IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.3983 of 2002
Date of decision: 17.12.2018

Mukesh Devi and Others

…. Appellants

Versus

Nar Singh and Others

….Respondents

CORAM : HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr.N.D.Achint, Advocate
for the appellants

Mr.Rakesh Dhiman, Advocate
for respondent No.2

Mr.Vinod Gupta, Advocate
for respondent No.3-Insurance Company

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ARUN KUMAR TYAGI, J. (ORAL)

1. The claimants widow, sons and parents of deceased Braham Parkash have filed the present appeal seeking enhancement of compensation awarded by learned Motor Accidents Claims Tribunal, Gurgaon (for short 'The Tribunal') in **MACT case No.55 of 2000** titled as **Mukesh Devi and others Versus Nar Singh and others** on account of death of Braham Parkash on 14.02.2000 due to injuries suffered in motor vehicle accident which took place on 20.01.2000.

2. Briefly stated, the facts giving rise to the present appeal are that the claimants filed petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the M.V.Act') on the averments that on 20.01.2000 at about 10.15 A.M. deceased Braham Parkash was returning to his village on scooter bearing registration No.HG-4683, with his father as pillion rider, after lodging a complaint with the electricity Department. When they reached near High School, Badshapur, four wheeler bearing registration No.HR-38-C-0841, owned by respondent No.2 and insured with respondent No.3, came from the side of Badshapur driven by respondent No.1 in a rash and negligent manner at a very fast speed and hit their scooter from front side due to which they fell down on the road and sustained grievous injuries. They were taken to Kalyani Hospital, Gurgaon from where Braham Parkash was shifted to Orthonova Institute of Advanced Surgery and Research, New Delhi and remained admitted there till 07.02.2000. Thereafter, Braham Parkash was shifted to Safdarjang Hospital, Delhi where he succumbed to the injuries on 14.02.2000. FIR No.42 dated 20.02.2000 was registered initially under Sections 279 and 337 of the Indian Penal Code, 1860 (for short 'the IPC') in Police Station, Sadar, Gurgaon and on death of Braham Parkash, Section 304-A of the IPC was added. The claimants spent ₹3,00,000/- on medical treatment and ₹25,000/- on the last rites of the deceased. Braham Parkash was aged about 37 years and was working as Pump Attendant in P.W.D., Public Health Sohna Division and was earning ₹5000/- per month. The claimants being legal

representatives and dependent on the deceased are entitled to award of compensation alongwith costs and interest.

3. On notice, the petition was contested by the respondents. In their written statements the respondents No.1 and 2 controverted allegations as to rash and negligent driving of four wheeler bearing registration No.HR-38-C-0841 by respondent No.1, pleaded false implication and denied their liability.

4. In its written statement the respondent No.3 inter alia took objections as to respondent No.1 not having valid and effective driving license and breach of the terms and conditions of the Insurance Policy by the insured. Respondent No.3 also denied involvement of the vehicle in the accident but took alternative plea as to contributory negligence of the deceased.

5. Issues were framed on the basis of the pleadings of the parties and evidence produced by the parties was recorded.

6. On consideration of the evidence produced by the parties and submissions made by the learned counsel for the parties, the Tribunal held that Braham Parkash died due to injuries suffered in accident caused by rash and negligent driving of the four wheeler, owned by respondent No.2 and insured with respondent No.3, by respondent No.1 who was having valid and effective driving license. The Tribunal held the deceased to be aged about 37 years, assessed his income as ₹4502/-, deducted 1/3rd amount towards personal expenses, applied the multiplier of 16, worked out loss of dependency as ₹5,76,000/-, awarded ₹2,00,000/- towards expenses incurred on medical

treatment of the deceased, transportation, special diet etc. and awarded ₹9,000/- towards the funeral expenses and directed respondents No.1 to 3 to jointly and severally pay total compensation amount of ₹7,85,000/- with costs and interest at the rate of 9% per annum.

7. Feeling aggrieved, the appellants have filed present appeal for enhancement of the compensation amount awarded by the Tribunal.

8. I have heard learned counsel for the parties and have gone through the material on record.

9. Mr.N.D.Achint, learned counsel for the appellants has argued that while computing the compensation amount, the Tribunal did not make any addition towards future prospects and deducted 1/3rd instead of 1/4th towards personal expenses of the deceased. The Tribunal awarded meager amount towards funeral expenses and did not award any amount towards loss of consortium and loss of estate. Therefore, the impugned award may be modified and compensation awarded by the Tribunal may be enhanced. In support of his arguments learned counsel for the appellants has placed reliance on the judgment of Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Others, 2017 (4) R.C.R. (Civil) 1009.**

10. On the other hand, Mr.Rakesh Dhiman learned counsel for respondent No.2 and Mr.Vinod Gupta, learned counsel for respondent No.3 have argued that the Tribunal erred in applying the multiplier of 16 instead of 15 and subject to the modification of award by application of correct multiplier, the Tribunal has awarded just and adequate

compensation to the claimants and no case for enhancement of the compensation awarded is made out.

