

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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FAO-805-2014

Date of Decision:01.02.2018

Gurdeep Singh and others

.....Appellants

Versus

Oriental Insurance Company
Limited and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

Present: Mr. Malhar Singh Dhami, Advocate,
for the appellants.

Mr. R.N. Singal, Advocate,
for respondent No.1-Insurance Company.

HARI PAL VERMA, J.(Oral)

Appellants-claimants have filed the present appeal for enhancement of compensation awarded by the learned Motor Accident Claims Tribunal, S.A.S. Nagar, Mohali (for short “the MACT”) vide award dated 06.11.2013.

The claimants have filed a claim-petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation on account of death of Nachhattar Kaur, aged about 42 years. The learned MACT has awarded a total compensation of ₹5,45,000/- along with interest @ 6% per annum from the date of filing the claim-petition till its realization.

As pleaded in the claim-petition, the deceased Nachhattar Kaur was about 42 years of age. She was doing the work of stitching clothes and domestic work and as such was earning ₹15,000/- per month. However, on 21.02.2011 at about 9.30 a.m., when deceased Nacchattar Kaur along with

her son Gurdeep Singh (one of the claimant) was going from Dera Bassi to Zirakpur on a motorcycle bearing registration No.PB-65-L-9910 and when they reached Old Toll Plaza, Dera Bassi, an Indica Car bearing registration No.PB-27-C-3352 came from behind in a rash and negligent manner and struck against their motorcycle. Resultantly, claimant No.1-Gurdeep Singh and Nachhattar Kaur fell on the road. Nachhattar Kaur sustained serious injuries and accordingly she was taken to Government Medical College and Hospital, Sector 32, Chandigarh. But she died on her way to the hospital.

Vide impugned award, the learned MACT on the basis of post-mortem report Ex.PW1/B has recorded the age of the deceased as 47 years and while determining her notional income @ ₹5,000/- per month has awarded a total compensation of ₹5,45,000/- after imposing 1/3rd deductions and applying multiplier of 13.

Dissatisfied with the award, the claimants have filed the present appeal seeking enhancement of compensation.

Learned counsel for the appellants has argued that at the time of accident, deceased Nachhattar Kaur was about 42 years of age and this fact was duly incorporated in the claim-petition filed by the claimants, but this fact was never controverted by the respondents and merely because in the post-mortem report Ex.PW1/B, her age has been recorded as 47 years, it is not at all conclusive evidence that the deceased was 47 years of age at the time of accident. Once the age as mentioned in the claim-petition has not been controverted, the same should have been considered. Learned counsel for the appellants has further argued that the learned MACT has awarded a total compensation of ₹5,45,000/- along with interest @ 6% per annum, which is contrary to the law laid down by the Hon'ble Apex Court in

National Insurance Company Limited Versus Pranay Sethi and others,
2017 (4) R.C.R (Civil) 1009. Accordingly, he sought enhancement of compensation (i) by applying the proper multiplier, (ii) interest on the compensation awarded by the learned MACT, as awarded in **Pranay Sethi's case (supra).**

On the other hand, learned counsel for respondent No.1- Insurance Company has argued that adequate compensation has already been awarded to the claimants. Even otherwise, in view of the judgment passed by the Hon'ble Supreme Court in **Pranay Sethi's case (supra)**, the claimants are entitled funeral expenses @ ₹15,000/- though the learned MACT has awarded ₹25,000/-, therefore, the award needs to be modified and the amount of ₹25,000/- on account of funeral expenses should be reduced to ₹15,000/-. He has further argued that in the absence of any conclusive evidence, age as referred in the post-mortem report Ex.PW1/B, is the very basis to compute the compensation. The claimants have not adduced any evidence in support of the fact that the age of the deceased was 42 years as on the date of the accident.

I have heard the learned counsel for the parties.

So far as the argument as put forward by learned counsel for the appellants that the age of the deceased on the date of accident was 42 years, merits acceptance. Except the post-mortem report, wherein age of the deceased has been recorded as 47 years, no other evidence has been brought on record to establish that the deceased was 47 years of age. By filing the claim-petition, the claimants have made a specific averment that the age of the deceased Nachhattar Kaur was 42 years. The claimants being natural children of the deceased are the best persons to know the age of the

deceased. Merely because age of the deceased has been mentioned as 47 years in the post-mortem report, it cannot be accepted as conclusive age, particularly when there is no other evidence available on record. Moreover, age of the deceased in the claim-petition was neither controverted nor questioned by the respondents. Therefore, this Court finds that age of the deceased at the time of accident was 42 years and as a consequence thereof, the award needs to be modified and instead of applying multiplier of 13, the claimants are entitled for compensation on the basis of multiplier of 14. Accordingly, this order is modified to the extent that the claimants shall be entitled for compensation by applying the multiplier of 14 instead of 13.

Similarly, the learned MACT has awarded interest @ 6% per annum from the date of filing of the claim-petition till its realization. But as held in **Pranay Sethi's case (supra)**, the claimants deserve to be granted interest @ 7.5% per annum from the date of filing of the claim-petition till its realization.

Accordingly, the award dated 06.11.2013 passed by the learned MACT is modified and the compensation, to which the claimants are entitled, is computed as follows:-

Sr.No.	Heads	Calculation
(i)	Monthly income of deceased	: ₹5,000/-
(ii)	Annual income of deceased	: ₹60,000/-
(iii)	Income after deduction of 1/3 rd amount towards personal expenses of the deceased.	: ₹40,000/-
(iv)	Compensation after applying multiplier of 14	: ₹5,60,000/-
(v)	<u>Conventional heads</u> Funeral expenses	: ₹15,000/-
Total amount of compensation		: ₹5,75,000/-.

This amount of compensation shall carry interest @ 7.5% per annum from the date of filing of the claim-petition till its realization.

With the aforesaid modification in the award, the present appeal stands disposed of.

February 01, 2018
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(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No