
(2018) 05 SHI CK 0058
In the High Court Of Himachal Pradesh
Case No : FAO(MVA) No. 44 of 2018

National Insurance Company Limited	Vs	APPELLANT
Kanwar Rawat and others		RESPONDENT

Date of Decision : 07-05-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 166
Code of Civil Procedure, 1908 — Order 41 Rule 33

Citation : (2018) 05 SHI CK 0058

Hon'ble Judges : SURESHWAR THAKUR

Bench : Single Bench

Advocate : Jagdish Thakur, Arvind Sharma, Anil Kumar God

Final Decision : Partly Allowed

Judgement

Sandeep Sharma, J.

1. Respondent No.1, who happened to be mother of the deceased Ankesh alias Sanam (herein after, "deceased") filed a claim petition under

Section 166 of Motor Vehicles Act, before the Motor Accident Claims Tribunal-II, Shimla, camp at Rohru, Himachal Pradesh, claiming therein

compensation on account of death of her son Ankesh alias Sanam, who at the relevant time was working at Goa in a three Star hotel.

2. Allegedly on 3.5.2016, deceased was coming back from Dehradun to Chirgaon in an Alto car bearing registration No. HP-10A-8151. At about 2

pm, on 3.5.2016, aforesaid ill fated car went down the road near Gumma and Ankesh alias Sanam died on the spot. FIR No. 22/16 under Sections 279

and 304A of the Indian Penal Code came to be lodged at Police Station Nerwa. Claimant-mother of deceased averred in the claim petition that her

son after having completed diploma in hotel management was serving in Goa in

a three star hotel and was getting salary of ` 25,000/- per month. She further claimed that her son had also qualified test of constable in Himachal Pradesh Police. Accident allegedly took place on account of rash and negligent driving of Rockey Negi, who also expired in the said accident.

3. Aforesaid petition was resisted by respondent No. 2, who happened to be owner of the ill fated car. Though, he did not deny the factum with respect to accident and death of Ankesh in the same but denied that deceased was a diploma holder in hotel management. He also denied the factum with regard to employment of deceased in a three star hotel in Goa and his having income of ` 25,000/- per month. Respondent No.1 also denied that the accident took place due to rash and negligent driving on the part of driver namely Rockey Negi and claimed that car developed some mechanical defect, as a result of which, it met with an accident.

4. Appellant-Insurance Company (hereinafter â??appellantâ??) refuted the claim of the claimants on the ground that the vehicle was being plied in violation of the terms and conditions of the insurance policy and claimed that deceased driver was not having a valid and effective driving licence as such, appellant is not liable to indemnify the insurer. Appellant also alleged that the deceased Ankesh alias Sanam was traveling in the car as a gratuitous passenger as such, claimant has no cause of action to file the claim petition and same deserves to be dismissed.

5. Learned trial Court, on the basis of material adduced on record by respective parties allowed the claim petition and held the claimant entitled to compensation to the tune of ` 11,07,000/-alongwith interest at the rate of 9% per annum from the date of filing of the petition till payment. In the aforesaid background, appellant has approached this Court in the instant proceedings laying therein challenge to the impugned award dated 16.8.2017 passed in MAC Petition No. 10-R/2 of 2016.

6. Mr. Jagdish Thakur, learned counsel representing the appellant, while terming impugned award to be illegal, vehemently argued that the same is against law and facts as such, is liable to be set aside. Mr. Thakur further contended that the learned Tribunal below has not appreciated the evidence in its right perspective and as such, erroneous findings have come on record to the detriment of the appellant. Mr. Thakur, while inviting attention of this Court to the notification issued by the State Government, prescribing therein

minimum wages in the State of Himachal Pradesh, with effect from

1.5.2015 contended that minimum wages prevalent in the year 2016 were `180/- per day, meaning thereby monthly income of the deceased could not

have been more than `5400/- whereas in the case at hand, learned Tribunal below assessed income of deceased as `6,000/- per month, as such,

impugned award deserves to be set aside. Mr. Thakur, further contended that the deceased was not serving in any regular establishment and as such,

learned Tribunal below ought not have made addition of 50% in the established income of the deceased, as has been categorically held in National

