IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.10591 of 2014
Date of decision: 24.01.2017

Raj Kali and others **..Appellants**

Versus

Parminder and others **..Respondents**

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. R.S. Mamli, Advocate
for the appellants.

Mr. Ashwani Talwar, Advocate
for respondent No.3-Insurance Company.

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Daya Chaudhary, J.

The appellants-claimants have filed the present appeal for modification of award dated 28.10.2014 passed by the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri in MACT Case No.63 of 2011 to the extent that less compensation has been awarded to them.

Briefly, the facts of the case as made out in the present appeal are that a petition under Section 166 of the Motor Vehicle Act, 1988 (hereinafter called as “the MV Act, 1988”) was initially filed for grant of compensation on account of injuries sustained by Des Raj. During pendency of the claim petition, Des Raj died and thereafter, his widow and two sons amended the petition in order to convert it to a petition for claiming compensation on account of death of deceased-Des Raj.

On 11.10.2011, deceased-Des Raj was returning to his native village on Motorcycle bearing registration No.HR-02S-0178, which was being driven by Paramjeet Singh (driver of the motorcycle). When they reached near Government Tubewell of their village, a TATA Ace vehicle No. HR-58-8598 came from the school side at a high speed and hit the motorcycle. The deceased sustained multiple and grievous injuries on his person. He was brought to Jindal Hospital, Jagadhri and was provided adequate treatment. He could not recover and thereafter, he remained in coma till his death, which occurred on 05.12.2012. Initially, the petition was filed by the deceased-Des Raj through his wife-Raj Kali being his guardian ad-litem as he himself was not physically fit on account of unconsciousness. The offending vehicle was owned by Parveen Kumar and it was insured with the insurance company. The claimants impleaded the driver, owner and insurance company of the motorcycle as party in the claim petition. The deceased was 63 years of age at the time of death and was stated to be earning ₹15,000/- per month by trading in the business of timber. FIR No.103 dated 29.11.2011 was registered at Police Station Jathlana relating to that accident. The claim petition was contested by the insurance company as well as driver and owner of the offending vehicle. The following issues were framed by the MACT: -

> “1. Whether the accident in question allegedly resulting into death of Des Raj took place due to rash and negligent driving of vehicle i.e. TATA Ace bearing registration No. HR-58-8598 by respondent No.1 or motorcycle bearing registration No. HR-02S-0178 by respondent No.4? OPP
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> 2. It issue No.1 is proved, what amount of

compensation, the petitioners are entitled to and from whom? OPP

3. Whether respondent No.1 was not holding a valid and effective driving licence at the time of accident. If so, its effect? OPR-3
4. Whether TATA Ace in question was being driven in violation of the terms and conditions of the insurance policy. It so, to what effect? OPR-3
5. Whether respondent No.4 was not holding a valid and effective driving licence at the time of accident. If so, to what effect? OPR-6.
6. Relief."

The tribunal allowed the claim petition in view of ratio of judgment rendered by Hon'ble the Apex Court in ***Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77*** considering the income of the deceased by relying upon the income tax returns pertaining to the assessment of the years 2009-2010 and 2010-2011. The deceased had shown in his last return Ex.P-158 his income as ₹1,45,000/-, which was filed on 31.03.2011 i.e., prior to the accident. The annual income of the deceased was assessed at ₹1,45,000/-. By considering the age of deceased as 63 years, the multiplier of 7 was adopted as is applicable to the age group of 61 to 65 years and amount of compensation came to be ₹6,76,669 (₹96667 x 7). Claimant Raj Kali was held entitled to a sum of ₹10,000/- as loss of consortium. The claimants were also held entitled to a sum of ₹5000/- towards loss of estate and another sum of ₹5000/- towards funeral expenses. Deceased remained admitted in the hospital from the date of accident i.e., 11.10.2011 till 23.11.2011. An amount of ₹2,70,000/- was spend on treatment vide bill Ex.P-21. The bills Ex.P-22 to Ex.P-53 amounting to ₹14,330/- for investigations done during hospital stay were proved by the doctor. Similarly, a sum of ₹2,70,000/- for treatment of deceased was proved vide bill Ex.P-21 by the statement of the doctor. Similarly, receipts Ex.P-15 to Ex.P-20 amounting to ₹1200/- for follow up treatment of the deceased were also proved by the doctor. The medicines worth ₹1,12,556/- were purchased for treatment of deceased vide cash memos Ex.P-112 to Ex.P-156 on the prescription of Dr. Yogesh Jindal. The claimants also tendered cash memos Ex.P-159 and Ex.P-160 amounting to ₹5275/- regarding purchase of medicines for treatment of the deceased. By considering the total amount spent on the treatment, i.e., ₹4,33,257/-, the said amount was allowed towards costs of treatment. The claimants were also awarded compensation of ₹10,000/- towards transportation expenses and ₹12,000/- as expenses incurred on attendants and ₹3000/- towards special diet.

Learned counsel for the appellants submits that by applying the ratio of judgment in **Sarla Verma's case (supra)**, nothing has been paid towards love and affection and less amount has been awarded for loss of consortium; loss of estate and also towards funeral expenses.

