234 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

FAO-8093-2015
Date of Decision: 05.03.2025

MITHLESH AND OTHERS

...APPELLANTS

VERSUS

KAN SINGH AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Arvind Kumar Yadav, Advocate
for the appellants.

Ms. Palak Jain, Advocate for
Mr. Gopal Sharma, Advocate
for respondents No.1 and 2.

Mr. D.R. Bansal, Advocate
for respondent No.3.

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VIKRAM AGGARWAL, J (ORAL).

Claimants have preferred the instant appeal seeking enhancement in compensation granted to them vide award dated 06.11.2012 passed by the Motor Accident Claims Tribunal, Rewari (for short 'MACT').

2. The facts, as emanating from the paper book, are that the appellants/petitioners who are the widow, son and daughter of one Mahesh Chand Saini filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'MV Act') claiming compensation of Rs.15,00,000/- on account of the death of Sh. Mahesh Chand Saini in a motor vehicular accident which took place on 23.08.2010.

3. It was averred that Mahesh Chand Saini was a driver by profession. On 23.08.2010, he was returning from Mumbai and was on his way to Bilaspur after loading grocery goods in a vehicle bearing Registration

No. HR-55H-8577. At about 09:00 PM, when he reached near Kasola Chowk on National Highway No.08, there was a traffic jam. Mahesh Chand Saini alighted from the vehicle and was waiting for the clearance of the traffic jam. In the meantime, the offending vehicle (truck trailer bearing Registration No.RJ-36GA-0470) which was being driven by respondent No.1 in a rash and negligent manner came from behind and hit the vehicle which Mahesh Chand Saini had been driving. As a result of the same, the vehicle hit Mahesh Chand Saini and he expired on the spot. FIR No.154 dated 24.08.2010 was registered. It was claimed that the accident had taken place on account of the rash and negligent driving of the offending vehicle by respondent No.1. It was further stated that Mahesh Chand Saini was 48 years old at the time of the accident and was a driver by profession. He was being paid a salary of Rs.10,000/- per month plus Rs.100/- per day as travelling allowance. Accordingly, a sum of Rs.15,00,000/- /- was claimed as compensation.

4. The claim petition was opposed. Respondent No.1 denied the factum of the accident as also other averments made in the claim petition. The owner initially put in appearance but subsequently did not appear as a result of which, he was proceeded against *ex parte*. The insurance company (respondent No.2 herein) also opposed the claim petition and took its usual defences. The factum of the accident was denied.

5. From the pleadings of the parties, following issues were framed:

> **"1. Whether Mahesh Chand had died in a vehicular accident that took place due to rash and negligent driving of offending truck-trailer bearing registration No.RJ-36GA-0470 by respondent No.1, as alleged in the petition? OPP**
>
> **2. If issue No.1 is proved, whether the petitioners are entitled to compensation? If so to what amount? OPP**

> **3. Whether respondent No.1 was not holding a valid and effective driving licence on the date of accident? If so its effect? OPR-3'**
> **4. Relief."**

6. Parties led their respective evidence.

7. The MACT held that the accident had taken place on account of the rash and negligent driving of the offending vehicle by respondent No.1. As regards the quantum of compensation, the age of Mahesh Chand Saini was assessed in the age group of 46-50 years. His income was assessed at Rs.5,000/- per month (Rs,60,000/- per annum). 1/3rd amount was deducted towards personal expenses and annual dependency was, therefore assessed at Rs.40,000/-. Applying a multiplier of 13, in terms of the decision of the Supreme Court of India in the case of '***Sarla Verma and Others Vs. Delhi Transport Corporation and Another', 2009 (3) RCR (Civil) 77***, the total compensation was assessed at Rs.5,20,000/-. Apart from the same, Rs.5,000/- on account of transportation, Rs.5,000/- on account of funeral expenses and Rs.5,000/- as loss of consortium was awarded making the total compensation payable to be Rs.5,35,000/- alongwith interest @ 7% per annum. Under issue No.3, it was found that the driver was authorized only to drive a light motor vehicle. Under the circumstances, the liability to pay the compensation was fastened upon the driver and owner. However, it was ordered that the insurance company would first satisfy the award and, thereafter, it would be at liberty to recover the said amount from respondents No.1 and 2 (driver and owner of the offending vehicle).

8. I have heard learned counsel for the parties.

9. Learned counsel for the appellants has submitted that the appellants only seek enhancement in terms of the judgment of the Supreme Court of India in the case of '***National Insurance Company Limited Vs.***

Pranay Sethi and Others', 2017 (4) RCR (Civil) 1009. He submits that in accordance with the same, keeping the assessed income and age group to be the same, future prospects @ 25% per annum would have to be added and after deduction of 1/3rd amount, the loss of dependency would come to Rs.6,49,896/-. The filial compensation would be Rs.1,44,000/- (Rs.48,000/- each) alongwith Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses which would come to a total of Rs.8,29,896/-. The balance, after deduction of Rs.5,35,000/- would, therefore, come to Rs.2,94,896/- alongwith interest.

10. *Per contra*, learned counsel representing the respondents have opposed the prayer made by learned counsel for the appellants. However, they have not been able to controvert the submissions made by learned counsel for the appellants which have strictly been made in terms of the ratio of the judgment of the Supreme Court of India in the case of '***National Insurance Company Limited Vs. Pranay Sethi and Others'*** (supra).

11. I have considered the submissions made by learned counsel for the parties.

12. There is no dispute as regards the age group and the consequential multiplier, the income, deduction on account of personal expenses etc. The only difference would be addition of 25% of the income on account of future prospects which would be 25% of Rs.5,000/- which comes to Rs.1,250/-. The monthly income would, therefore be Rs.6,250/- out of which Rs.2,084/- (1/3rd amount) would be deducted for personal expenses. The net loss of income per month would, therefore, come to Rs.4,166/- and the net loss of annual income would be Rs.49,992/-. Applying a multiplier of 13, the same comes to Rs.6,49,896/- which would be the loss of dependency. Loss of filial compensation would be Rs.48,000/-

for each of the claimants making it to be a total of Rs.1,44,000/-. Apart from this, Rs.18,000/- would be payable under the head of loss of estate and a similar amount would be payable as funeral expenses. The total, therefore, comes to Rs.8,29,896/-. After deducting a sum of Rs.5,35,000/-, the balance amount comes to Rs.2,94,896/-. This amount would be payable in addition to the amount assessed by the learned MACT alongwith interest @ 7.5% per annum. However, no interest would be payable for the period of 975 days with the delay of which, the appeal had been preferred as had been observed in the order dated 03.05.2023 also, when the delay of 975 days in filing the appeal was condoned. The liability to pay the same would be as per the award. However, the insurance company would be liable to pay the enhanced amount in the first instance and would, thereafter, have the right to recover the same from the driver and owner of the offending vehicle.

With the above modification in the award passed by the learned MACT, the present appeal is ***disposed of***.

(VIKRAM AGGARWAL)
JUDGE

05.03.2025
Prince Chawla

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