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

1 FAO No.3455 of 2018 (O&M)
Date of Decision: 31.10.2018

Jaskaranjot and others
...Appellants
Versus
Gurpal Singh and others
....Respondents

2 FAO No.3486 of 2018 (O&M)

Jaskaranjot and others
...Appellants
Versus
Gurpal Singh and others
....Respondents

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

Present: Mr. Ruhani Chadha, Advocate for the appellants.

Respondents No. 1 and 2 ex-parte.

Mr. Shashi Kumar Yadav, Advocate for respondents No.3.

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B.S.WALIA, J (Oral).

1. This order shall decide FAO No.3455 of 2018 and 3486 of 2018 filed by three children of the deceased on account of death of their father and mother, respectively, in a motor vehicular accident on 30.06.2017.

2. FAO No.3455 of 2018 pertains to the claim for enhancement on account of death of mother of the appellants on the ground that monthly contribution of the deceased towards the family was wrongly taken as ₹5000/- whereas in view of decision of this Court in FAO No.3207/1999, in

case titled as **Amarnath and others vs. General Manager, Haryana Roadways, decided on 13.11.2013** and **FAO 218 of 2014 titled United India Insurance Company Ltd. vs. Sube Singh and others decided on 15.01.2014,** income of deceased housewife was taken at ₹9000/- per month.

3. Learned counsel for the appellant has also referred to the decision of a Co-ordinate Bench of this Court in **Ram Mehar and others Vs. Bhupinder and others i.e. FAO No.1492 of 2018** decided on 29.08.2018 in which the monthly contribution of the deceased housewife towards the family was taken at ₹9,000/- per month with the further rider that no addition on account of future prospects or deduction on account of personal expenses of the deceased-house wife was to be made.

4. Learned counsel for the respondent has contended that in the instant case, income of the husband of the deceased was assessed at ₹7,500/- per month, therefore, by no stretch of imagination, could the monthly contribution of the deceased housewife be taken more than that what was being earned by her husband.

5. I find merit in the submissions of learned counsel for the respondent Insurance Company. Accordingly, instead of monthly contribution of ₹9,000/- towards the family by the deceased house wife as claimed by the appellants, the same is taken as ₹7,500/-.

6. Learned counsel further contended that appropriate compensation had not been awarded under the conventional heads. I have considered the submissions of learned counsel for the appellants. As per Paragraph 61 (viii) of the decisionof Hon'ble the Supreme Court in **National Insurance Company Limited vs Pranay Sethi and others, 2017**

(4) RCR (Civil) 2009, ₹15000/- is payable on account of funeral expenses, likewise ₹15,000/- is payable on account of loss of estate, whereas the appellants have been awarded a sum of ₹10,000/- on account of loss of love and affection and ₹10,000/- on account of funeral expenses. Although, in paragraph 61 (viii) of the Pranay Sethi's case (supra) loss of consortium is @ ₹40,000/-, yet in a later decision of Hon'ble the Supreme Court Case in **Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram and Ors., 2018(4) R.C.R. (Civil) 333**, it has been held that the children of the deceased would be entitled to loss of parental consortium.

7. Accordingly, appellants are held entitled to a sum of ₹15,000/- on account of loss of estate, ₹15,000/- on account of funeral expenses and ₹40,000/- to each of the children on account of loss of parental consortium. As regards compensation of ₹10,000/- awarded by the Tribunal on account of love and affection, the same is not maintainable.

8. In the circumstances, the appellants /claimants are held entitled to the following compensation:-

Sr. No.	Head	Amount assessed by the Tribunal	Amount assessed by this Court
1	Contribution towards family	₹5000/-	₹7500/-
2	Future Prospects	Nil	Nil
3	Total Income assessed	₹5000/-	₹7500/-
4	Multiplier applied	14	14
5	Dependency	₹5000x12x14=₹8,40,000/-	₹7500x12x14=₹12,60,000/-
6	Loss of Love and affection	₹10,000/-	Nil
7.	Funeral expenses	₹10,000/-	₹15,000/-
8.	Loss of Estate	Nil	₹15,000/-

Sr. No.	Head	Amount assessed by the Tribunal	Amount assessed by this Court
9.	Loss of Parental Consortium	Nil	₹1,20,000/- i.e. ₹40,000/- to each of the appellants
	Total	₹8,60,000/-	₹14,10,000/-

9. Learned counsel for the appellants has further contended that interest is liable to be enhanced @ 12 % p.a., in view of the decision of Hon'ble the Supreme Court in Magma General Insurance Co. Ltd.'s case (supra).