Learned counsel for respondent No.3-Insurance Company submits that multiplier has been applied in view of **Sarla Verma's case**

(supra) and the compensation awarded against different heads cannot be said to be on the lesser side. The award has been passed by the Tribunal on the basis of evidence available on record and after proper appreciation of facts and evidence.

Heard arguments of learned counsel for the parties and have also perused the award as well as other documents available on the file.

Admittedly, initially, the petition was filed by the deceased-Des Raj through his wife Raj Kali being his guardian ad-litem under Section 166 of the MV Act, 1988 for grant of compensation on account of injuries sustained by him. During pendency of the petition, he died and thereafter, his widow and two sons came before the Tribunal and claim petition was amended. The deceased was on motorcycle, which was being driven by Paramjeet Singh. The offending vehicle TATA Ace bearing registration No. HR-58-8598, was proved to be coming at a high speed and had hit against the motorcycle. Deceased received multiple and grievous injuries and thereafter, he was brought to Jindal Hospital, Jagadhri but he could not recover in spite of treatment provided to him. He also remained in coma till his death, which occurred on 05.12.2012. The Tribunal relied upon judgment rendered in **Sarla Verma's case (supra)** and deducted 1/3rd amount i.e., ₹48,333/- per annum towards personal expenses as number of dependents family members were three. As per calculations, the dependency of the claimants was assessed at ₹96,667/- per annum. The date of birth of deceased was 10.02.1948 and he was more than 63 years of age at the time of accident. Accordingly, multiplier of 7 was applied. The amount of compensation comes to ₹6,76,669/- (96,667 x 7). Claimant Raj Kali was held entitled to a sum of ₹10,000/- as loss of consortium.

As per judgment of **Sarla Verma's case (supra)**, the compensation for loss of consortium should be in the range of ₹5000/- to ₹10,000/- whereas it should have been ₹1,00,000/- in view of ratio of judgment in ***Rajesh and others vs. Rajbir Singh and others, 2013(9) SCC 54***. No amount towards love and affection was paid to the dependent children which they have been deprived of because of death of their father whereas they were in such an age group wherein the guidance of father was required.

Similarly, an amount of ₹5000/- has been awarded towards funeral expenses and the claimants were entitled for ₹25,000/- as per judgment of **Rajesh's case (supra)**.

After the amendment of the Act by Act No.54 of 1994 with effect from 14.11.1994, the report on motor vehicle accident prepared by the police officer and forwarded to the Claims Tribunal under Sub-section (6) of Section 158 has to be treated as an Application for Compensation.

Prior to the amendment in 1994, it was left to the discretion of the Tribunal as to whether the report be treated as an application or not. Now it is the duty of the Tribunal to build on that report and award just, equitable, fair and reasonable compensation with reference to the settled principles on assessment of damages. Meaning thereby, the Tribunal has a duty, irrespective of the claims made in the application, if any, to properly award a just, equitable, fair and reasonable compensation even after ignoring the claim made in the application for compensation.

It was a precedent made by Hon'ble the Apex Court to achieve uniformity and consistency on a socio-economic issue, vis-a-vis legal principle. The different heads have been specified for grant of compensation like, loss of consortium to the spouse, loss of love, care and guidance to children and funeral expenses. In **Sarla Verma's case (supra)**, it was held that compensation for loss of consortium should be in the range of ₹5000/- to ₹10,000/-. 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. It was also observed in **Sarla Verma's case (supra)** that non-pecuniary head of damages has not been properly understood by the Courts. The loss of companionship, love, care and protection etc., the spouse is entitled to get, has to be compensated appropriately. Now damage for loss of consortium is one of the major heads of award of compensation. Accordingly, the enhancement in loss of consortium is also required by applying ratio of judgment in **Rajesh's case (supra)**. The amount awarded against head of funeral expenses is also required to be enhanced.

The chart mentioning the amount, which has been awarded and which requires to be enhanced is prepared as under: -

Sr. No.	***Heads***	***Amount awarded***	***Amount enhanced***
1	Loss of Income	₹96667/- x 7 ₹6,76,669/-	same
2	Loss of consortium	₹10,000/-	₹1,00,000/-
3	Loss of estate	₹5000/-	same
4	Funeral Expenses	₹5000/-	₹25,000/-
5	Love and affection	---	₹1,00,000/-
	Total	₹696669/-	₹2,25,000/-

The amount, which has been granted towards consortium ₹10,000/-, loss of estate ₹5000/- and funeral expenses ₹5000/- comes to ₹20,000/- and as such, the appellants-claimants are entitled to enhanced compensation by deducting the amount of ₹20,000/- from the enhanced amount of ₹2,25,000/-, which comes to ₹2,05,000/-. The appellants are also entitled for interest @ 7.5% per annum from the date of filing of claim petition till its realization.

Accordingly, the appeal is partly allowed and the award passed by the Tribunal is set-aside. The claimants shall be entitled to total compensation of ₹6,96,669/- + ₹2,05,000/- as enhanced along with interest @ 7.5 % per annum from the date of filing of claim petition till its realization. The respondent-Insurance Company is also directed to pay the enhanced compensation by preparing demand draft in the name of the claimants within a period of two months from the date of receipt of certified copy of this order, after deducting the amount, if any, already paid.

24.01.2017 **(DAYA CHAUDHARY)**
neetu **JUDGE**

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Whether speaking/reasoned Yes/No
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Whether Reportable Yes/No