**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

F.A.O. No.2747 of 2005
Date of Decision:14th December, 2018

Raj Kala and others

......Appellants

Versus

Ram Pal and others

...... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present: Mr.Ranjit Saini, Advocate for
Mr. Krishan Singh, Advocate
for the appellants.

Mr.Paul S.Saini, Advocate
for respondent No.3.

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ARUN KUMAR TYAGI, J.

1. The claimants - widow, minor daughters and parents of deceased - Darshan Singh have filed the present appeal seeking enhancement of compensation awarded by learned Motor Accident Claims Tribunal, Kaithal (for short 'the Tribunal') in **MACT Case No.96 of 2003 titled as 'Smt. Raj Kala and others Vs. Ram Pal and others'** on account of death of Darshan Singh which took place on 07.04.2003 in a motor vehicular accident.

2. The above said claimants filed claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the M.V.

Act') on the averments that on 07.04.2003 at about 2.00 p.m. Darshan Singh, Om Parkash, Harish Kumar and one unknown person were going in Jeep No.HR-56-T-1031 driven by Ishwar Singh from Kaithal to village Kamalpur. When the Jeep reached near HAFED godown on Jind Road, Kaithal, then truck bearing registration No.HRL-5558, owned by respondent No.2 and insured with respondent No.3, driven by respondent No.1-Ram Pal rashly and negligently in a zigzag manner suddenly came from the backside gate of HAFED godown without blowing any horn and hit the Jeep due to which Darshan Singh and one unknown person suffered injuries. The injured were taken to Shah Hospital, Kaithal where Darshan Singh was declared dead. FIR No.137 dated 07.04.2003 was registered under Sections 279, 338 and 304-A of the Indian Penal Code, 1860 in Police Station Kaithal. Darshan Singh was aged about 22 years at the time of his death and was earning ₹7,000/- p.m. from agriculture and by selling milk. The claimants, being legal heirs of the deceased dependent on him are entitled for award of compensation with costs and interest.

3. On notice, the claim petition was contested by the respondents in terms of their respective written statements wherein respondents No.1 to 3 besides taking usual legal objections pleaded that the accident did not occur due to rash

and negligent driving of the truck in question by respondent No.1 and denied their liability.

4. Issues were framed on the basis of the pleadings of the parties and the evidence produced by the parties was recorded. On consideration of the evidence produced by the parties and submissions made by the learned counsel for the parties, the Tribunal held that Darshan Singh died due to injuries suffered in accident caused by rash and negligent driving of truck bearing registration No.HRL-5558, owned by respondent No.2 and insured with respondent No.3, by respondent No.1 who was having valid and effective driving licence. The Tribunal held deceased to be aged about 22 years, assessed his income as ₹2100/- p.m., deducted 1/3rd towards personal expenses, applied the multiplier of 17 and by adding ₹4400/- towards funeral expenses awarded compensation of ₹2,90,000/- to the claimants with costs and interest at the rate of 9 % per annum payable by the respondents No.1 to 3 jointly and severally.

5. Feeling aggrieved, the claimants have filed present appeal for enhancement of the compensation.

6. I have heard learned counsel for the parties and gone through the record.

7. In the present case, the findings of the Tribunal as to death of Darshan Singh due to injuries suffered in accident

caused by rash and negligent driving by respondent No.1 of truck bearing registration No.HRL-5558 owned by respondent No.2 and insured with respondent No.3; entitlement of the claimants to award of compensation and joint and several liability of respondents No. 1 to 3 to pay the same have not been challenged by respondent No. 3 by filing any appeal or cross-objections. The factum of death of Darshan Singh due to injuries suffered in accident caused by rash and negligent driving by respondent No.1 of truck bearing registration No.HRL-5558 is proved by testimony of PW2-Ishwar Singh which is corroborated by other oral and documentary evidence including copy of F.I.R., Charge-Sheet filed under Section 173 of the Code of Criminal Procedure, 1973 against respondent No.1 and post-mortem report of the deceased. The respondent No.3 did not produce any evidence to prove breach of the terms and conditions of the insurance policy. The claimants No.1 to 4 and 6 widow, minor daughters and mother being class-I legal heirs dependent on the deceased and claimant No.5-father, who was not proved to have any independent income, being class-II legal heir dependent on the deceased were rightly considered to be legal representatives of the deceased entitled to payment of compensation for his death. These findings can not, therefore, be faulted and no interference with the same is warranted.