Insurance Company Limited vs. Pranay Sethi and others, AIR 2017 SC 5157. While placing reliance upon aforesaid judgment, Mr. Thakur contended

that the learned Tribunal below has further erred in awarding a sum of `25,000/- on account of funeral charges andÂ `1.00 Lakh on account of loss of

love and affection, because, as per latest judgment in Pranay Sethi (supra) only `15,000/- can be awarded on account of funeral charges, whereas no

amount can be awarded on account of loss of love and affection. Mr. Thakur further contended that bare perusal of evidence available on record

suggests that deceased was under the influence of liquor and quantity of alcohol in his body was 338.58 mg%, as such, vehicle was being plied in

violation of terms and conditions of the insurance policy, as such, appellant is not liable to indemnify the insured. However, Mr. Thakur was not able to

point out evidence, if any, collected on record by appellant that at the relevant time, vehicle in question was being driven by deceased. Lastly, while

placing reliance uponÂ judgment rendered by Hon'ble Apex Court in Laxmidhar Nayak and ors v. Jugal Kishore Behera and Ors, (Civil Appeal No.

19856 of 2017, arising out of SLP(C) No. 31405 of 2016), Mr. Thakur contended that interest awarded by the learned Tribunal below is on higher side

and same deserves to be modified/reduced to 7.5% per annum instead of 9% per annum, as awarded by learned Tribunal below.

7. Mr. Arvind Sharma, learned counsel representing respondent No.1-claimant, fairly admitted that in the year 2016, minimum wages were `180/- per

day and as such, court below ought to have taken monthly income as `5400/- instead of `6000/-. WhileÂ fairly conceding thatÂ inÂ terms ofÂ

judgment rendered in Pranay Sethi (supra), claimant is entitled to `15,000/- on account of funeral charges, Mr. Sharma disputed the claim of the

appellant company that no amount is payable under the head "loss of love and affection". Mr. Sharma also contended that interest is not on

higher side, rather same has rightly been awarded by the learned Tribunal below in the peculiar facts and circumstances of the case.

8. Having heard the learned counsel representing the parties and perused the record, this Court finds no force in the contention having been raised by

learned counsel representing the appellant that learned Tribunal below, while passing impugned award failed to take note of the fact that deceased

was under the influence of liquor because admittedly in the case at hand, there is no evidence led on record by appellant or by respondent No.2

suggestive of the fact that vehicle in question was being driven by deceased Ankesh alias Sanam, rather evidence clearly suggests that vehicle was

being driven by driver namely Rockey Negi, who unfortunately also died in the accident. There is no evidence led on record by the appellant that

Rockey Negi, driver of vehicle was under influence of liquor. Similarly, this court finds that it stands duly proved on record that at the time of alleged

accident, deceased was traveling with Rockey Negi, who was having a valid and effective driving licence, which was issued by RLA Rohru and was

valid with effect from 17.4.2013 to 16.4.2033.

9. Similarly, onus to prove that vehicle was being plied in violation of terms and conditions of insurance policy was on the appellant, but, it has not been

able to discharge aforesaid onus, rather, it stands duly proved on record that the deceased driver was having valid and effective driving licence to drive

the offending vehicle. Similarly, this court finds from record that no evidence, whatsoever was led on record by the appellant to prove that Ankesh

alias Sanam was traveling in the vehicle as a gratuitous passenger, whereas, it is admitted fact that all the four occupants of car died on the spot.

10. After having perused evidence with regard to minimum wages applicable in the State of Himachal Pradesh with effect from May 1, 2015, this

court finds considerable force in the arguments of learned counsel representing the appellant that learned Tribunal below has erred while arriving at a

conclusion that monthly income of deceased Ankesh was `6,000/-, whereas on the date of accident, daily wages were `180/- per day and monthly

income ought to have been assessed as `5400/-, as has been noticed above. Mr. Arvind Sharma, fairly conceded aforesaid error committed by

learned Tribunal below, as such, same is required to be rectified in accordance with law.

