

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.1917 of 2002
Date of Decision : 19.01.2018

Mohinder Singh & ors.

....APPELLANTS

VERSUS

Ramesh Kumar & ors.

...RESPONDENTS

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. J.S. Thind, Advocate for the appellants.

Mr. Shubham Jain, Advocate for respondent No.2.

Mr. S.S. Walia, Advocate for respondent No.3.

Mr.Suvir Dewan, Advocate for respondent No.4-
Insurance Company.

B.S. WALIA, JUDGE (ORAL)

1. Challenge by the mother, father and two daughters of the deceased is to award dated 10.10.2001 passed by the learned Motor Accidents Claims Tribunal, Hisar (hereinafter referred to as “the Tribunal”) awarding compensation of ₹1,47,259/- to the mother only of the deceased Sanjiv Kumar while denying compensation to the minor daughters and father of the deceased. The Tribunal awarded compensation to the mother of the deceased by taking into account age of mother of the deceased, of deceased being employed as a Helper in a dry cleaner's shop against monthly salary of ₹2,000/- and by applying multiplier of 6 excluding 1/3rd of the income of the deceased towards his personal expenses and working out

annual dependency of ₹16,000/-.

2. Challenge to the award is primarily on ground of non application of correct multiplier by not taking the age of deceased into account, non awarding of compensation to the daughters and father of the deceased besides on account of non award of compensation towards future prospects, loss of estate and award of ₹5,000/- only towards funeral expenses.

3. Per contra, learned counsel for the respondent-Insurance Company has assailed the claim on behalf of father of deceased, award of ₹5,000/- on account of special diet, ₹4,000/- as transportation expenses and ₹6,000/- towards loss of love and affection .

4. I have considered the submissions of learned counsel for the parties.

5. As agreed to by learned counsel for the parties, the deceased was 25 years of age and was employed as a Helper in the shop of a dry cleaner against monthly salary of ₹2,000/- per month. As per paragraph No. 61 (vii) of the decision of the Hon'ble Supreme Court in **National Insurance Company Limited vs Pranay Sethi and others-2017(4) RCR (Civil) 1009**, it is the age of the deceased on the basis of which multiplier is to be applied. Relevant extract of the decision in **Pranay Sethi's** case (supra) is reproduced as under :-

“61 (vii) The age of the deceased should be the basis for applying the multiplier”

Apparently, the Tribunal erred in applying multiplier of 6 by taking into account the age of mother of the deceased as against the requirement of taking the age of deceased into account. In terms of paragraph No.44 of the decision of the Hon'ble Supreme Court in **Pranay Sethi's** case (supra) upholding decision in '**Sarla Verma versus Delhi Transport Corporation**', 2009 ACJ 1298, where

deceased was 25 years old, multiplier of 18 is applicable. Relevant extract of the decision of the Hon'ble Supreme Court in '**Sarla Verma's** case (supra) as approved in **Pranay Sethi's** case (supra) is reproduced hereunder :-

“42. We therefore hold that the multiplier to be used should be mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.”

Accordingly, multiplier of 18 is to be applied and not 6 in view of paragraph No.44 and paragraph No. 61 (vii) and 44 of the decision in **Pranay Sethi's** case (supra) as well as paragraph No. 42 of the decision in **Sarla Verma's** case (supra).

6. Since the deceased was less than 40 years of age and was self-employed, therefore, in view of paragraph No.61(iv) of the decision of the Hon'ble Supreme Court in **Pranay Sethi's** case (supra), 40% of the established income of the deceased minus the tax component is to be added towards future prospects.

Relevant extract of the aforementioned decision is reproduced as under:-

“61 (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.”

Accordingly, 40% of the established income of the deceased minus the tax component is to be added towards future prospects while working out compensation.

7. However, award of compensation on account of loss of love and affection, special diet, transportation charges is opposed as not admissible by learned counsel for respondent-Insurance Company on the ground that no award in respect thereto has been made as per the decision in ***Pranay Sethi's*** case (supra).