10. Per contra, learned counsel for the respondent Insurance Company has contended that the interest awarded @ 7.5% was appropriate and does not warrant any interference.

11. I have considered the submissions of learned counsel for the parties. A Coordinate bench of this Court in **Sonia Devi and others vs. Satbir and others, in FAO No.6545 of 2015, decided on 27.09.2018**, while considering the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra) and Magma General Insurance Co. Ltd.'s case (supra), awarded interest @ 12% per annum with effect from the date of filing of the claim petition till the date of realization. Relevant extract of the same is reproduced as under:-

> "Consequently, it is held that the total compensation amount would carry interest @ 12% p.a. from the date of filing of the claim petition till the date of realization. Out of the enhanced amount 20% each would be the share of appellants No.2, 3 and 4 and the remaining 40% would go to the share of appellant No.1. The share of any minor

would be kept in a fixed deposit in any nationalized bank till the age of majority."

12. Accordingly in the light of the decision of the Co-ordinate Bench as also the decision of Hon'ble the Supreme Court in Magma General Insurance Co. Ltd.'s Case (supra), interest on the compensation shall be payable @ 12% per annum from the date of filing of the claim petition till the date of realization.

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13. FAO No.3486 of 2018, has been filed seeking enhancement of compensation on account of death of the father of the appellants. Learned Motor Accidents Claims Tribunal, SBS Nagar (hereinafter referred to as 'the Tribunal') by assessing the income of the deceased at ₹7,568/- per month, by taking the age of deceased as 47 years, applying multiplier of 13 and by treating number of dependants as three imposed a deduction of 1/4th of the income of the deceased towards his personal expenses and further by awarding ₹10,000/- on account of loss of love and affection and ₹10,000/- on account of funeral expenses, awarded total compensation of ₹11,71,176/- (rounded off to Rs.11,72,000/-).

14. Learned counsel for the appellants contended that income of the deceased-father of the appellants ought to have been taken as that of a skilled worker whereas the income of an unskilled labourer had been taken into account. Secondly, that compensation on account of conventional heads was not correctly awarded and thirdly interest was to be enhanced from 6% per annum to 12% per annum.

15. Per contra, learned counsel for the respondent Insurance

Company contended that the appellants failed to establish that the deceased was working as a tailor, consequently, could be treated as a skilled worker. Therefore, the Tribunal had correctly treated the deceased to be an unskilled labourer, accordingly, assessed his income as ₹7568.52/- per month.

16. I find merit in the submission of learned counsel for the respondent-Insurance Company. Accordingly, the assessment of the income of the deceased at ₹7,568.52/- per month as unskilled labourer does not call for any interference. As regards the plea for enhancement of compensation on account of conventional heads, it needs noticing that a sum of ₹10,000/- was awarded on account of loss of love and affection while ₹10,000/- was awarded on account of funeral expenses.

17. I have considered the submissions of learned counsel for the parties. As per Paragraph No.61 (viii) of the decision in Pranay Sethi's case (supra), ₹15,000/- is payable on account of loss of estate while ₹15,000/- is payable on account of funeral expenses and ₹40,000/- on account of loss of consortium. As already noted above, after taking into account decision rendered in Pranay Sethi's case (supra), Hon'ble the Supreme Court in a subsequent decision in Magma General Insurance Co. Ltd vs, Nanu Ram Alias Chuhru Ram, in Civil Appeal No.9581 of 2018, decided on 18 September, 2018, while elaborating on the payment to be made on account of loss of consortium, held the children entitled to award of compensation on account of loss of parental consortium.

18. Accordingly, in the light of the position as noted above, the appellants are held entitled to a sum of ₹15,000/- on account of loss of estate, ₹15000/- on account of funeral expenses and ₹40,000/- each on

account of loss of parental consortium, on account of death of their father. However, no compensation is payable on account of loss of love and affection.

19. Learned counsel for the respondent-Insurance Company further contends that addition in income on account of future prospects was made @ 30% whereas as per paragraph No. 61(iv) of the decision in Pranay Sethi's case (supra), on account of deceased being 47 years of age, 25% of the established income of the deceased minus tax component was to be added in the income while computing compensation.

Since, the deceased in the instant case was admittedly 47 years of age, therefore, 25% of the established income of the deceased minus tax is to be added in the income while computing compensation.

