

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

FAO No.825 of 2018

Date of Decision:04.09.2018

Mohit Sawhney and another

.....Appellants

Vs.

Sheo Raj and others

....Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.Yash Pal Gupta, Advocate,
for the appellants.

AMOL RATTAN SINGH, J. (Oral)

The present first appeal has been filed by the appellants against the Award dated 12.04.2017, passed by learned Motor Accident Claims Tribunal, Gurugram.

Though learned counsel has tried to argue on the question of negligence, a perusal of the record before this Court very clearly shows that the car driven by appellant no.1 is completely damaged from front, with the three-wheeler driven by the deceased damaged on its roof, with the finding of the learned Tribunal on the issue of negligence of appellant no.1 based on the averments made in the claim petition and the evidence led in support thereof by the respondents-claimants, in the form of one eye witness, i.e. PW2 Desh Raj.

As per the said evidence, the vehicle driven by appellant no.1 came and hit the three-wheeler from behind, due to which it turned turtle and this witness (PW2) and the deceased Devender received injuries, with the latter having succumbed to such injuries.

Though learned counsel for the appellants has submitted that there is no evidence whatsoever that the three-wheeler was hit from behind because even the photographs, Ex.P2, do not clearly depict the condition of the three-wheeler on its rear side, however, it is seen that the appellants led no evidence whatsoever to refute the case of the respondent-claimants, with appellant no.1, being the driver of the car, also not having stepped into the witness box to testify contrary to what was alleged by the respondents (petitioners in the claim petition).

That being so, even though PW2 was stated to be the driver of the three-wheeler, I do not see how this Court would interfere simply on a contention made before it in this appeal, that the three-wheeler was not actually hit from behind but was taking a turn on the main road when the vehicle driven by appellant no.1 hit it, and therefore no negligence can be attributed to appellant no.1

As regards the compensation awarded by the Tribunal, though learned counsel could not point out as to how it is excessive in any manner, the following factors are to be kept in mind by this Court.

It is seen that the income of the deceased was taken to be Rs.6,000/- per month by the learned Tribunal though it was contended by the claimants that he was earning Rs.40,000/- (but with no evidence led to that effect).

The accident having taken place on 19.11.2015, I see no error in

the assessment of the income of the deceased, with the legal heirs, i.e. the respondents-claimants, being 6 in number and a deduction of 1/4th of the income having accordingly been made towards the personal expenses of the deceased (had he been continued to live).

The deceased being 52 years old, a multiplier of 11 was applied to the loss of income to the respondents-claimants but no compensation was given towards loss of future prospects of income, on the ground that he did not have any permanent income source as per record.

Though that aspect is in fact now covered in favour of the respondents, as per what has been held in National Insurance Co. Ltd. v. Pranay Sethi (2017) 16 SCC 680, however, it is seen that respondent no.2 herein, i.e. the widow of the deceased, was awarded Rs.1,00,000/- towards loss of estate and loss of consortium, which has now been held to be excessive payment in *Pranay Sethis'* case, with the amounts awarded under these heads being Rs.15,000/- and Rs.40,000/- respectively.

Similarly, the amount of Rs.25,000/- awarded towards funeral expenses of the deceased is again Rs.10,000/- more than what is held to be payable in *Pranay Sethis'* case; (Rs.15,000/- is to be paid on that count).

If the parameters laid down in *Pranay Sethis'* case are to be applied to the case of the respondents-claimants, the following would be payable to them:-

1.	Towards loss of income per month	Rs.6000 - Rs.1500 (1/4 th deduction towards personal expenses of the deceased) =Rs.4500/-
2.	Loss of annual income	Rs.4500 x 12 = Rs.54,000/-
3.	Total loss of income after applying the appropriate multiplier	Rs.54,000/- x 11 =Rs.5,94,000/-
4.	Towards future prospects of income @ 10%	Rs.59,400/-
5.	Therefore total loss of income	Rs.6,53,400/-

6.	Towards loss of estate and loss of consortium	Rs.55,000/- (Rs.15,000/- + Rs.40,000/-)
7.	Towards funeral expenses	Rs.15,000/-
8.	Total compensation payable	Rs.7,23,400/-

Thus, it is seen that the Tribunal, even while not awarding any amount towards loss of future prospects of income, had awarded an excessive amount (in terms of the ratio of *Pranay Sethis'* case (supra), towards loss of consortium and estate (Rs.1,00,000/-), towards loss of love and affection to the children of the deceased (Rs.1,00,000/-), towards loss of love and affection to the parents of the deceased (Rs.1,00,000/-) and towards funeral expenses (Rs.25,000/-).

Hence, the total amount awarded under these heads is Rs.3,25,000/-, whereas as per *Pranay Sethis'* case, it is to be only Rs.70,000/- in all.

Consequently, the amount of the total compensation of Rs.9,19,000/- awarded is to be cut down to Rs.7,23,400/- by this Court and even though no notice has been issued in this appeal, the amount as calculated hereinabove by this Court, in terms of the ratio of the aforesaid judgment, is, in my opinion, the exact amount that can be awarded and is accordingly awarded to the respondents-claimants.

Interest @ 7.5% per annum as was awarded by the Tribunal, running from the date of filing of the petition till the date of realisation, shall also be paid by the appellants to the respondents-claimants.

The appeal is allowed to the aforesaid extent only, but with a rider that since no notice was issued to the respondents when the matter was heard, learned counsel for the appellant not having addressed any arguments on the issue of the quantum of compensation being excessive, liberty is granted to the

respondent-claimants to file a review application, if the criteria for granting compensation, or the calculation made by this Court accordingly, is found to be erroneous in any manner by them, on the touchstone of the judgment in *Pranay Sethis'* case aforesaid.

No order as to costs.

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September 04, 2018
dharamvir/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No.