IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2838 of 2011
Date of decision:14.12.2018

Savitri Devi and another

…. Appellants

Versus

Satpal and another

….Respondents

CORAM : HON'BLE MR.JUSTICE ARUN KUMAR TYAGI

Present : Mr.Rakesh Nehra, Advocate with
Mr.Pankaj Kaushik, Advocate
for the appellants

Mr.T.K.Joshi, Advocate with
Mr.Arun Sharma, Advocate
for respondent No.2

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ARUN KUMAR TYAGI, J.

1. The claimants have filed present appeal seeking enhancement of compensation awarded by learned Motor Accidents Claims Tribunal (for short 'the Tribunal') in **MACT case No.85 of 2008** titled as **Savitri Devi and another Versus Satpal and another** on account of death of Rajesh Kumar in motor vehicle accident arising out of the use of Truck bearing registration No.HR-63-A-3647.

2. Briefly stated, the facts giving rise to the present appeal are that the claimants filed petition under Section 163-A of the Motor Vehicles Act, 1988 (for short 'the M.V.Act') on the averments that deceased Rajesh Kumar, aged 24 years was employed as driver on truck bearing registration No.HR-63-A-3647 on salary of ₹3300/- per month under the respondent No.1. On 30.07.2008, he, along with Ajay Kadian and Kishan, was going from Jawaran to Mandsor (M.P.). At about 06.00 A.M. when they were crossing the culvert situated at village Mahu Nimach at Highway Road Richa Chanda, the truck, having lost its balance, fell down in the water. Ajay Kadian and Kishan escaped but Rajesh Kumar died due to drowning in the water. Deceased Rajesh Kumar was taken to Civil Hospital, Jawaran, where postmortem was conducted on the dead body. Ajay Kadian reported the matter to the police on which DDR No.1086 dated 30.07.2008 was recorded in this regard and then FIR No.142 dated 30.07.2008 under Sections 279, 337 and 304-A of the Indian Penal Code, 1860 (for short 'the IPC') in Police Station Ringnod was registered. The claimants being dependent on the deceased are entitled to award of compensation of ₹10,00,000/- alongwith costs and interest at the rate of 12 % per annum.

3. On Notice, respondent No.1 appeared and admitted the accident and also the factum of employment of deceased Rajesh Kumar, as driver, on salary of ₹ 3300/- per month under him but pleaded the amount of compensation claimed to be highly

exorbitant and expressed no objection to award of adequate compensation to the claimants. Respondent No.2 contested the petition and took usual legal objections including the objections as to the deceased Rajesh Kumar not having any valid and effective driving license and breach of the terms and conditions of the insurance policy and denied its liability.

4. Issues were framed on the basis of pleadings of the parties and evidence produced by the parties was recorded. On consideration of the material on record and the submissions made by the learned counsel for the parties, the Tribunal held that Rajesh Kumar died in accident arising out of the use of truck bearing registration No.HR-63-A-3647, owned by respondent No.1 and insured with respondent No.2. The Tribunal held claimant No.1-mother to be entitled for award of compensation but declined the claim of claimant No.2-brother on the ground of not being class-I heir of the deceased. The Tribunal held the deceased to be aged about 28 years, assessed his income as ₹3300/- per month, made deduction of 1/3rd, applied multiplier of 11 in view of age of claimant No.1-mother and by adding an amount of ₹2000/- as funeral expenses and amount of ₹2500/- for loss of estate, awarded compensation of ₹2,94,900/- to claimant No.1-mother with costs and interest at the rate of 6 % per annum.

5. Feeling aggrieved, the claimants have filed present appeal.

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

7. The learned counsel for the appellants has argued that both the claimants, mother and brother of the deceased were dependent on him and are entitled to award of compensation and the claim of the claimant No.2-brother has been wrongly rejected by the Tribunal.

8. The learned counsel for the appellants has further argued that in view of the provisions of the second Schedule of the M.V. Act, the Tribunal ought to have applied the multiplier of 18 but the Tribunal wrongly applied the multiplier of 11 and the loss of dependency is required to be re-worked out.

9. The learned counsel for the appellants has further argued that the Tribunal awarded meager amounts of ₹2000/- and ₹2500/- towards funeral expenses and loss of estate respectively and did not award any amount towards filial consortium. In view of the Supreme Court judgment in **Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram and others, 2018 (4) R.C.R. (Civil) 333**, the claimants are entitled to award of amount of ₹15,000/- towards funeral expenses, ₹40,000/- towards loss of consortium and ₹15,000/- towards loss of estate.

10. The learned counsel for the appellants has further argued that the Tribunal awarded interest at low rate of 6% per annum which may be modified to 12 % per annum.

