

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Decision : 24.09.2018

1.

FAO No.152 of 2004 (O&M)

Amarjit Kaur and others

..... Appellants

Versus

M/s New Trading Associates and others

..... Respondents

2.

FAO No.997 of 2004 (O&M)

Bhavnesh Kumar and others

..... Appellants

Versus

M/s New trading Associates and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Vipul Sharma, Advocate
for the appellants.

Ms. Vandana Malhotra, Advocate
for respondent No.3.

Mr. Vinod Chaudhri, Advocate
for respondent No.5.

AJAY TEWARI, J. (Oral)

This order shall dispose of above mentioned two appeals. As
common question of facts and law are involved the facts are being taken

These two appeals have been filed against the award of the Motor Accident Claims Tribunal, Patiala awarding a sum of Rs.2,88,000/- for the death of Paramjeet Singh and a sum of Rs.1,56,000/- for the death of Santosh Kumari. The conditional interest was awarded @ 9% per annum. Both these appeals have been filed for getting compensation regarding deaths of Santosh Kumari @ Santosh Rani and Paramjeet Singh which took place in road accident on 09.12.2001 at 01.30 A.M. near Ganda Kheri.

In FAO No.152 of 2004, counsel for the appellants has argued that in view of the judgment passed in *National Insurance Company Ltd. vs. Pranay Sethi and others, 2017(4) RCR (Civil)1009*, 40% had to be awarded on account of future prospects. I find this to be indeed so. It is held that 40% has to be awarded towards future prospects.

Counsel for the appellants further states that in view of the judgment of the Supreme Court in the matter of *Sarla Verma and others v. Delhi Transport Corporation and another, 2009 ACJ 1298* the multiplier of 18 has to be applied instead of 15. I find this to be indeed so. Consequently, it is held that multiplier of 18 has to be applied.

Counsel for the appellants further states that under the conventional heads nothing has been awarded and states that in view of the judgment passed in *Pranay Sethi's case (supra)* a sum of Rs.70,000/- has to be awarded. Counsel for respondent No.3-insurance company has accepted this fact. Consequently, Rs.70,000/- is awarded towards conventional heads. Apart therefrom, a sum of Rs.40,000/- each will be paid to claimants No.2, 3 and 4 for filial consortium in view of the latest judgment of the Supreme Court passed in *Magma General Insurance Company Ltd.,*

Vs. Nanu Ram @ Chuhru Ram & ors., Civil Appeal No.9581 of 2018 arising out of SLP (Civil) No.3192 of 2018 decided on 18.09.2018.

Learned counsel for the appellants has argued that in a latest judgment passed in ***Magma General Insurance Company Ltd. case (supra)*** the Supreme Court has after considering ***National Insurance Company Ltd. vs. Pranay Sethi and others, 2017(4) RCR (Civil)1009***, granted interest @12% p.a. and the same should be granted in the present case on the entire compensation.

Counsel for respondent No.3-insurance company, however, points out that in ***Dharampal and others Vs. U.P. State Road Transport Corporation, 2008(3) RCR (Civil) 808***, the Supreme Court after considering the entire matter of interest in all its historical perspective had granted @7.5% per annum. That may be so but I consider myself bound by the judgment of the ***Magma General Insurance Company Ltd.'s case supra*** rather than the judgment of ***Dharampal's case supra*** and consequently grant interest @12% per annum from the date of filing the claim petition till realization. Out of the enhanced amount 40% will go to the widow and 20% each will go respondents No.2, 3 and 4.

In **FAO No.997 of 2004** counsel for the appellant states that the appellant was doing tuition work but since no evidence of that was led she had to be treated as a house wife. Even as a house wife counsel for the appellants has argued that in the case of ***Lata Wadhwa and others Vs. State of Bihar and others, (2001) 8 SCC 197*** where the accident took place in the year 1989 the contribution of a housewife to the family was taken at Rs.3,000/- and in a subsequent case bearing FAO No.3680 of 2009 titled as

Harpal Kaur & others Vs. Parmod Kumar and others, decided on 01.06.2016 where the death had taken place in 2007 this Court had taken the contribution of the deceased in 2007 at Rs.9,000/-.

Keeping in view the fact that the death here has taken place in the year 2001, I deem it appropriate to take the contribution of the deceased at Rs.7,000/- per month. In view of the judgment of ***Paramjit Singh and another vs. Dilbagh Singh alias Bagga and others 201 (4) RCR (Civil) 895***, a Division Bench of this Court has held that where the income is taken on notional basis no deduction can be made (for the simple reason that the income is notional). Similarly, in ***FAO No.1492 of 2018 titled as Ram Mehar and others Vs. Bhupinder and others decided on 29.08.2018***, this Court held that there can neither be addition of future prospects in case of notional income nor can there be deduction.

Counsel for the appellants argued that the age of the deceased was 34 years and tribunal has erred in taking her age as 37 years. Counsel for respondent No.3-insurance company however points out that except for the bald statement of the claimants themselves there is no other evidence of age. In the circumstances, I do not deem it appropriate to change the age taken by the tribunal. However, I find that the multiplier had to be 15 and the same is allowed. In view of the judgment of the Supreme Court passed in ***Pranay Sethi (supra)*** and ***Magma General Insurance Company Ltd. case (supra)*** I grant Rs.30,000/- for funeral, transportation and loss of estate and I further grant a sum of Rs.40,000/- each to the claimants No.1, 2 and 3 for filial consortium.

In view of the judgment passed in *Magma General Insurance Company Ltd.'s case supra* the entire compensation would carry interest @12% per annum from the date of filing the claim petition till realization. Out of the enhanced amount 20% will go to appellant No.1 and 40% each will go respondents No.2 and 3. The share of minor will be put in a fixed deposit till they attain the age of majority.

Both the appeals are allowed in the above terms and the awards are modified accordingly.

Since the main cases have been decided, the pending civil miscellaneous applications, if any, also stand disposed of.

(AJAY TEWARI)
JUDGE

24.09.2018
Pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No