

Before Avneesh Jhingan, J.

AMANDEEP AND ANOTHER—Appellants

versus

SAMPAT AND OTHERS—Respondents

FAO No.7008 of 2017

May 07, 2019

A. *Motor Vehicles Act, 1988—S.166—Notional Income of house wife deceased—how to be calculated—No deductions of self-expenses from notional income.*

Held that, the deceased was just 22 years old at the time of accident and was having a 1 and a half year old son, having a clue from the minimum wages at the time of accident, notional income of the deceased is assessed as Rs.8000 per month. As the notional income is being assessed, no deduction for self-expenses is to be made.

(Para 9)

B. *Entitlement of funeral expenses and for loss of estate—Quantum of loss of consortium to the spouse.*

Held that, as the quantum of compensation is being revisited, it would be appropriate that the amounts under the conventional heads are awarded in consonance with the decision of the Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157. The claimants are entitled to Rs.15,000 each for funeral expenses and for loss of estate. Another sum of Rs.40,000 is awarded for loss of consortium to the spouse.

(Para 10)

C. *Higher rate of interest from retrospective effect—Not permissible under Section 171 of the Act.*

Held that, it was held that such a condition that in case of failure of payment within stipulated time, higher rate of interest with retrospective effect, cannot be sustained.

(Para 15)

Yogesh Gupta, Advocate
for the *appellants*.

Punit Jain, Advocate

for respondent No.3.

AVNEESH JHINGAN, J oral

(1) The award dated 02.05.2017 passed by the Motor Accident Claims Tribunal, Mohali (for brevity 'the Tribunal') in MACT Case No. 206, dated 20.10.2016 has been assailed in appeal by the legal representatives of Sunita @ Sunita Devi seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act'). The appellants are husband and minor son of the deceased.

(2) The driver, owner and insurer (i.e. United India Insurance Co. Ltd.) of tractor/trolley bearing registration No. HR-59-C-1851 (hereinafter referred to as 'offending vehicle') have been arrayed as respondents No. 1 to 3 respectively in the appeal.

(3) The factum of accident has not been disputed by the parties. A motor vehicular accident took place on 29.09.2016. Sunita @ Sunita Devi lost her life in the said accident. FIR No. 509, dated 29.09.2016 was registered at Police Station Sadar, Fatehabad.

(4) A claim petition under Section 166 of the Act was filed. The Tribunal after considering the facts and on 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 compensation.

(5) In the claim petition it was pleaded that the deceased was 22 years of age and was doing the job of tailoring. Her earning was claimed to be Rs. 10,000/- per month. The claimants failed to prove occupation and monthly earning of the deceased. The Tribunal considered the deceased as house-wife and assessed her notional monthly earning as Rs. 5000/-; and multiplier of '18' was applied. The Tribunal awarded a sum of Rs. 12,05,000/- along with interest @6% per annum in case compensation is paid within three months, otherwise @9% per annum. The amount awarded included Rs. 1,00,000/- for loss of consortium and Rs. 25,000/- for funeral expenses.

(6) Learned counsel for the appellants contends that the notional income assessed by the Tribunal is on the lower side, as the deceased apart from doing house hold work, was doing the job of tailoring also. His grievance is that the Tribunal erred in awarding conditional interest.

(7) Learned counsel for the insurer argues that the claimants failed to prove occupation and earning of the deceased. In such circumstances, she is to be treated as a house wife only.

(8) In Indian society, role of a lady towards her family cannot be measured in monetary terms. She has multifarious roles to play as a mother, as a wife and may more. She is not working for some financial benefit but it is her affection, sincerity and care towards her family that keeps her working round the clock. The Supreme Court in *Jitendra Khimshankar Trivedi and others* versus *Kasam Daud Kumbhar and others*,¹ has held as under:

"Even assuming Jayvantiben Jitendra Trivedi was not self employed doing embroidery and tailoring work, the fact remains that she was a housewife and a home maker. It is hard to monetize the domestic work done by a house mother. The services of the mother/wife is available 24 hours and her duties are never fixed. Courts have recognised the contribution made by the wife to the house is unvaluable and that it cannot be computed in terms of money. A housewife/home-maker does not work by the clock and she is in constant attendance of the family throughout and such services rendered by the home maker has to be necessarily kept in view while calculating the loss of dependency."