11. On the other hand, the learned counsel for the respondent No.2-Insurance Company has argued that the Tribunal has awarded just and adequate compensation to the claimants with appropriate rate of interest. The claimants are entitled to award of funeral expenses and loss of estate as per the provisions of the Second Schedule of the M.V.Act. The claimants are not entitled to award of any compensation towards loss of filial consortium, as there is no provision in the Second Schedule of the M.V.Act for payment of compensation for loss of filial consortium. In support of his arguments, learned counsel for the respondents has placed reliance on judgment dated 11.10.2018 passed by Hon'ble Single Bench of this Court in **FAO No.5570 of 2014 (O & M) titled as Smt.Bala@Rajbala and others Vs. Sumer Singh and others.**

12. It may be observed, at the very outset that in the present case, the findings of the Tribunal, as to death of Rajesh Kumar due to accident arising out of the use of Truck bearing No.HR-63-A-3647, owned by respondent No.1 and insured with respondent No.2, age of deceased Rajesh Kumar being 28 years and employment of deceased Rajesh Kumar as Driver on salary of ₹3300/- per month under respondent No.1 have not been challenged by respondents No.1 and 2 by filing any appeal or cross objections.

13. It may be observed here that FIR No.142 dated 30.07.2008 under Section 279, 337 and 304-A of the IPC was

registered in Police Station Ringnod alleging rash and negligent driving of the truck by deceased Darshan Singh but it is now well settled that Insurer cannot be allowed to raise defence of negligence on the part of victim in claim proceedings under Section 163-A of the M.V.Act. Reference in this regard may be made to **United Insurance Co.Ltd. Vs. Sunil Kumar 2018 (1) RCR (Civil) 680 (SC)**. Therefore, the respondent No.3. is not entitled to defend the claim on the basis of negligence of the deceased.

14. In the present case, the Tribunal held claimant no.1-mother to be entitled to award of compensation for death of Rajesh Kumar but rejected the claim of claimant No.2-brother on the ground of not being class-I heir of the deceased. The question which arises is whether claimant No.2 being younger brother, who is claimed to be dependent on the deceased, is also entitled to payment of compensation on account of his death or not.

15. The relevant part of Sub Section (1) of Section 163-A of the M.V.Act, which makes special provisions as to payment of compensation on structured formula basis, reads as under :

> " (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent diablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be."

16. A bare reading of the above said provision makes it clear that unlike Section 166 of the M.V.Act, which permits filing of application for compensation by all or any of the legal representatives of the deceased, Section 163-A of the M.V.Act provides for payment of compensation to legal heirs. The observations in **Gujarat State Road Transport Corporation, Ahmedabad Versus Ramanbhai Prabhatbhai AIR 1987 Supreme Court 1690** and **Montford Brothers of St.Gabriel Vs. United India Insurance AIR 2014 Supreme Court 1550** interpreting the expression 'legal representatives' used in Section 166 of the M.V.Act are not applicable to interpretation of the expression 'legal heirs' and are not, therefore, of any help or guidance. The question as to who is legal heir of the victim depends on personal law of succession applicable to the claimant(s). In the present case, as per the provisions of Section 8 of the Hindu Succession Act, 1956, claimant No.1-mother is class-I legal heir entitled to inherit his estate and claimant No.2 brother being class-II legal heir of the deceased is not entitled to inherit his estate in the presence of claimant No.1-mother-class I legal heir of the deceased. Even otherwise self serving uncoroborated testimony of claimant No.2-Pawan Kumar as PW-1 as to his dependence on the deceased could not be relied upon and claimant No.2 being healthy and abled bodied person aged about 20 years must be held to be having his own source of income. Therefore, the claimant No.2-brother is not entitled to

payment of compensation for death of his brother Rajesh Kumar and his claim has been rightly rejected by the Tribunal.

17. In claim petition filed under Section 163-A of the M.V.Act, amount of compensation has to be assessed as per the structured formula embodied in the Second Schedule of the M.V.Act which cannot be deviated from except in case of child as directed by Hon'ble Apex Court i**n Master Mallikarjun Vs. Divisional Manager, The National Insurance Company limited and another 2013 ACJ 2445 (SC).**

18. In the present case, Tribunal while referring to observations in **Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya & Ors. II (2005) ACC 476 (SC), and Oriental Insurance Co. Ltd. Versus Hansrajbhai V. Kodala, (2001) 5 SCC 175** took into consideration age of claimant No.1-mother of the deceased, who fell in the age group of 51-55, and applied the multiplier of 11. However, as per the structured formula provided for in the Second Schedule of the M.V. Act, multiplier has to be applied on the basis of age of the deceased. It may also be observed here that in **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) R.C.R. (Civil) 1009,** Hon'ble Apex Court has held that the age of the deceased should be the basis for applying the multiplier. Therefore, the view as to application of multiplier on the basis of the age of the deceased or claimants or parents, whichever is higher, stands overuled. Since, the deceased was aged about 28 years at the time of his death,

multiplier of 18 would apply for assessment of the amount of compensation. When so applied the amount of death compensation comes to (₹3300 x 12 x 18 = ₹7,12,800/). Out of the above said 1/3rd amount will be liable to be deducted towards personal expenses of the deceased as per Note I to Para I of the Second Schedule of the M.V.Act. When so deducted, amount of compensation payable to claimant No.1 comes to ₹4,75,200/-.

