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

FAO No. 360 of 2000
Reserved on : 13.11.2018
Date of decision : 28.02.2019

Om Pal and another

…….Appellant(s)

Versus

Rajinder Singh and others

……..Respondent(s)

FAO No. 361 of 2000

Kamlesh and others

…….Appellant(s)

Versus

Rajinder Singh and others

……..Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Satyendra Chauhan, Advocate,
for the appellant(s).

Mr. Sahil Khunger, Advocate,
for respondent No.1.

Mr. Suman Jain, Advocate
for respondent No.3.

ARUN MONGA, J.

CM No 22287-CII of 2000 in FAO No 361 of 2000:

Along with the appeal an application under Order 41 rule 27 CPC for placing on record an FIR (Annexure A-1) and a Map (Annexure A-2), by way of additional evidence was filed.Both these are public documents and had been part of record of JMIC, Hansi in the criminal proceedings against respondent driver. Both documents had been proved before the MACT by PW-5 Virender Kumar, Ahlmad of JMIC. The charge against the driver was framed and he was being prosecuted under section 279 and 304-A IPC in the said FIR. The appellants/claimants are rustic villagers and depended upon the advice of learned counsel. Majority of them were minors. One child was in fact born after the accident and filing of the claim petition. The applicants have been able to show sufficient cause for not placing the same on record earlier. Otherwise also, these being public documents, I allow the same to be taken on record as Exhibits A-1 and A-2 for the just decision of the case. The civil miscellaneous application is allowed in above terms.

FAO Nos. 360 &361 of 2000

By this common order I intend to dispose of two appeals bearing FAO No. 360 of 2000 titled as, "Om Pal and another v. Rajinder Singh and others" and FAO No.361 of 2000 titled as "Kamlesh and others v. Rajinder Singh and others. Both the appeals arise from same accident and against an award passed by Learned Motor Accident Claims Tribunal, Hisar (hereinafter referred to as "MACT"). The appellants/ claimants feeling dissatisfied with quantum of compensation awarded, have preferred two separate appeals under section 173 of the Motor Vehicles Act, 1988 (hereinafter refered to as "the Act") for modification of award dated 23.10.1999. The two separate claim petitions under Section 166 of the Act, one filed by injured Om Pal and his wife and another petition preferred by Kamlesh-widow and 3 minor daughters and fourth child in womb, of the deceased were partly allowed by the MACT.

2. The brief relevant facts for disposal of both the appeals are that

a truck number UHQ-598 was being driven by Yogesh on 24.01.1996 from Hansi to Hissar. Bijender Singh was travelling in the truck as helper/ conductor. A bus number RJ-13 P-0686 (hereinafter referred to as the "offending bus") was being driven on the opposite side of road. The said bus was being driven in a rash and negligent manner by one Brijinder Singh. The bus was owned by Zamidara Motor Transport Co-operative Society Limited/ respondent No.2. The offending bus was insured with National Insurance Company/respondent No.3. The offending bus came on the wrong side near Dhani Kutubpur and hit the aforesaid truck, as a result of which Yogesh and Bijender suffered fatal injuries. Such was the impact of collision that both the occupants of truck, driver and helper, died at the spot.

3. The father and mother of deceasaed turck driver Yogesh filed MACT case No 78 of 1996 before MACT Hisar claiming compensation. Similarly, widow and 3 minor daughters and a child in womb of deceased Bijender filed MACT case No. 79 of 1996 claiming compensation.

4. In both the claim petitions respondents No.1 and 2 filed joint written statement and denied the averments of the claim petition. They took a stand that truck driver was driving in a rash and negligent manner which resulted into the alleged accident. Respondent insurance company filed separate written statements in both the claim petitions before the learned MACT. Insurance company of the bus denied averments of the claim petitions and also objected to the age and income of the deceased. It was also alleged that the offending bus was being driven in breach of terms and conditions of the insurance policy.

5. The Ld. MACT after appreciating the evidence on record partly allowed the petitions with costs in favour of claimants and awarded compensation of Rs.50,000/ along with interest at the rate of 12 % per annum from the date of filing the claim petition till realisation.

6. I have heard learned counsels for the parties and perused the records.

7. It was contended by learned counsel for the appellants that the MACT erroneously applied the multiplier and had granted amount of compensation on lower side. The MACT had not granted compensation under various heads. Actual loss of income and future loss of income etc had not been awarded. The MACT applied unit system for calculating dependency income and excluded personal expenses. The MACT also wrongly deducted expenses and erroneously considered dependency income. MACT had wrongly taken the age of the deceased persons as mentioned in the Post-mortem reports. No other expenses had been awarded. Only No Fault Liability compensation of Rs.50,000/ each in both claims petitions had been awarded by the MACT.