(9) The deceased was just 22 years old at the time of accident and was having a 1 ½ year old son, having a clue from the minimum wages at the time of accident, notional income of the deceased is assessed as Rs.8000/- per month. As the notional income is being assessed, no deduction for self- expenses is to be made. Reliance in this regard is placed on the decision of Division Bench of this Court in *Paramjit Singh and another* versus *Dilbagh Singh alias Bagga and others*² wherein it was held that no deduction for self expenses is to be made in case of notional income of a house wife. Relevant para is quoted below:

"15. After the decision in Lata Wadhwa's case (supra), the notional income of the housewife is estimated according to their age. The notional income of the housewife was taken to be Rs.3,000/- per month if she had been between the age group of 34 to 59 at the time of accident. The only riddle

¹ (2015) 4 SCC 237

² 2014 (4) RCR (Civil) 895

which is to be solved by us is as to whether 1/3rd cut should be applied on the notional income or not? The answer to this question is couched in the aforesaid extracted paragraph of the judgment of Lata Wadhwa's case (supra), as in that case, the Supreme Court was searching for a modest notional income of the housewife who was not earning an income but rendering multifarious services while managing all the chores of the family. Since it is a case where the Courts are confronted with the notional income of the housewife on account of her multifarious services which not only includes rearing the children but also performing all matrimonial obligations, in our considered view, the deduction of 1/3rd out of her notional income is not warranted."

(10) As the quantum of compensation is being revisited, it would be appropriate that the amounts under the conventional heads are awarded in consonance with the decision of the Supreme Court in *National Insurance Company Limited* versus *Pranay Sethi and others*³. The claimants are entitled to Rs. 15,000/- each for funeral expenses and for loss of estate. Another sum of Rs. 40,000/- is awarded for loss of consortium to the spouse.

(11) There is no challenge to the multiplier of 18 applied by the Tribunal.

(12) In view of above discussion, compensation is re-calculated as under:

	Head	Compensation awarded
(i)	Monthly income	8000/- per month
(ii)	Annual Income	96000/- per annum
(iii)	Multiplier	18 (as per age of deceased)
(iv)	Loss of income	96000x18=17,28,000/-
(v)	Funeral Expenses	15,000/-
(vi)	Loss of estate	15,000/-
(vii)	Loss of consortium	40,000/-
	Total Compensation awarded	17,98,000/-

³ AIR 2017 SC 5157

(13) The award dated 02.05.2017 is modified to the extent that amount of Rs.12,05,000/- awarded by the Tribunal is enhanced to Rs.17,98,000/-.

(14) The Supreme Court in *National Insurance Co. Ltd. versus Keshav Bahadur and others*⁴ held as under:

“Though Section 110CC of the Act (corresponding to Section 171 of the New Act) confers a discretion on the Tribunal to award interest, the same is meant to be exercised in cases where the claimant can claim the same as a matter of right. In the above background, it is to be judged whether a stipulation for higher rate of interest in case of default can be imposed by the Tribunal. Once the discretion has been exercised by the Tribunal to award simple interest on the amount of compensation to be awarded at a particular rate and from a particular date, there is no scope for retrospective enhancement for default in payment of compensation. No express or implied power in this regard can be culled out from Section 110CC of the Act or Section 171 of the new Act. Such a direction in the award for retrospective enhancement of interest for default in payment of the compensation together with interest payable thereon virtually amounts to imposition of penalty which is not statutorily envisaged and prescribed. It is, therefore directed that the rate of interest as awarded by the High Court shall alone be applicable till payment, without the stipulation for higher rate of interest being enforced, in the manner directed by the Tribunal.”

(15) It was held that such a condition that in case of failure of payment within stipulated time, higher rate of interest with retrospective effect, cannot be sustained.

(16) Considering the banks' rate of interest at the time of accident, the claimants shall be entitled to the entire amount (including enhanced amount) alongwith interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount.

(17) The appeal is allowed in the afore-said terms.

Tejinderbir Singh

⁴ (2004) 2 SCC 370