11. In view of aforesaid position, monthly income of deceased is required to be taken as `5400/- at the time of accident. Learned Tribunal below, while

placing reliance upon judgment rendered by Hon'ble Apex Court in *Sarla Verma & Ors. v. Delhi Transport Corporation and Anr.*, AIR 2009 SC 3104,

rightly applied multiplier of 18 because undisputedly deceased was 20 years old at the time of accident. However, this Court is in agreement with the

contention of Mr. Jagdish Thakur that since deceased was 20 years old and self employed, addition of 40% of the established income of the deceased

is/was to be made while determining future prospects as has been held in *Pranay Sethi*'s case (*supra*).

12. Having perused judgment rendered by the Hon'ble Supreme Court in *Pranay Sethi*'s case, this court is persuaded to agree with the contention

of Mr. Jagdish Thakur, learned counsel representing the appellant-Insurance Company that the Tribunal has erred in making addition of 50% of actual

salary /income of deceased while determining future prospects. In the aforesaid judgment Hon'ble Apex Court has specifically quantified the amounts

to be paid under conventional heads i.e. loss of estate, loss of consortium and funeral charges. Relevant paragraphs of aforesaid judgment are

reproduced herein below:

“47. In our considered opinion, if the same is followed, it shall subserve the cause of justice and the unnecessary contest before the tribunals and

the courts would be avoided. 48. Another aspect which has created confusion pertains to grant of loss of estate, loss of consortium and funeral

expenses. In *Santosh Devi* (*supra*), the two-Judge Bench followed the traditional method and granted `5,000/- for transportation of the body, `10,000/-

as funeral expenses and `10,000/- as regards the loss of consortium. In *Sarla Verma*, the Court granted `5,000/- under the head of loss of estate, `

5,000/- towards funeral expenses and `10,000/- towards loss of Consortium. In *Rajesh*, the Court granted `1,00,000/- towards loss of consortium and `

25,000/- towards funeral expenses. It also granted `1,00,000/- towards loss of care and guidance for minor children. The Court enhanced the same on

the principle that a formula framed to achieve uniformity and consistency on a socioeconomic issue has to be contrasted from a legal principle and

ought to be periodically revisited as has been held in Santosh Devi (supra). On the principle of revisit, it fixed different amount on conventional heads.

What weighed with the Court is factum of inflation and the price index. It has also been moved by the concept of loss of consortium. We are inclined

to think so, for what it states in that regard. We quote:- 17. In legal parlance, consortium is the right of the spouse to the company, care,

help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been

properly understood by our courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated

appropriately. The concept of non pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the

world more particularly in the United States of America, Australia, etc. English courts have also recognised the right of a spouse to get compensation

even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's

affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation

awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be

proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least

rupees one lakh for loss of consortium.

49. Be it noted, Munna Lal Jain (2015 AIR SCW 3105) (supra) did not deal with the same as the notice was confined to the issue of application of

correct multiplier and deduction of the amount.

50. This aspect needs to be clarified and appositely stated. The conventional sum has been provided in the Second Schedule of the Act. The said

Schedule has been found to be defective as stated by the Court in Trilok Chandra (supra). Recently in Puttamma and others v. K.L. Narayana Reddy

and another it has been reiterated by stating:- we hold that the Second Schedule as was enacted in 1994 has now become redundant, irrational

and unworkable due to changed scenario including the present cost of living and current rate of inflation and increased life expectancy.

51. As far as multiplier or multiplicand is concerned, the same has been put to

rest by the judgments of this Court. Para 3 of the Second Schedule also provides for General Damages in case of death. It is as follows:- 3. General Damages (in case of death): The following General Damages shall be payable in addition to compensation outlined above:-

(i) Funeral expenses- ` 2,000/-.