8. Mr. Ranjit Saini, learned counsel for the appellants has argued that the Tribunal awarded amount of ₹2,90,000/- without properly assessing income of the deceased, without adding any amount towards future prospects and by applying multiplier of 17 instead of 18 as per his age at the time of his death. The Tribunal awarded meagre amount towards funeral expenses and did not award any amount towards loss of spousal, parental and filial consortium and loss of estate. Therefore, the impugned award may be modified and the compensation awarded by the Tribunal may be enhanced. In support of his arguments, Mr.Ranjit Saini, learned Counsel for the appellants has placed reliance on the judgments of Hon'ble Supreme Court in **Sarla Verma and other vs. Delhi Transport Corporation and another, 2009 (3) R.C.R. (Civil) 77 ; National Insurance Company Limited vs. Pranay Sethi and others, 2017 (4) R.C.R. (Civil) 1009 and Magma General Insurance Co. Ltd. versus Nanu Ram alias Chuhru Ram and others 2018 (4) Recent Civil Reports 333.**

9. On the other hand, Mr. Paul S. Saini, learned counsel for respondent No.3-Insurance Company has argued that the Tribunal has awarded just compensation. The claimants are not entitled to enhancement thereof. In view of the conflict with principles laid down in **Pranay Sethi case (Supra)**, the ratio in **Magma General Insurance Co. Ltd. case (Supra)** regarding

award of compensation for loss of consortium to the parents and the children of the deceased is not a binding precedent.

10. Even though the claimants pleaded and PW-1 Raj Kala deposed that the deceased was earning ₹7000/- p.m. by agriculture and selling milk but the claimants did not produce any reliable oral or documentary evidence as to ownership of any agricultural land or running of dairy. Therefore, the Tribunal rightly assessed the income of the deceased as ₹2100/- p.m. on the basis of minimum wages payable to unskilled labourer.

11. However, the Tribunal did not make any addition in the income of the deceased towards future prospects. In view of observations made by Hon'ble Supreme Court in para No.61 (iv) of its judgment in **National Insurance Company Limited Vs. Pranay Sethi and Ors. 2017(4) R.C.R.(Civil) 1009** addition of 40% is required to be made in the income of the deceased towards future prospects.

12. The Tribunal made deduction of 1/3rd towards personal expenses of the deceased and applied the multiplier of 17. Since the number of the claimants dependent on the deceased was more than 4 and the deceased was 22 years of age at the time of his death, the Tribunal was required to make deduction of 1/4th instead of 1/3rd towards personal expenses of the deceased and apply the multiplier of 18 instead of 17 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 Anr. 2009 (3) R.C.R. (Civil) 77**.

13. The Tribunal merely awarded ₹4400/- towards funeral expenses and did not award any amount under the head loss of estate. In view of observations made by Hon’ble Supreme Court in para No. 61 (viii) of its judgment in **National Insurance Company Limited vs. Pranay Sethi and others, 2017 (4) R.C.R. (Civil) 1009,** the claimants are entitled to award of ₹15,000/- towards funeral expenses and ₹15,000/- towards loss of estate.

14. In **Pranay Sethi case (Supra)** in para No.61 (viii) of its judgment, Hon'ble Apex 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. The aforesaid amounts should be enhanced at the rate of 10% in every three years. In **Magma General Insurance Co. Ltd. case (Supra)**, relied upon by the learned counsel for the appellants, a Two Judge Bench of the Hon’ble Apex Court clarified that in legal parlance ‘consortium’ is compendious term which encompasses ‘spousal consortium’, ‘parental consortium’ and ‘filial consortium’ and awarded

compensation of ₹40,000/- each for loss of filial consortium to father and sister of the deceased. However, the Bench observed in para No.8.7 of its judgment that the amount of compensation to be awarded for loss of consortium will be governed by the principles of awarding compensation under 'Loss of Consortium' as laid down in **Pranay Sethi case (Supra)**. In view of these observations, award of compensation of ₹40,000/- each for loss of filial consortium to father and sister of the deceased in **Magma General Insurance Co Ltd. case (Supra)** has to be construed as being in exercise of powers under Article 142 of the Constitution of India and does not constitute a binding precedent.

15. In view of the principles of awarding compensation under 'Loss of Consortium' as laid down in para No.61 (viii) **Pranay Sethi case (Supra)** referred to above, the claimants widow, children and parents of the deceased will be entitled to award of compensation of ₹40,000/- only towards loss of spousal, parental and filial consortium in equal shares.

16. Accordingly, compensation payable to the claimants on account of death of Darshan Singh is re-worked out as under:-

Sr.No.	Head	Compensation
1	Monthly income of deceased	₹2100/- per month
2	Income after addition of future prospects at the rate of 40%	2100 + 840 = ₹2940/-
3	Deduction of 1/4th on account of personal expenses	2940 x 1/4= ₹735/-

4	Loss of Dependency	2940-735= 2205 x 12 x 18 = ₹4,76,280/-
6	Funeral expenses	₹15,000/-
7	Compensation payable for loss of spousal, parental and filial Consortium	₹40,000/-
8	Loss of Estate	₹15,000/-
	Total Compensation =	**₹5,46,280/-**

17. The amount of compensation of ₹2,90,000/- already awarded to the appellants/claimants shall be liable to be deducted from the amount calculated as above. The enhanced amount of compensation shall be payable with interest at the rate of 9% per annum from the date of filing of petition till realization. Out of the enhanced amount, amount of ₹1,31,280/- shall be payable to claimant No.1- widow and remaining amount of ₹1,25,000/- shall be payable to claimants No.2 to 6 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.

18. The appeal is allowed with costs and the award dated 19.03.2005 is modified as mentioned above.

(**ARUN KUMAR TYAGI)**
JUDGE

14.12.2018
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Whether speaking/reasoned : Yes

Whether reportable : Yes