

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.2782 of 2001

Date of Decision :18.05.2018

Baljit Singh & others.

...APPELLANTS

VERSUS

Gurmit Singh & ors.

...RESPONDENTS

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

Present: Mr. Vikas Bahl, Sr. Advocate with Ms. Balpreet Sidhu, Advocate
for the appellants.

Mr. Satinder Khanna, Advocate
for the respondents.

B.S. WALIA, JUDGE (ORAL),

1. Appeal has been filed by the mother, three sisters and father of deceased Gurmit Singh against award by the Motor Accident Claims Tribunal, Nawanshahar (hereinafter referred to as the Tribunal) of compensation of only ₹50,000/- on account of 'No Fault Liability' and ₹15,000/- for the services being rendered by the deceased, besides on account of the deceased being the only son of his parents. Out of the compensation awarded, ₹35,000/- was ordered to be paid to the mother-Nirmal Kaur and ₹10,000/- to each of the three sisters of the deceased while ₹10,000/- payable to minor sister Paramjit Kaur was ordered to be deposited in a Nationalized Bank to be withdrawn on her attaining majority. However, no amount was awarded to the father.

2. Deceased Gurmit Singh was 16 years old at the time of his death in an accident between Truck No. PAT-6436 and tractor trolley make DT-24 on

11.05.2009. Learned counsel for the appellants contended that the Tribunal failed to take into account that the deceased had appeared in Class-10 examination, was assisting his father in agricultural operations on the land owned by his father, besides, supplying milk to customers from the dairy owned by his father and in view thereof was helping his father in saving money to the extent of ₹5,000/- per month, consequentially, the compensation awarded was wholly inadequate. Besides, no amount whatsoever was awarded on account of conventional heads.

3. Reliance was placed upon the decision of Hon'ble the Supreme Court in **Kishan Gopal and another versus Lala and others 2013 AIR SC (Civil) 2465** to contend that in a case involving death of a 10 year old child who was assisting his father in agricultural occupation, Hon'ble the Supreme Court by taking into account that had the deceased child been alive, he would have contributed substantially to his family by working hard, took notional income in said case at ₹30,000/- applied multiplier of 15, and by giving ₹50,000/- towards conventional heads awarded ₹5,00,000/- along with interest @ 9% per annum with effect from the date of filing of the application till date of payment. Relevant extract of the decision in **Kishan Gopal's** case (supra) is reproduced as under :

“In our considered view, the aforesaid legal principle laid down in Lata Wadhwa's case with all fours is applicable to the facts and circumstances of the case in hand having regard to the fact that the deceased was 10 years' old, who was assisting the appellants in their agricultural occupation which is an undisputed fact. We have also considered the fact that the rupee value has come down drastically from the year 1994, when the notional income of the non- earning member prior to the date of accident was fixed at Rs.15,000/-. Further, the deceased boy, had he been alive would have certainly contributed substantially to the family of the appellants by working hard. In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs.30,000/- and further taking the young age of the parents, namely the mother who was about 36 years old, at the time of

accident, by applying the legal principles laid down in the case of [Sarla Verma v. Delhi Transport Corporation](#)[3], the multiplier of 15 can be applied to the multiplicand. Thus, 30,000 x 15 = 4,50,000 and 50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites as held in [Kerala SRTC v. Susamma Thomas](#)[4], which is referred to in Lata Wadhwa's case and the said amount under the conventional heads is awarded even in relation to the death of children between 10 to 15 years old. In this case also we award Rs.50,000/- under conventional heads. In our view, for the aforesaid reasons the said amount would be fair, just and reasonable compensation to be awarded in favour of the appellants. The said amount will carry interest at the rate of 9% p.a. by applying the law laid down in the case of [Municipal Council of Delhi v. Association of Victims of Uphaar Tragedy](#)[5], for the reason that the Insurance Company has been contesting the claim of the appellants from 1992-2013 without settling their legitimate claim for nearly about 21 years, if the Insurance Company had awarded and paid just and reasonable compensation to the appellants the same could have been either invested or kept in the fixed deposit, then the amount could have earned five times more than what is awarded today in this appeal. Therefore, awarding 9% interest on the compensation awarded in favour of the appellants is legally justified.”

4. Learned counsel for the respondents could not controvert the factual/legal position as stated by learned counsel for the appellants. He however contended that in terms of decision of Hon'ble the Supreme Court in **National Insurance Company Limited vs Pranay Sethi and others-2017(4) RCR (Civil) 1009**, upholding the decision in '**Sarla Verma vs. Delhi Transport Corporation**', **2009 ACJ 1298**, compensation would be payable only to the mother, therefore 50% of the notional income of the deceased was to be excluded towards his personal expenses while remaining 50% was to be taken into account for working out compensation payable. Learned counsel for the respondents however contended that amount already paid as per the orders of the Tribunal be not disturbed but

compensation if any awarded over and above the award of the Tribunal be paid exclusively to the mother of the deceased. Learned counsel for the appellants states that the appellants would be satisfied with the award of compensation in the manner aforesaid and in the circumstances, he does not press the claim on behalf of the father and sisters of the deceased.