(ii) Loss of Consortium, if beneficiary is the spouse- ` 5,000/-

(iii) Loss of Estate - ` 2,500/-

(iv) Medical Expenses - actual expenses incurred before death supported by bills/vouchers but not exceeding ` 15,000/-

52. On a perusal of various decisions of this Court, it is manifest that the Second Schedule has not been followed starting from the decision in Trilok

Chandra (supra) and there has been no amendment to the same. The conventional damage amount needs to be appositely determined. As we notice, in different cases different amounts have been granted. A sum of ` 1,00,000/- was granted towards consortium in Rajesh. The justification for grant of consortium, as we find from Rajesh, is founded on the observation as we have reproduced hereinbefore.

53. On the aforesaid basis, the Court has revisited the practice of awarding compensation under conventional heads.

54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted ` 25,000/- towards

funeral expenses, ` 1,00,000/- loss of consortium and ` 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of

care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional

heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income,

the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall

in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in

this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense

variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided.

Therefore, we think it seems to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be ` 15,000/-, ` 40,000/- and ` 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.

55. Presently, we come to the issue of addition of future prospects to determine the multiplicand.

56. In Santosh Devi the Court has not accepted as a principle that a self-employed person remains on a fixed salary throughout his life. It has taken note of the rise in the cost of living which affects everyone without making any distinction between the rich and the poor. Emphasis has been laid on the extra efforts made by this category of persons to generate additional income. That apart, judicial notice has been taken of the fact that the salaries of those who are employed in private sectors also with the passage of time increase manifold. In Rajesh's case, the Court had added 15% in the case where the victim is between the age group of 15 to 60 years so as to make the compensation just, equitable, fair and reasonable. This addition has been made in respect of self employed or engaged on fixed wages.

57. Section 168 of the Act deals with the concept of "just compensation" and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of "just compensation" has to be viewed through the prism of fairness, reasonableness and non violation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the discretion vested in the tribunal is quite wide, yet it is obligatory on the part of the

tribunal to be guided by the expression, that is, "just compensation". The determination has to be on the foundation of evidence brought on record as regards the age and income of the deceased and thereafter the opposite multiplier to be applied. The formula relating to multiplier has been clearly stated in *Sarla Verma* (supra) and it has been approved in *Reshma Kumari* (supra). The age and income, as stated earlier, have to be established by adducing evidence. The tribunal and the Courts have to bear in mind that the basic principle lies in pragmatic computation which is in proximity to reality. It is a well accepted norm that money cannot substitute a life lost but an effort has to be made for grant of just compensation having uniformity of approach. There has to be a balance between the two extremes, that is, a windfall and the pittance, a bonanza and the modicum. In such an adjudication, the duty of the tribunal and the Courts is difficult and hence, an endeavour has been made by this Court for standardization which in its ambit includes addition of future prospects on the proven income at present. As far as future prospects are concerned, there has been standardization keeping in view the principle of certainty, stability and consistency. We approve the principle of "standardization" so that a specific and certain multiplicand is determined for applying the multiplier on the basis of age.

58. The seminal issue is the fixation of future prospects in cases of deceased who is self-employed or on a fixed salary. *Sarla Verma* (supra) has carved out an exception permitting the claimants to bring materials on record to get the benefit of addition of future prospects. It has not, per se, allowed any future prospects in respect of the said category.

59. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardization, there is really no rationale not to apply the said principle to the self employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal

representatives of a deceased who was on a fixed salary would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be inapposite. It is because the criterion of distinction between the two in that event would be certainty on the one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other but such a perception is fallacious. It is because the price rise does affect a self-employed person; and that apart there is always an incessant effort to enhance one's income for sustenance. The purchasing capacity of a salaried person on permanent job when increases because of grant of increments and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get better efficiency from the employees. Similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time. Though it may seem appropriate that there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job, yet the said perception does not really deserve acceptance. We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary. But not to apply the principle of standardization on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. And, therefore, degree-test is imperative. Unless the degree-test is applied and left to the parties to adduce evidence to establish, it would be unfair and inequitable. The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50

years would be reasonable.

