

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****261****FAO-1709-2020 (O&M)****Date of decision: 09.01.2025****Smt. Parkasho Devi & Others****...Appellant(s)****Vs.****Mahender & Others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:-

Mr. Yajat Gill, Advocate
Mr. Mehnaz Preet Singh Chahal, Advocate
for the appellants.

Ms. Manvi Verma, Advocate
Mr. Rajnesh Malhotra, Advocate
for respondent No.3.

NIDHI GUPTA, J.

Prayer in the present appeal filed by the claimants is for modification of the Award dated 15.11.2019 passed by Motor Accident Claims Tribunal, Jhajjar (hereinafter referred to as "the learned Tribunal") in MACP-300-2017 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") to the extent that the appellants may kindly be granted compensation as prayed for in the claim petition before the learned Tribunal on account of death of Raj Singh.

2. Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence adduced before it concluded that deceased-Raj Singh had died due to injuries suffered by him in a motor vehicular accident that took place on 17.05.2017 due to rash and negligent driving of truck bearing registration No.HR-63B-9639



(hereinafter referred to as 'the offending vehicle'), being driven by respondent No.1, owned by respondent No.2, and insured by respondent No.3. Learned Tribunal awarded compensation of Rs.13,96,240/- along with interest @ 6% per annum from the date of filing the claim petition till actual realisation. The three claimants are the widow, son and mother of the deceased-Raj Singh.

3. Learned counsel for the appellants inter alia submits that while assessing the compensation, the learned Tribunal has assessed the net income of the deceased as Rs.16,745/- per month. It is submitted that after his retirement from the Army, the deceased was serving as a Security Guard since 2011, and his gross salary was Rs.18,078/- per month. It is submitted that the claimants had proved salary certificate of the deceased as Ex.P5 however, the learned Tribunal has erroneously deducted the Provident Fund and ESI and has taken the monthly salary of the deceased as only Rs.16,745/-. Learned counsel contends that this deduction could not have been made in view of judgment of the Hon'ble Supreme Court in "**Sebastiani Lakra & Others Vs. National Insurance Company Ltd. & Another**" Civil Appeal Nos.10588-89 of 2018 decided on **12.10.2018**. It is accordingly prayed that income of the deceased be taken as Rs.18,078/- per month.

4. It is further submitted that future prospects have also been applied on the lower side at the rate of 10%; whereas the same should be 20% as the deceased was working as a Security Guard and was



retired from the Armed Forces; and was therefore in a 'permanent salaried job'.

5. It is next contended by learned counsel for the appellants that the deceased was 55 years of age on the date of incident. However, multiplier of 9 has been applied, whereas multiplier of 11 ought to have been applied.

6. Learned counsel for respondent No.3/Insurance Company opposes the prayer made on behalf of the appellants and submits that in the FIR (Ex.P1), the registration number of the alleged offending vehicle is mentioned as 'HR-63B-9609'; whereas challan had been filed in respect of registration number 'HR-63B-9639'. It is submitted that therefore, this casts a shadow of doubt cast as to whether the accident in question was caused by the driver of the offending vehicle or not. Reference is also made to the observations made by the learned Tribunal in Para 21 of the impugned Award, which is as under:-

"21. So far as the income of the deceased from pension is concerned, it has been argued by learned counsel for respondent No.3- Insurance Company that the petitioners have not suffered any loss of income in this regard because as per statement of pension account Ex.P26, petitioners had received the pension of the deceased after his death. However, except document Ex. P26, petitioners have not placed on file any other documentary proof showing that they had suffered any loss towards pension of the deceased. Perusal of the document Ex.P26 makes it clear that after the death of the deceased in May, 2017, his pension was received



by the petitioner till November, 2017. There is no evidence brought by the petitioners to prove the loss of the income of the deceased towards pension.”

