

(2018) 04 SHI CK 0029
In the High Court Of Himachal Pradesh
Case No : FAO(MVA) No. 531 of 2017

Oriental Insurance Company Ltd.	Vs	APPELLANT
Smt. Salochna and others		RESPONDENT

Date of Decision : 17-04-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 168
Code of Civil Procedure 1908 — Order 41 Rule 33
Workmen's Compensation Act

Citation : (2018) LatestHLJ 647 (HP)

Hon'ble Judges : SANDEEP SHARMA

Bench : Single Bench

Advocate : Lalit K. Sharma, H.C. Sharma, Vivek Darhel, V.S. Chauhan

Final Decision : Disposed Of

Judgement

Sandeep Sharma, J.

1.Respondents No. 1 to 7 being wife, children and father of Beli Ram (deceased), filed a claim petition under Section 166 of the Motor Vehicles Act

before the learned Motor Accident Claims Motor Accident Claims Tribunal(IV) Shimla, District Shimla, Himachal Pradesh, claiming therein

compensation to the tune of `15,00,000/- on account of death of deceased Beli Ram in a motor vehicle accident occurred on 29.9.2002.

2.As per claimants, on 29.9.2002 deceased Beli Ram was traveling in the vehicle bearing registration No. HP-37A-1093 (Eicher Canter) owned by

respondent No. 8, Smt. Asha Himalvi, from his Village Aloti to Subzi Mandi Dhalli, being driven by its driver in a rash and negligent manner and when

vehicle reached at Bajasra at about 7.15 am, it rolled down the road into a deep gorge resulting into death of Beli Ram and driver of the vehicle.

Though Beli Ram was taken to Civil Hospital Theog, but he was declared brought dead. It is alleged that the accident took place due to rash and

negligent driving of driver of the vehicle. Deceased was stated to an agriculturist growing vegetables etc. He was engaged as a cleaner by respondent

No. 8, who is owner of the vehicle and had been working as such for the last six months. Deceased was carrying his cabbage in the said vehicle for

sale in the market at Shimla. A petition came to be filed under Workmen's Compensation Act, which was later withdrawn. Yet another petition came

to be filed under Motor Vehicles Act, which was also withdrawn with liberty to file afresh. Claimants prayed for award of ` 15,00,000/- as

compensation on account of death of Beli Ram. Interest at the rate of 12% p.a. was also claimed on the award amount.

3.Respondent No. 8 (owner), while filing reply to the claim petition took objection of maintainability, vehicle being insured with appellant-Insurance

Company and liability if any, was that of the insurer. On merits, factum of accident and vegetables being loaded in the vehicle at the time of accident

is admitted. However, it was denied that the driver was rash and negligent in driving the vehicle.

4.Appellant-Insurance Company resisted the claim of the claimants by raising preliminary objections of maintainability and ill-fated vehicle being plied

in violation of terms and conditions of insurance policy without any registration-cum - fitness certificate. On merits, factum of accident is not denied. It

was averred by the appellant-Insurance Company that the deceased was an unauthorized passenger in the vehicle and as such, appellant-Insurance

Company was not liable to indemnify the claimants.

5.Learned Tribunal below vide impugned award allowed the claim petition thereby holding claimants entitled to a sum of ` 13,91.400/- with interest at

the rate of 9% from the date of filing of the petition till realization, to be paid by the appellant-Insurance Company.

6.In the aforesaid background, appellant-Insurance Company being aggrieved and dissatisfied with the aforesaid award passed by learned Tribunal

below, approached this Court in the instant proceedings, praying therein for setting aside the impugned award.

7.Dr. Lalit K. Sharma, learned counsel representing the appellant-Insurance Company argued that the impugned award is against law and facts as

such, same is liable to be set aside. He further contended that bare perusal of impugned award clearly suggests that the learned Tribunal below has

not appreciated the evidence in its right perspective, as a consequence of which, erroneous findings have come on record to the detriment of the

appellant-Insurance Company. Dr. Lalit K. Sharma, further contended that the finding returned by the learned Tribunal below on issue No. 4 Is liable

to be set aside being contrary to pleadings and evidence adduced on record by respective parties. He further contended that it stands duly proved on

record that claimants at first instance had preferred a claim petition under Workmen's Compensation Act, wherein it was stated that deceased was

under employment of respondent No. 8 as cleaner but when said averment was denied by the respondent No. 8, claimants withdrew said petition. Dr.

Lalit K. Sharma further contended that another claim petition under Section 166 of Motor Vehicles Act was also withdrawn. Dr. Lalit K. Sharma

stated that in the present case, it is third petition wherein claimants have taken a plea that deceased was traveling alongwith his goods i.e. cabbages

and he was also discharging duties of cleaner with the truck of respondent No. 8. He stated that as per RX-2 i.e. copy of insurance policy, RX-3 i.e.

copy of RC, truck was a goods carriage, where no risk of unauthorized passenger was covered. Dr. Lalit K. Sharma contended that claimants in

order to support the factum that deceased was traveling alongwith goods have not examined any witness as such, present appeal deserves to be

allowed and liability is required to be shifted upon respondent No. 8. Learned counsel for the appellant-Insurance Company further contended that the

learned Tribunal below erred in taking monthly income of the deceased as ` 8100/- [Rs.5400 + 2700(50% addition)] for the purpose of compensation,

whereas learned Tribunal below ought to have deducted 1/3rd from the salary of deceased i.e. ` 5,400/-, and as such, impugned award is liable to be

set aside. Lastly, Dr. Lalit K. Sharma contended that deceased was not serving in any regular establishment and learned Tribunal below ought not

have made addition of 50% in the established income of deceased, as has been laid down by Hon'ble Apex Court in National Insurance Company