8. Learned counsel for the appellants has not controverted the aforementioned position. Accordingly, it is held that the compensation payable under the said heads would be excluded from the award of compensation.

9. A sum of ₹31,259/- was awarded on account of reimbursement of medical expenses. The same would remain unchanged. However, as per paragraph No.61 (viii) of the decision of Hon'ble Supreme Court in ***Pranay Sethi's*** case (supra), a sum of ₹15,000/- is payable towards funeral expenses besides ₹15,000/- towards loss of estate. Paragraph No. 61 (viii) of the decision in ***Pranay Sethi's*** case (supra) is reproduced as under:-

“61 (viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.”

Accordingly, in view of the position as noted above, as against the compensation of ₹5,000/- awarded towards funeral expenses, the claimant-appellants are entitled to ₹15,000/- towards funeral expenses besides ₹15,000/- on account of loss of estate.

10. Learned counsel for the appellants contended that although the claim petition had been filed on behalf of the father, mother and two minor daughters of the deceased, yet inadvertently due to typographical error, instead of mentioning the names of the minors as daughters of the deceased, the same was mentioned as sons, therefore, the Tribunal held that as the father of the deceased had stated that the deceased had left behind 2 minor daughters, it could not be believed that the deceased had any children. Learned counsel contends that the Tribunal adopted a hyper technical approach. Learned counsel for the Insurance Company does not dispute that names of 2 minor children of the deceased was mentioned as Mannu and Disha in the claim petition and that said names are those which are ordinarily of girls though the name Mannu can be of a boy also. Learned counsel for the respondent-Insurance Company also does not dispute the claim of the daughters of the deceased for award of compensation in view of paragraph No.22 of the award. The discrepancy in the description of the children as sons instead of daughters in the circumstances is an inadvertent typographical mistake and not calling for adoption of a hyper-technical approach. Besides, the Tribunal has awarded compensation by taking into account three dependents of the deceased. Accordingly, the daughters of the deceased are also held entitled to compensation in accordance with paragraph No.22 of the award. Learned counsel for the

appellants does not press the appeal qua the claim by the father of the deceased. In the circumstances, appeal qua the father is dismissed.

11. Accordingly, in the light of the position as noted above, the amount of compensation payable to the claimant-appellants mother and two daughters of the deceased works out as under :

Sr. No.	Head	Amount assessed by Tribunal in ₹	Amount assessed by this Court in ₹
1	Income	₹ 2000/-	No change
2	Future prospects .	NIL	@ 40% of the income = ₹ 800/-
3	Total income assessed	₹ 2000/-	₹ 2800/-
4	Deduction towards personal expenses of deceased.	₹666/- (1/3 rd)	₹933/- (1/3 rd)
5	Dependency arrived at	₹1334/- per month	₹1867/- per month
6	Multiplier applied	6	18
7	Dependency	₹1334 x 12 x 6 = ₹96048/-	₹ 1867 x 12 x 18 = ₹ 4,03,272/-
8	Loss of consortium	NIL	NIL
9	Funeral expenses	₹5000/-	₹15,000/-
10	Loss of Estate	NIL	₹15,000/-
11	Medical bills	₹31,259/-	₹31,259/-
12	Transportation charges	₹4,000/-	NIL
13	Loss of love and affection	₹6,000/-	NIL
14	Special diet	₹5,000/-	NIL
Total		₹1,47,307/-	₹4,64,531/-

12. Resultantly, as against the compensation of ₹1,47,307/- awarded by the Tribunal to the mother of the deceased, the claimant-appellants i.e. mother and two daughters of the deceased would be entitled to ₹4,64,531/- along with interest as awarded by the Tribunal in equal share with effect from the date of the claim petition till date of payment of the amount , less payment, if any, already made.

Compensation payable to the daughters of deceased be deposited in a Nationalized Bank till they attain the age of majority.

13. Accordingly, appeal is allowed by modifying the award dated 10.10.2001 passed by the learned Tribunal to the extent as noted above.

(B.S. WALIA)
JUDGE

January 19, 2018
ps

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No