20. Learned counsel for the insurance company further contends that deduction was ordered to be made @ 1/4th whereas there were three dependants, therefore in terms of paragraph No.14 of the decision of Hon'ble the Supreme Court **in <u>Sarla Verma vs Delhi Transport Corporation, 2009 ACJ 1298</u>,** deduction was to be made @ 1/3rd of the income of the deceased.

Since in the instant case, there are three dependants of the deceased, therefore, the deduction is to be made @ 1/3rd of the income of the deceased as against 1/4th ordered by the Tribunal.

21. In the circumstances, the appellants/claimants are held entitled to the following compensation :-

Sr. No.	**Head**	**Amount assessed by the Tribunal (in ₹)**	**Amount assessed by this Court (in ₹)**
1.	Monthly Income	7,568.52/-	7,569/- (rounded off)
2.	Future Prospects	30% 7,568.52 X 30%=2,270.55/-	25% 7,569 X 25%=1,892/-

3.	Total monthly income assessed	7,568.52+2,270.55=9,839.07/-	7,569 + 1,892.13=9,461/-
4.	Annual Income	9,839.07 X 12=1,18,069/-	9,461 X 12=1,13,532/-
5.	Deduction	1/4th 1,18,069 X 1/4=29,517/-	1/3rd 1,13,532 X 1/3=37,844/-
6.	Annual Income after deduction	1,18,069-29,517=88,552/-	1,13,532-37,844=75,688/-
7.	Multiplier applied	13 88,552 X 13 = 11,51,176/-	13 75,688 X 13 = 9,83,944/-
	Dependency	11,51,176/-	9,83,944/-
8.	Loss of Love and affection	10,000/-	Nil
9.	Funeral expenses	10,000/-	15,000/-
10.	Loss of estate	Nil	15,000/-
11.	Loss of Parental Consortium	Nil	1,20,000/- (40,000/- to each of the appellants)
	Total	**11,71,176/- (rounded off 11,72,000/-)**	**11,33,944/-**

22. Learned counsel for the appellants has further contended that interest is liable to be enhanced @ 12 % p.a., in view of the decision of Hon'ble the Supreme Court in Magma General Insurance Co. Ltd.'s case (supra).

23. Per contra, learned counsel for the respondent Insurance Company has contended that the interest awarded @ 7.5% was appropriate and does not warrant any interference.

24. I have considered the submissions of learned counsel for the parties. A Coordinate bench of this Court in Sonia Devi's case (supra), while considering the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra) and Magma General Insurance Co. Ltd.'s case (supra), awarded interest @ 12% per annum with effect from the date of filing of the claim petition till the date of realization. Relevant extract of the same is reproduced as under:-

> "Consequently, it is held that the total compensation amount would carry interest @ 12% p.a. from the date of filing of the claim petition till the date of realization. Out of the enhanced amount 20% each would be the share of appellants No.2, 3 and 4 and the remaining 40% would go to the share of appellant No.1. The share of any minor would be kept in a fixed deposit in any nationalized bank till the age of majority."

25. Accordingly in the light of the decision of the Co-ordinate Bench as also the decision of Hon'ble the Supreme Court in Magma General Insurance Co. Ltd.'s Case (supra), interest on the compensation shall be payable @ 12% per annum from the date of filing of the claim petition till the date of realization.

26. Accordingly, as against the compensation of ₹8,60,000/- awarded by the Tribunal, the appellants in FAO No.3455 of 2018 are held entitled to award of compensation of ₹14,10,000/- along with interest @ 12% per annum with effect from the date of filing of the claim petition till the date of realization. Likewise, as against the compensation of ₹11,71,176/- (rounded off to ₹11,72,000/) awarded by the Tribunal, the appellants in FAO No.3486 of 2018 are held entitled to award of compensation of ₹11,33,944/- along with interest @ 12% per annum with effect from the date of claim petition till the date of realization. Needless to mention, the appellants would be entitled to the award of compensation in proportion to their shares determined by the Tribunal after first making payment on account of loss of consortium to the appellants as indicated above. The Insurance Company shall make the payment to the appellants

after making deduction of the tax liability if any qua future prospects, in accordance with the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra).

27. Accordingly, the appeals are allowed in part and award dated 11.12.2017 is modified to the extent as noted above.

(B.S.WALIA)
JUDGE

31.10.2018.
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Whether speaking/reasoned : Yes/No
Whether reportable: Yes/No