5. I have considered the submissions of learned counsel for the parties and am of the view that in terms of paragraph Nos.61(v) of the decision in **Pranay Sethi's case (supra)** read in the context of paragraph No. 32 of the decision in **Sarla Verma's case (supra)** as referred to in paragraph No. 39 in **Pranay Sethi's case (supra)**, deceased being a bachelor, only the mother would be considered to be dependent, consequentially 50% of his income would be treated as personal living expenses and balance 50% as contribution to the family. Paragraph No. 61(v) of the decision in **Pranay Sethi's case (supra)** as also paragraph No. 32 of the decision in **Sarla Verma's case (supra)** is reproduced as under :

*Paragraph No.61(v) of the decision in **Pranay Sethi's case (supra)***

“ 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.”

Paragraph No.32 of the decision in Sarla Verma's case (supra)

“32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non earning sisters or brothers, his personal and living expenses may be restricted to one-third and

contribution to the family will be taken as two-third.”

6. Accordingly the mother of the deceased is to be considered as dependent of the deceased and is entitled to compensation by treating 50% of the notional income of the deceased as his personal expenses.

7. Another aspect which needs noticing is that in terms of paragraph No.61(vii) of the decision in **Pranay Sethi's case (supra)**, it is the age of the deceased which is to be taken into account for applying multiplier while as per paragraph No. 42 of the decision in **Sarla Verma's case (supra)**, where the deceased was in the age group of 15 to 20 years, multiplier of 18 is to be applied. Paragraph No.61(vii) of the decision in **Pranay Sethi's case (supra)** and paragraph No. 42 of the decision in **Sarla Verma's case (supra)** is reproduced as under :

Paragraph No.61(vii) of the decision in **Pranay Sethi's case (supra)**

“The age of the deceased should be the basis for applying the multiplier.”

Paragraph No. 42 of the decision in **Sarla Verma's case (supra)**

“42. We therefore hold that the multiplier to be used should be as 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.”

8. Admittedly, the deceased was 16 years of age and was a student of Class-10, besides, was helping his father in agricultural work on the land owned by the father and also delivering milk from the dairy owned by his father. The accident in **Kishan Gopal's** case (supra) had taken place on 19.07.1992 while in the instant case the accident took place on 11.05.1995. Hon'ble the Supreme Court after taking into account that the rupee value had come down drastically from the year 1994, when the notional income of the non-earning member prior to the date of accident was fixed at ₹15,000/-, observed that it would be just and reasonable to take the notional income of the deceased 10 year old child at ₹30,000/- and further by taking into account the age of the mother, applied multiplier of 15. Since the accident in the instant case had taken place in the year 1995, I am of the view that it would be just and proper if the same amount i.e. ₹ 30,000/- is taken as the notional income of the deceased for although it was claimed that deceased had appeared in matriculation examination prior to death, it has not been brought on record as to whether he had passed the examination and whether he was a meritorious student, thereby having a bright future. In terms of paragraph No.61(vii) of the decision in **Pranay Sethi's** case (supra), it is the age of the deceased which is to be taken into account for working out the multiplier. Deceased was 16 years of age, therefore in view of paragraph No. 42 of the decision in **Sarla Verma's** case (supra), multiplier of 18 would be applicable.
9. Paragraph No.61(viii) of the decision in **Pranay Sethi's** case (supra) deals with amount of compensation payable under conventional heads. Relevant extract 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, an amount of ₹15,000/- would be awarded towards funeral expenses and ₹15,000/- towards loss of estate. However, no amount would be paid towards loss of consortium. No other point has been argued.

10. In the light of the position as noted above, amount of compensation paid under Section 140 of the Act is to be adjusted on account of compensation under Section 166 being higher than the compensation payable under Section 140 of the Act. Relevant extract of the decision in **Eshwarappa @ Maheshwarappa and anr. Versus C.S. Gurushanthappa and anr. 2010(8) SCC 620** is reproduced as under:

“Sub-sections (2) and (3) further provide that even while claiming compensation under the principle of fault (under [Section 166](#)) one may claim no fault compensation under [section 140](#) and in that case the claim of no fault compensation shall be disposed of in the first place and the amount of compensation paid under [section 140](#) would be later adjusted if the amount payable as compensation on the principle of fault is higher than it.”

Accordingly, notional income ₹30,000 x 18=₹5,40,000/2=₹2,70,000/- plus ₹15,000/- each towards loss of estate and funeral expenses, less ₹50,000/- paid under Section 140 of the Act total ₹2,50,000/-.

11. The aforementioned amount would be payable along with interest @ 9% per annum from the date of application till date of payment less amount, if any, already paid. It is further made clear that the amount already paid to the sisters of the deceased would not be recovered from them in view of only the mother of the deceased being treated as dependent of the deceased. However, amount on enhancement, over and above the amount already paid would be released

exclusively to the mother i.e. appellant No.2-Nirmal Kaur along with interest @ 9% per annum from the date of the claim petition till date of payment.

12. Accordingly, the appeal is allowed. Award dated 06.12.2000 passed by the learned MACT, Nawanshahar is modified to the extent as noted above.

**(B.S. WALIA)
JUDGE**

May 18, 2018
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No