60. The controversy does not end here. The question still remains whether there should be no addition where the age of the deceased is more than 50

years. Sarla Verma thinks it appropriate not to add any amount and the same has been approved in Reshma Kumari. Judicial notice can be taken of

the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due to one reason or the other.

To lay down as a thumb rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an

addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of self employed or

person on fixed salary, the addition should be 10% between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be

consistency in the approach by the tribunals and the courts.

61. In view of the aforesaid analysis, we proceed to record our conclusions:-

(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than

what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a

contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding

precedent.

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased

had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to

50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less

tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the

deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the

deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30

to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be ` 15,000/-, ` 40,000/- and `

15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.â??

13. In view of aforesaid exposition of law laid down in Pranay Sethiâ??s case, amount awarded under various heads i.e. funeral expenses and loss of

estate needs to be reassessed, whereas no amount could be awarded under the head of loss of love and affection. Accordingly, amount awarded

under funeral expenses is modified to `15,000/- whereas no amount can be awarded under the head of loss of love and affection. Similarly, as has

been observed above an addition of 40% of established income is required to be made in the case of deceased who was self employed and 20 years

old, while assessing compensation on account of loss of future prospects. In the case at hand, established income of deceased is ` 5400/- per month

and after adding 40% of the actual income/salary of deceased, same comes to ` 7560/- ( ` 5400+2160) per month. Taking note of the ratio of law laid

down in Sarla Vermaâ??s case half of the amount towards personal living expenses of the deceased are required to be deducted as he was a

bachelor and as such, contribution of deceased towards family comes to ` 7560-3780 = 3780, which comes to ` 45,360 per annum and after applying

multiplier of 18, same comes to ` 8,16,480/-.

14. In view of aforesaid modification, claimant is entitled to a sum of ` 8,16,480/-, on account of loss of dependency instead of ` 9,72,000/- as awarded

by the learned Tribunal below. However, this Court while exercising powers under Order XLI, Rule 33 CPC, wherein appellate court enjoys power to

pass any decree and make any order, which ought to have been passed or made,

as the case may be, deems it fit to enhance the amount awarded

under head of loss of estate from `10,000/- to `15,000/-. In view of aforesaid modification, now the claimants shall be entitled to the following amount:

1. Loss of dependency `8,16,480/-

2. Loss of Estate `15,000/-

3. Funeral charges `15,000/-

Total `8,46,480/-

15. Having carefully gone thorough the judgment passed by Hon'ble Apex Court in Laxmidhar Nayak (supra), as relied upon by learned counsel for

the appellant-Insurance Company, this Court is not inclined to agree with the contentions of the learned counsel representing the appellant that interest

awarded by the learned Tribunal below is on higher side. In the case referred herein above, Hon'ble Apex Court reduced the rate of interest in the

peculiar facts and circumstances of the case and certainly laid no thumb rule/law that interest cannot be awarded at the rate of 9% per annum.

16. Recently, Hon'ble Apex Court in Reliance General Insurance Co. Ltd. v. Shalu Sharma, (2018) 2 SCC 753, awarded 9% interest and as such, this

court finds no reason to interfere with the rate of interest awarded by the learned Tribunal below. The Hon'ble Apex Court in the aforesaid judgment

has held as under: "The Tribunal has awarded a sum of Rs 3,14,335 towards medical expenses. An addition of Rs 70,000 would be required to be

made in terms of the decision in Pranay Sethi (supra) on account of the conventional heads of loss of estate (Rs 15,000), loss of consortium (Rs

40,000) and funeral expenses (Rs 15,000). Hence, the total compensation is quantified at Rs 27,66,522 on which the claimants would be entitled to

interest @ 9% p.a. from the date of the filing of the claim petition. The apportionment shall be carried out in terms of the award of the Tribunal. We

order accordingly."

17. Consequently, in view of the detailed discussion made herein above and law laid down by the Hon'ble Apex Court, present appeal is partly

allowed and impugned award passed by the learned MACT below is modified to the aforesaid extent only. Present appeal is disposed of, so also

pending applications if any.