IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.5742 of 2016 (O&M)
Date of Decision : 22.11.2018

Karamjit Kaur & others

....Appellants

VERSUS

Satyapal Gangwar & others

...Respondents

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Deepak Aggarwal, Advocate for the appellants.

Mr. D.K. Parajapati, Advocate for the respondent -Insurance Company.

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B.S. WALIA, JUDGE (ORAL)

1. Appeal has been filed for enhancement of compensation awarded on account of death of Gurdeep Singh, husband of appellant No.1, father of appellant No.2 and son of appellant No.3 in a motor vehicular accident on 4.9.2014. The learned Motor Accidents Claims, Tribunal, Bathinda (hereinafter referred to as 'the Tribunal) assessed monthly income of the deceased as unskilled labourer at ₹6,000/- imposed deduction at 1/3rd of the income towards personal expenses of the deceased, by applying multiplier of 16 and by awarding ₹25,000/- on account of funeral expenses, ₹25,000/- on account of general damages and loss of estate and ₹1,00,000 on account of loss of consortium to the widow of the deceased, awarded compensation of ₹9,20,000/-.

2. The only argument of learned counsel for the appellants for enhancement is that despite entitlement no amount was awarded on account of future prospects. By relying on paragraph No.61(iv) of the decision of Hon'ble the Supreme Court in **National Insurance Company Limited vs. Pranay Sethi and others-2017(4) RCR (Civil) 1009,** learned counsel contended that

the appellants were entitled to award of future prospects @ 40% of the established income of the deceased. Learned counsel for the appellants further contended that although a sum of ₹1,00,000/- had been awarded on account of loss of consortium to the widow of the deceased yet the same was liable to be modified by awarding a sum of ₹40,000/- on account of loss of spousal consortium to the widow of the deceased in accordance with the decision in **Pranay Sethi's** case (supra) while a sum of ₹40,000 is payable to minor appellant No.2 on account of loss of parental consortium in accordance with paragraph No.8.7 of the decision of Hon'ble the Supreme Court in **Magma General Insurance Co. Ltd. vs Nanu Ram Alias Chuhru Ram** and others decided on 18.09.2018 in Civil Appeal No.9518 of 2018.

3. Learned counsel for the respondent-Insurance Company has fairly not disputed the aforementioned claim. However, learned counsel contends that a sum of ₹25,000/- awarded on account of funeral expenses and like amount on account of general damages and loss of estate is liable to be reduced to ₹15,000/- on each count and further that the amount of loss of consortium awarded to the widow has to be scaled down from ₹1,00,000/- to ₹40,000/-.

4. I have considered the submissions of learned counsel for the parties and am of the view that for the reasons as are mentioned hereunder, the appeal is liable to be allowed and the compensation is liable to be enhanced.

5. Admittedly, the deceased was 31 years of age. As per paragraph No.61(iv) of the decision in **National Insurance Company Limited vs. Pranay Sethi and others-2017(4) RCR (Civil) 1009** where the deceased was self employed and less than 40 years of age, 40% of the established income of the deceased less tax component is to be taken into account for the purpose of assessing the future prospects.

In this case, since the deceased was less than 40 years of age and was self employed, appellants are held entitled to addition of 40% of established income of the deceased minus the tax component on account of future prospects.

6. Likewise as per paragraph 61(viii) of the decision in **Pranay Sethi's** case (supra), a sum of ₹40,000/- is payable on account of loss of consortium to the widow of the deceased.

Accordingly, in the light of the aforementioned decision, the compensation awarded on account of loss of consortium to the widow of the deceased is reduced from ₹1,00,000/- to ₹40,000/-.

7. Moreover, as per paragraph No.8.7 of the decision of Hon'ble the Supreme Court in **Magma General Insurance Co. Ltd. vs Nanu Ram Alias Chuhru Ram** and others decided on 18.09.2018 in Civil Appeal No.9518 of 2018, a sum of ₹40,000/- is payable to a child on account of loss of parental consortium. Accordingly, appellant No.2 is held entitled to a sum of ₹40,000/- on account of loss of parental consortium.

8. As regards the submission of learned counsel for the respondent-Insurance Company that the amount on account of conventional heads as has been awarded is on the higher side, it needs noticing that as per paragraph No.61(viii) of the decision in **Pranay Sethi's** case (supra), a sum of ₹15,000/- is payable on account of funeral expenses and likewise on account of loss of estate. However, the appellants have been awarded a sum of ₹25,000/- on each count. Accordingly, the same is reduced to ₹15,000/- on each count in the light of the decision as noted above.

9. Accordingly, in the light of the decision as noted above, appellants are held entitled to the following compensation:

Sr. No.	**Head**	**Amount assessed by Tribunal in ₹**	**Amount assessed by this Court in ₹**
1	Monthly Income	6,000/-	6,000/-

2	Future prospects	NIL	40%=2400/-
3	Deduction towards personal expenses of deceased.	1/3rd of total income 6,000/3= 2000/-	1/3rd of total income (6,000+2400) 8400/3= 2800
4	Multiplier applied	16	16
5	Compensation awarded	4000x12x16=7,68,000	5600x12x16=10,75,200/-
6	Funeral expenses	25000/-	15000/-
7	General damages and loss of estate	25,000/-	15,000/- (only for loss of estate)
8	Loss of spousal consortium	1,00,000/-	40,000/-
9	Loss of parental consortium to child	Nil	40,000/-
10	Total	9,18,800/-	11,85,200/-

10. Accordingly, in the light of the position as noted above, appellants are held entitled to the award of compensation of ₹11,85,200/- as against compensation of ₹9,20,000/- awarded by the learned Tribunal along with interest @ 9% per annum on the enhanced amount with effect from the date of claim petition till date of payment less amount, if any, already paid.

11. Needless to mention, tax liability, if any, shall be deducted in accordance with the decision in **Pranay Sethi's** case (supra) while paying amount on account of future prospects. Needless also to mention, the compensation shall be apportioned amongst the appellants in the manner as ordered by the Tribunal.

12. Accordingly, appeal is allowed. Award dated 13.05.2016 passed by the learned MACT, Bathinda is modified to the extent as noted above.

(B.S. WALIA)
JUDGE

November 22, 2018
ps

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No