19. As per the provisions made in the second Schedule to the M.V. Act amount of ₹2,000/- is payable towards funeral expenses, amount of ₹5,000/- is payable towards loss of consortium if beneficiary is spouse and amount of ₹2500/- is payable towards loss of estate. The observations in ***Pranay Sethi*** **(Supra)** as to addition towards future prospects, award of amount of ₹15,000/- towards loss of estate, ₹40,000/- towards loss of consortium and ₹15,000/- towards funeral expenses and in **Magma General Insurance Company Limited (Supra*)*** as to award of ₹40,000/- each towards loss of filial consortium to father and sister of the deceased were made by the Hon'ble Apex Court on reference/petition for award of compensation under Section 166 of the M.V.Act and the same being restricted in applicability to claim petitions filed under Section 166 of the M.V.Act, would not be applicable to the present claim petition under Section 163-A of the M.V.Act. Therefore, award of amount of ₹2,000/- towards funeral expenses and amount of ₹2500/- towards loss of estate to

claimant No.1-mother by the Tribunal does not call for any modification.

20. When the amount of ₹2,000/- towards funeral expenses and amount of ₹2500/- towards loss of estate is added to the death compensation of ₹4,75,200/-, total amount of compensation payable to claimant No.1-mother comes to ₹4,79,700/-.

21. In the present case, the Tribunal directed the payment of compensation amount with interest at the rate of 6% per annum from the date of filing of the claim petition till relaization of the whole amount which is challenged to be inadequate and the question which arises is as to what would be the appropriate rate of interest.

22. In claim petitions under Section 163-A or 166 of the M.V.Act, the Motor Accidents Claims Tribunal is empowered by Section 171 of the M.V.Act to award interest from the date of making the claim at such rate as may be specified by it. In awarding interest, the Motor Accident Claims Tribunal is not bound by the provisions of Section 34 of the Code of Civil Procedure, 1908 to restrict the award of interest to 6 % per annum.

23. In **Puttamma and others Vs. K.L.Narayana Reddy and another 2014 (1) R.C.R. (Civil) 443,** Hon'ble Apex Court observed in para 60 as under :

> “ This Court in **Abati Bezbaruah Vs. Deputy Director General, Geological Survey of India and another (2003) 3 SCC 148** noticed that varying rate of interest is being awarded by the Tribunals, High Courts and this Court. In the said case, this Court held that the rate of interest must be just and reasonable depending on the facts and circumstances of the case and should be decided after taking into consideration relevant factors like inflation, change in economy, policy being adopted by the Reserve Bank of India from time to time, how long the case is pending, loss of enjoyment of life etc.”

24. In **Supe Dei and others Vs. National Insurance Company Ltd. and another 2009 (4) SCC 513**, Hon’ble Apex Court held that 9% per annum would be the appropriate rate of interest to be awarded in Motor Accidents Claims compensation cases.

25. In **Sube Singh and another Vs. Shyam Singh (Dead) and others 2018 (2) R.C.R. (Civil) 131 (SC)** rate of interest of 6% per annum awarded by the Motor Accidents Claims Tribunal was modified by Hon’ble Supreme Court of India to 9% per annum.

26. In view of the observations in above referred judicial precedents, mercantile rate of interest prevalent, rate of interest allowed by Nationalized Banks on fixed deposit receipts and other relevant factors, it will be appropriate to modify the rate of interest of 6% per annum awarded by the Tribunal to 9% per annum.

27. As per above discussion, the claimant No.1 will be entitled to payment of compensation amount of ₹4,79,700/- with interest at the rate of 9% per annum from the date of filing of the petition till realization. The amount of compensation of ₹2,94,900/-

already awarded to the claimant No.1 will be liable to be deducted from the amount calculated as above. The directions of the Tribunal as to the manner of disbursement of amount of compensation to claimant No.1 shall also apply to the disbursement of enhanced amount of compensation.

28. The appeal is allowed with costs in terms of the above said modifications of the award dated 19.03.2010.

(ARUN KUMAR TYAGI)
JUDGE

14.12.2018
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No