7. No other argument is raised on behalf of the appellants.

8. I have heard learned counsel for the appellants and perused the case file in great detail.

9. I find merit in the submission made on behalf of the appellants that the learned Tribunal has assessed income of the deceased on the lower side as only Rs.16,745/- per month. It is admitted fact on record that the gross income of the deceased was ₹18,078/- per month. The learned Tribunal has assessed income of the deceased as ₹16,745/- per month by making deductions for PF and ESI. In the afore-cited judgment of the Hon’ble Supreme Court in **Sebastiani Lakra** (supra), it is held that: –

“14. As far as the amounts of pension and gratuity are concerned, these are paid on account of the service rendered by the deceased to his employer. It is now an established principle of service jurisprudence that pension and gratuity are the property of the deceased. They are more in the nature of deferred wages. The deceased employee works throughout his life expecting that on his retirement he will get substantial amount as pension and gratuity. These amounts are also payable on death, whatever be the cause of death. Therefore, applying the same principles, the said amount cannot be deducted.”



10. Ld. Counsel for the respondent-Insurance Company, is unable to dispute this position in law. Accordingly, income of the deceased is taken as ₹18,078/- per month.

11. Next contention on behalf of the learned counsel for the appellants is that the deceased being admittedly 55 years of age, multiplier of 9 has been incorrectly applied and multiplier of 11 ought to have been applied; and future prospects of 10% have been applied; whereas the same ought to have been 15%. I find merit in these arguments also which is in conformity with the law as laid down by the Hon'ble Supreme Court in "**Sarla Verma Vs. Delhi Transport Corporation**" (2009) AIR (SC) 3104 Law Finder Doc ID # 188882. It also remains undisputed that the deceased was an ex-serviceman and was working as a Security Guard at Shri Balaji Security Services, Gurugram since 01.11.2011.

12. As regards the contention on behalf of the respondent-Insurance Company in respect of the discrepancy in the registration number of the offending vehicle, the relevant reasoning of the learned Tribunal in this regard is as under:-

"14. It is not in dispute that the offending vehicle was recovered by the police from the place of accident and in the supplementary statement dated 17.5.2017 (Ex.P4), PW1 Ranjeet Singh has duly explained how he came to know about the changed registration number of the offending vehicle. His supplementary statement dated 17.5.2017 has also been proved by PW3 HC Yudhvir Singh, who had recorded the same during investigation of this case. It is duly explained that in



the number plate, the number of offending vehicle was mentioned as HR-63B-9609 which was wrong as disclosed by its driver when he came to the eye-witness and disclosed that digit '9609' was wrongly printed but the actual number was 9639 and on the same day, supplementary statement of PW1 Ranjeet was written. Moreover, the offending vehicle was left at spot and recovered by the police with the said number plate. In the accident cases, the evidence cannot be scrutinised in the manner as scrutinised in criminal cases where the case is to be proved beyond reasonable doubts. In the motor vehicular accident cases, some time during investigation the offending vehicle identified and its number disclosed. Respondents No.1 and 2 have not challenged the investigation conducted by the police in this case which shows that respondents No.1 and 2 have no grievance with the investigation conducted by the police.”

13. It is established position in law that claim petitions under the Act are to be decided on the basis of preponderance of probabilities and are not to be conducted as a strict criminal trial.

14. In view of the above, present appeal is **allowed** and the compensation awarded to the appellants/claimants is re-assessed as under:-

Head	Amount
Income	Rs.18,078/- per month x 12 = Rs.2,16,936/- per annum
Future prospects (15%)	Rs.2,49,476/- per annum
Deduction (1/3 rd)	Rs.1,66,317/- per annum
Multiplier (age 55)	11
Loss of dependency	Rs.1,66,317/- x 11 = Rs.18,29,487/-
Consortium	Rs.48,000/- x 3 = Rs.1,44,000/-
Funeral expenses	Rs.18,000/-



Loss of estate	Rs.18,000/-
Total	Rs.20,09,487/-

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

09.01.2025

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No