Limited vs. Pranay Sethi and others, AIR 2017 SC 5157. Dr. Lalit K. Sharma also contended that learned Tribunal below also erred in awarding

interest at the rate of 9% per annum because, as per prevalent market rate, interest could not be awarded more than 7.5% per annum. While placing

reliance upon the judgment rendered by Hon'ble Apex Court in Pranay Sethi (supra), Dr. Lalit K. Sharma contended that the learned Tribunal below has awarded a sum of ` 1,00,000/- each on account of loss of love and affection and ` 1,00,000/- to claimant No.1 under the head of loss of consortium, and ` 25,000/- on account of funeral charges, whereas, as per aforesaid judgment passed by Hon'ble Apex Court, only ` 40,000/- and ` 15,000/- can be awarded under the heads of loss of consortium and funeral charges and no amount can be awarded under the head of loss of love and affection. Dr. Lalit K. Sharma also placed reliance upon judgment passed 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), to suggest that interest awarded by the learned Tribunal below is on higher side.

8.Mr. H.C. Sharma, learned counsel representing respondents No.1 to 7 (claimants) supported the judgment passed by the learned Tribunal below and contended that there is no illegality or infirmity in the impugned award and same deserves to be upheld. While inviting attention of this Court to the evidence available on record, Mr. H.C. Sharma contended that it stands duly proved on record that the deceased died due to rash and negligent driving of driver of the offending vehicle, which was admittedly insured with the appellant-Insurance Company at the relevant time. She further contended that it stands duly proved on record that monthly income of deceased was ` 5,400/- per month, as such, learned Tribunal below drawing strength from law laid down in Reshma Kumari's case (supra) rightly made an addition of 50% to the actual salary while assessing future prospects. Learned counsel fairly conceded that in terms of judgment rendered in National Insurance Company Limited v. Pranay Sethi and others, AIR 2017 SC 5157, claimants are entitled to ` 15,000/- on account of funeral charges and ` 40,000/- on account of loss of consortium to claimant No.1.

9.Having heard the learned counsel for the parties and perused the record, this Court finds that the claimants successfully proved on record that the monthly income of deceased was ` 5,400/- at the time of accident. Learned Tribunal below has further held that the deceased was not traveling as a gratuitous passenger in the vehicle in question, rather, he was traveling with his agricultural produce, which has not been rebutted by the appellant-

Insurance Company. Besides, the appellant-Insurance Company has not led any proof to show that the vehicle in question was being plied in violation

of the terms of the insurance policy. So far as objection taken by the appellant-Insurance Company that the claimants had earlier filed two petitions,

one under Workmen's Compensation Act and another under Motor Vehicles Act but it would be pertinent to note here that both these petitions were

not decided on merit and were withdrawn with liberty to file afresh as such, this objection does not have any weight and deserves dismissal. Learned

Tribunal below while placing reliance upon judgment rendered in *Sarla Verma & Ors. v. Delhi Transport Corporation and Anr.*, AIR 2009 SC 3104,

rightly applied multiplier of 15 because undisputedly deceased was 38 years old at the time of accident.

10. 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 Dr. Lalit K. Sharma, 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. This Court is also in agreement with the contention of Dr. Lalit K. Sharma that 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 seemly 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 selfemployed 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??

11. In view of aforesaid exposition of law laid down in Pranay Sethi's case, amount awarded under various heads i.e. funeral expenses and loss of consortium needs to be reassessed.

12. Accordingly, amount awarded under funeral expenses and loss of consortium is modified to ` 15,000/- and ` 40,000/- instead of ` 1,00,000/- each.

Similarly, as has been observed above an addition of 40% of established could have been made by the learned Tribunal below in the case of deceased

who was self employed and 38 years old, while assessing compensation on account 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.

Learned Tribunal below taking note of the ratio of law laid down in Sarla Verma's case has deducted 1/5th amount towards personal living

expenses of the deceased and as such, contribution of deceased towards family comes to $7560 - 1520 = 6048$ per month and ` 72,576/- per annum and

after applying multiplier of 15, total loss of dependency comes to ` 10,88,640/-.

13. In view of aforesaid modification, claimants are entitled to a sum of ` 10,88,640/-, on account of loss of dependency instead of ` 11,66,400/- 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 grant an amount of `

15,000/- on account of loss of estate. In view of aforesaid modification, now the claimants shall be entitled to the following amount:

1.Loss of dependency ` 10,88,640/ -

2.Loss of Estate` 15,000/-

3.Funeral charges` 15,000/-

Total` 11,18,640/-

4.Loss of consortium

(petitioner No. 1)` 40,000/-

Total` 11,58, 640/-

14.Though, reliance placed on the judgment rendered by the Hon'ble Apex Court in Laxmidhar Nayak (supra) by the learned counsel representing the

appellant-Insurance Company in support of his contention that the learned Tribunal below has fallen in grave error while awarding interest at the rate

of 9% to the claimants on the awarded amount, is wholly misplaced because there is no thumb rule/law that interest on the compensation /awarded

amount cannot be awarded at the rate of 9%, however, in the given facts and circumstances of the case, interest awarded at the rate of 9% is

modified to 7.5% and as such, claimants shall be entitled to interest at the rate of 7.5% on the awarded amount.

15.The compensation of ` 11,18,640/- shall be apportioned amongst claimants No.1 to 6 as under: 50% to claimant No.1 being wife 10% each to

claimants No.2 to 6 ` 40,000/- to claimant No.1 under the head of loss of consortium .

16.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.