11. It may be mentioned at the outset that in the present case the findings of the Tribunal as to death of Braham Parkash due to injuries suffered in accident caused by rash and negligent driving of four wheeler by respondent No.1, entitlement of claimants for award of compensation on account of death of Braham Parkash and joint and several liability of the respondents No.1 to 3 to pay the compensation have not been challenged and these findings of the Tribunal being based on proper appreciation of evidence on record cannot be faulted and no interference therewith is warranted.

12. Admittedly, deceased Braham Parkash was employed as Pump Operator in P.W.D., Public Health Department and his carry home salary was rightly assessed by the Tribunal as ₹4502/- which is also not challenged by any of the parties on any ground. However, the Tribunal did not make any addition towards future prospects. In view of the observations made by Hon'ble Supreme Court in Para 61 (iii) of its judgment in **Pranay Sethi case (Supra) a**ddition of 50% is required to be made to the income of the deceased towards future prospects.

13. The Tribunal made deduction of 1/3rd towards personal expenses of the deceased and applied the multiplier of 16. Since, the number of claimants dependent on the deceased was more than 5 and the deceased was 37 years of age at the time of his death, the Tribunal was required to make deduction of 1/4th instead of 1/3rd towards his personal expenses and to apply the multiplier of 15 instead of 16 in

view of the observations made by Hon'ble Supreme Court in Para No.14 and 21 of its judgment in **Smt.Sarla Verma and others Vs. Delhi Transport Corporation and another 2009 (3) RCR (Civil) 77.**

14. The Tribunal merely awarded amount of ₹9,000/- towards funeral expenses and did not award any amount under the heads of loss of estate and loss of consortium. In **Pranay Sethi case (Supra)** in para No.61 (viii) of its judgment, Hon'ble Supreme Court observed that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be ₹15,000/-, ₹40,000/- and ₹15,000/- respectively and that the aforesaid amounts should be enhanced at the rate of 10% in every three years.

15. In view of the observations made by Hon'ble Supreme Court in para No.61 (viii) of its judgment in **Pranay Sethi case (Supra)** the claimants are entitled to award of amount of ₹15,000/- towards funeral expenses, ₹40,000/- towards loss of spousal, parental and filial consortium and ₹15,000/- towards loss of estate.

16. The Tribunal had awarded amount of ₹2,00,000/- towards expenses incurred on medical treatment, transportation and special diet etc. which is not challenged by the claimants to be inadequate.

17. In view of the above discussion, compensation payable to the claimants on account of death of Braham Parkash is re-worked out as under :

Sr.No.	**Head**	**Compensation**
1.	Monthly income of the deceased	₹4502
2.	Income after addition of future prospects at the rate of 50%	₹4502 + ₹2251 = ₹6753

3.	Deduction of 1/4th on account of personal expenses	₹6753 x ¼ = ₹1688
4.	Loss of Dependency	₹6753 - ₹1688 =₹5065 x 12 x 15 = ₹9,11,700/-
5.	Funeral Expenses	₹15,000/-
6.	Compensation payable for loss of spousal, parental and filial consortium	₹40,000/-
7.	Loss of Estate	₹15,000/-
8.	Expenses on medicines, special diet and transportation	₹2,00,000/-
	Total Compensation	**₹11,81,700/-**

18. The amount of compensation of ₹7,85,000/- already awarded to the appellants/claimant shall be liable to be deducted from the amount calculated as above. The enhanced amount of compensation of ₹3,96,700/- shall be payable with interest at the rate of 9% per annum from the date of filing of the petition till realization. Out of the enhanced amount, amount of ₹1,96,700/- shall be payable to claimant No.1-widow and remaining amount of ₹2,00,000/- shall be payable to claimants No.2 to 5 in equal shares. The directions of the Tribunal as to manner of disbursement of compensation amount to the claimants shall also apply to disbursement of enhanced compensation.

19. The appeal is allowed with costs and the award dated 04.02.2002 is modified as mentioned above.

(ARUN KUMAR TYAGI)
JUDGE

17.12.2018
Kavneet Singh

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No