**(2018) 12 P&H CK 0213**

**In the Punjab And Haryana At Chandigarh**

**Case No :** First Appeal Order No. 2865, 3959 Of 2015 (O&M)

National Insurance Co. Ltd. APPELLANT

Vs

Swarn Kaur And Others RESPONDENT

**Date of Decision :** 18-12-2018

**Acts Referred:**
Motor Vehicles Act, 1988 — Section 166

**Citation :** (2018) 12 P&H CK 0213

**Hon'ble Judges :** Avneesh Jhingan, J

**Bench :** Single Bench

**Advocate :** R.C. Kapoor, Ekta Thakur, Jaiteshwar Singh, H.S. Brar

**Final Decision :** Allowed

## Judgement

Avneesh Jhingan, J

The aforesaid two appeals are being disposed of by a common order as they are emanating out of the same accident.

The award dated 20.11.2014 passed by the Motor Accident Claims Tribunal, SAS Nagar, Mohali (for short 'the Tribunal') passed in MACT case No. RT19/24.07.2013/20.02.2014 and MACT case No. 20/24.07.2013/20.02.2014 has been assailed by the insurer of Truck bearing registration No. HR-37-B-3843 (hereinafter referred to as 'offending vehicle') by filing two separate appeals bearing FAO Nos. 2865 of 2015 and FAO No. 3959 of 2015.

To avoid repetition, the facts are being taken from FAO No. 2865 of 2015.

The brief facts emanating from the record are that on 01.07.2013, Jasbir Singh alongwith Jaswinder Singh was going on motorcycle bearing registration No. PB-65-T-4659 to Kharar. The motorcycle was being driven by Jaswinder Singh and Jasbir Singh was the pillion rider. On their way when they reached near Anaj Mandi of Kharar, the motorcycle was hit by a rashly and negligently driven offending vehicle. As a result of the impact, both the occupants of the motorcycle fell down and suffered multiple injuries. They were taken to Govt. Hospital, Kharar from where they were taken to GMCH, Sector 32, Chandigarh, where they succumbed to the injuries suffered in the accident. FIR No. 102, dated 01.07.2013 was registered at Police Station Kharar.

Two separate claim petitions i.e. MACT Case No. RT19/24.07.2013/20.02.2014 and MACT Case No. 20/24.07.2013/20.02.2014, under Section 166 of the Motor Vehicles Act, 1988 were filed before the Tribunal by the legal heirs of Jasbir Singh and Jaswinder Singh.

The Tribunal after considering the facts and appreciating the evidence adduced, held that the accident was caused due to rash and negligent driving of the offending vehicle. The driver , owner and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded a compensation to the tune of Rs.14,35,400/- alongwith interest @6% per annum on account of death of Jasbir Singh. The amount awarded included Rs.1,00,000/- for loss of love and affection and Rs.25,000/- for funeral expenses.

The Tribunal awarded a compensation to the tune of Rs.30,33,000/-alongwith interest @6% per annum on account of death of Jaswinder Singh. The amount awarded included Rs.1,00,000/- for loss of consortium; Rs.1,00,000/-for loss of love and affection and Rs.25,000/- for funeral expenses.

The claimants before the Tribunal in MACT case No. RT19/24.07.2013/20.02.2014 pleaded that Jasbir Singh was 45 years of age and was unmarried. He had passed M.A. (Religious studies), M.A (Punjabi) and M.Phil from Panjab University. He had also passed M.Ed. and Master of Eduction (Educational Technology). It was claimed that he was taking tuitions and was earning Rs.20,000/- per month. But the claimants failed to substantiate the occupation and earnings of the deceased. The Tribunal assessed the monthly earning of the deceased as Rs.12,000/- per month. 1/2 deduction for self-expenses was made; multiplier of 14 was applied and 30% future prospects were awarded.

There is no dispute between the parties with regard to the age of the deceased; applying of multiplier of 14 and ½ deduction made for self-expenses.

Learned counsel for the appellant contends that the claimants failed to prove on record the occupation and earning of the deceased and the Tribunal erred in assessing the monthly income of the deceased as Rs.12,000/-. It is argued that at the most minimum wages of an un-skilled labourer should have been taken. He further contends that 30% future prospects have been awarded instead of 25%. His grievance is that the amounts awarded under the conventional heads are also on higher side.

Learned counsel for the claimants contends that the deceased was highly qualified, in no case he can be equated with an un-skilled labourer.

Apart from the pleadings that the deceased was earning Rs.20,000/- per month, not an IOTO of evidence was produced by the claimants to substantiate their claim regarding occupation and monthly earning of the deceased. But keeping in view the qualification of the deceased, it would not be appropriate to equate him with an un-skilled labourer. In the facts of the present case, the safest yardstick is to rely upon the minimum wages prevalent in the State at the time of accident for skilled labourer. In the State of Punjab, the minimum wages for a skilled labourer at the time of accident was Rs.7,924/-. The same is rounded off to Rs.8,000/- for the purpose of calculating the compensation.

Having due regard to the decisions of the Supreme Court in National Insurance Co. Ltd. vs. Pranay Sethi and others; 2017 (4) RCR (Civil) 1009 and Hem Raj vs. Oriental Insurance Company Ltd; 2018 (2) PLR 480; 25% future prospects are awarded, as the deceased was in the age group of 40-50 and was self employed.

