my deceased driver Rinku Kumar were in our trailer..."*. It is submitted that accordingly, it is clear that the deceased was a driver of heavy vehicles, and would therefore, fall in the category of highly skilled worker and therefore, his income ought to have been assessed as Rs.10,277.52 per month. It is further stated that respondents have not rebutted the facts as registered in the FIR;

c) that nothing has been granted by way of parental consortium to claimants No.2 and 3/minor children of the deceased.

4. Per contra, it is submitted by learned counsel for respondent No.3-Insurance Company:

a) that it has nowhere been proven on record that deceased was a Driver. No evidence has been led by the claimants to prove income of the deceased as claimed. Even Jagtar Singh owner of trailer No.PB-02BV-8088 being allegedly driven by the deceased at the time of accident, was not examined by the claimants. Accordingly, income of the deceased ought to have been assessed as Rs.7568.52/- as admissible to an unskilled labourer w.e.f. 01.03.2017 as per Notification dated 11.10.2017;

b) that issue regarding age of the deceased was not pressed by the claimants before the learned Tribunal and therefore, learned Tribunal took age of the deceased as per post mortem report. Appellants should have filed an application for additional evidence to prove driving licence of the deceased and therefore, age taken by learned Tribunal on the basis of post mortem report is correct.

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

6. I have heard learned counsel for the parties.

7. a) Perusal of record of the case shows that learned Tribunal has assessed notional income of the deceased as per Notification dated 11.10.2017 as per which minimum wages with effect from 01.03.2017 for skilled labourers was Rs.9,245.12/-, which was rounded off to Rs.10,000/- per month by the Tribunal. Though, claimants have claimed salary @ Rs. 10,277/- per month, however, no proof in support of said claim has been given. Even claimant No.1/widow of the deceased has stated in her cross-examination that her husband used to hand over salary to her but she has no proof regarding the same. In support of their claim

that deceased was working as a Driver of heavy motor vehicles, the claimants have relied solely upon statement of complainant on basis of which FIR (Exhibit P4) was registered under Sections 279, 337 and 304-A IPC. Learned counsel for the appellants has also relied upon notification of 15.11.2012 to submit that driver of heavy vehicle is to be classified as a highly skilled worker. However, as per driving licence of the deceased, which is on record as Exhibit P6, it is evident that deceased was only authorized to drive MCWG, LMV, LMV-GV and TRANS. Accordingly, I find assessment of notional income of the deceased as Rs.10,000/- per month by learned Tribunal to be correct and proper in the facts of the case. No sufficient material is on record to prove employment of deceased as a truck driver;

b) Further, perusal of Exhibit P6/driving licence of the deceased shows that his date of birth is recorded therein, as 28.02.1978. Clearly, age of the deceased could therefore, not have been taken as 47 years on the basis of post mortem report (Exhibit P5). Thus, age of the deceased is taken as 39 years on the basis of his driving licence.

8. Accordingly, compensation as admissible to claimants/appellants is re-worked as follows:-

HEADS	MACT	AMOUNT
Income	Rs. 10,000/-	Rs.10,000/-
Future prospects	@ 25%=Rs.12,500/-	@ 40% = Rs.14,000/-
Deduction of 1/3 rd	Rs. 8333/-	Rs.9,334/-
Annual income	Rs. 1 lac	Rs.1,12,008/-
Multiplier of	13 = Rs.13 lacs	15 = Rs.16,80,120/-
Conventional heads	Rs.40,000/- + Rs.30,000/-	Rs.44,000/- + Rs.88,000/- + Rs.33,000/-
Total	Rs.13,70,000/-	Rs.18,45,120/-
Enhanced by		Rs.4,75,120/-

9. Rate of interest shall be 7% per annum on enhanced compensation from the date of filing of the petition till realization. Ratio of apportionment and manner of disbursement of compensation, as determined by learned Tribunal is maintained. Present appeal stands **disposed of** in above terms.

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

16.03.2023

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No