The amounts under the conventional head are to be awarded in consonance with the decision of the Supreme Court in Pranay Sethi's case (supra). Claimants are entitled to a sum of Rs.15,000/- each for funeral expenses and for loss of estate. No amount can be awarded for loss of love and affection. In view of afore-said discussion, the compensation is recalculated as

under:

Head

Compensation awarded

(i)

Income

Rs.8,000/- per month

(ii)

Future prospects at 25%

Rs.2,000/- per month

(iii)

Total Income

Rs.10,000/- per month

(iv)

Deduction

of

personal

Rs.5,000/- (i.e. ½ of total  income)

expenses

(v)

Multiplier

14 (as per age of deceased)

(vi)

Total Dependency

Rs.5000x12x14=Rs.8,40,000/-

(vii)

Funeral expenses

Rs.15,000/-

(viii)

Loss of estate

Rs.15,000/-

Total Compensation awarded

Rs.8,70,000/-

The award dated 20.11.2014 passed in MACT case No. RT19/ 24.07.2013/20.02.2014 is modified to the extent that the amount awarded of Rs.14,35,400/- is reduced to Rs.8,70,000/-. The claimants/appellants shall be entitled to interest @7.5 % per annum on the amount of compensation from the date of filing of the claim petition till the realization of amount.

The claimants before the Tribunal in a MACT case No. 20/24.07.2013/20.02.2014 pleaded that Jaswinder Singh (deceased) was 40 years old and was working as Executive with the National Council for Development and Education and was drawing monthly salary of Rs.16,000/- per month. The claimants produced EX.P4, the salary certificate of the deceased. The partner of National Council for Development of Education appeared before the Tribunal as PW-3 and proved the salary certificate Ex.P4. But in his cross-examination he admitted that there was no record regarding the employment of the deceased or of salary to be paid to him. He further stated that there is no attendance register available after March 2012 till the date of accident. Yet, the Tribunal calculated the monthly income of the deceased as Rs.16,000/- per month. 30% future prospects were awarded; 1/4th deduction was made for self-expenses and multiplier of 15 was applied.

Learned counsel for the appellant contends that the evidence produced with regard to the salary certificate was not worth reliance. Apart from the salary certificate issued by the partnership firm there was not even a single document to prove that the said salary was paid to the deceased. Further, that the Tribunal erred in awarding 30% future prospects instead of 25%. His grievance is that the amount awarded for funeral expenses is on higher side and no amount can be awarded for loss of love and affection.

Learned counsel for the claimants contends that the deceased was working as an Executive with National Council for Development and Education. The partner of the firm appeared before the Tribunal and deposed that the deceased was drawing a monthly salary of Rs. 16,000/-. She further argued that no amount has been awarded for loss of estate.

Apart from producing the salary certificate, which was issued by a private partnership firm, no evidence was adduced by the claimants to support the salary certificate. The deposition of PW-3 was not worth reliance as he himself in his cross-examination admitted that the firm had no record with regard to the payment of salary or to establish that the deceased was employed with them. Even the attendance register produced was from February 2011 to March 2012, there was no attendance register from March 2012 to July 2013. In such circumstances the deposition of PW-3 is not worth reliance. Since, it is pleaded that the deceased was working as an Executive, he is treated as a skilled labourer. The safest yardstick to rely upon the minimum wages prevalent in the State at the time of accident for skilled labourer. In the State of Punjab, the minimum wages for a skilled labourer at the time of accident was Rs.7924/-. The same is rounded off to Rs.8000/- for the purpose of calculating the compensation. Having due regard to the decisions of the Supreme Court in National

Insurance Co. Ltd. vs. Pranay Sethi and others; 2017 (4) RCR (Civil) 1009 and Hem Raj vs. Oriental Insurance Company Ltd; 2018 (2) PLR 480; 25% future prospects are awarded, as the deceased was 40 years.

As the quantum of compensation is being revisited, it would be appropriate that the amounts under the conventional head are awarded in consonance with the decision of the Supreme Court in Pranay Sethi's case (supra). Claimants are entitled to a sum of Rs.15,000/- each, for funeral expenses and for loss of estate. Further an amount of Rs.40,000/- is awarded to the widow for loss of consortium.

There is no dispute between the parties with regard to 1/4th deduction made for self-expenses and multiplier applied of 15.

In view of afore-said discussion, the compensation is recalculated as under:

Head

Compensation  awarded

(i)

Income

 

Rs.8000/- per month

(ii)

Future prospects at 25%

Rs.2000/- per month

(iii)

Total Income

Rs.10,000/- per month

(iv)

Deduction

of

personal

Rs.2500/- (i.e. 1/4th of total income)

expenses

(v)

Multiplier

15 (as per age of deceased)

(vi)

Total Dependency

Rs.7500x12x15=Rs.13,50,000/-

(vii)

Funeral expenses

Rs.15,000/-

(viii)

Loss of estate

Rs.15,000/-

(ix)

Loss of consortium

Rs.40,000/-

Total Compensation awarded

Rs.14,20,000/-

 

The award dated 20.11.2014 passed in MACT case No. RT20/ 24.07.2013/20.02.2014 is modified to the extent that the amount awarded of Rs.30,33,000/- is reduced to Rs.14,20,000/-. The claimants/appellants shall be entitled to interest @7.5 % per annum on the amount of compensation from the date of filing of the claim petition till the realization of amount.

Both the appeal are allowed in the afore-said terms.