8. Admittedly, an FIR was registered against the driver respondent no. 1 and he was charged and was facing prosecution before the competent court. The said fact had been proved by PW-4 Sh.Varinder Kumar, Ahlmad of the judicial court when he had brought the concerned file. The accident had been proved but it was not proved that bus in question was being driven in rash and negligent manner by respondent No.1 (issue No.1). The respondents were proceeded ex parte. The finding recorded by the MACT has not been challenged by the respondents, as they have not

preferred appeals against the awards. Rather, they were proceed ex parte before MACT after filing written statements. The age of the deceased Yogesh was 23 years and of Bijender was 26 years. No evidence was adduced by respondents No.1 and 2. Insurance company had only placed on record insurance policy Exhibit R-1. The evidence of the appellants/petitioners, thus, remained unrebutted.

9. The finding recorded by the MACT per Issue No.1, that accident has been proved but rash and negligent act of the offending bus has not been proved is not sustainable. The learned MACT wrongly recorded as under :-

> " The copy of the FIR has also not been proved. There is absolutely no evidence to establish any act of rashness or negligence on part of the driver of the offending bus. There is however sufficient evidence to prove the accident involving the truck and the offending bus."

10. Concededly, an FIR against the driver of the offending bus had been registered. Criminal case for rash and negligent driving was pending in the court of Judicial Magistrate Ist Class. The same has been duly proved by the Ahlmad of the criminal court. There is no rebuttal, either oral or documentary of the evidence of FIR and Map placed on record as additional evidence. In view of the above, I hold that offending bus was being driven rashly and negligently by its driver and set aside the findings of learned MACT. Further more the age and income of deceased person had also not been rebutted by the respondents. The income of the driver Yogesh was between Rs.3,000-3,500 per month. The income of the helper Bijender by a guess work can be taken Rs.2,000-2,500 per month. In view of the

evidence on record and preponderance of probabilities, I take the income of the driver as Rs.3,000/- per month and of helper as Rs.2,000/- per month.

11. The issue of award of compensation is no more res-integra. The same has been explained by the Hon'ble Supreme Court in its judgments reported as **Sarla Verma and Others vs Delhi Transport Corporation and another 2009(3) RCR (Civil) 77 SC** followed by the Constitutional Bench in the case of **National Insurance Company limited vs Pranay Sethi and Ors. 2017(4) RCR (Civil) 1009 (SC).** It would be apposite to refer the relevant paragraphs from the above said judgments.

Relevant of Para 21 of **Sarla Verma (supra)** reads as under:

> "21. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

Relevant of Para 61 of **Pranay Sethi (supra)** reads as under:

> "(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.
>
> (iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income

> means the income minus the tax component.
>
> (v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.
>
> (vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.
>
> (vii) The age of the deceased should be the basis for applying the multiplier.
>
> (viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

12. Further, Hon'ble Supreme Court in the case of **Magma General Insurance Co. ltd. vs Nanu Ram alias Chuhru Ram & Ors 2018(4)RCR(Civil) 333** in paras 8.7 and 9 considered the issue of consortium and the relevant thereof reads as under:

> "8.7 A Constitution Bench of this Court in Pranay Sethi (supra) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium.
>
> In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'.
>
> The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse. **Rajesh and Ors v Rajbir Singh and Ors (2013) 9 SCC 54**
>
> Spousal consortium is generally defined as rights pertaining to the relationship of a husband wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation."

Black's Law Dictionary(5th ed.1979)

> Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training."
>
> Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.
>
> Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.
>
> The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium.
>
> Parental Consortium is awarded to children who lose their parents in motor vehicle accidents under the Act.
>
> The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under 'Loss of Consortium' as laid down in Pranay Sethi (supra).

13. In the light of above discussion and principles, I deem it appropriate to award compensation as under:

In the FAO No. 360 of 2000 preferred by the parents, father and mother of deceased driver Yogesh aged 23 years income as Rs.3,000/ per month treating it as self employed.

Head	Compensation awarded
i. Income:	Rs 3,000/-
ii. Future Prospects:	Rs.1,200/ (i.e 40% of the income)
iii. Deduction towards personal expenditure:	Rs.1,400/(1/3rdof (3000+1200)
iv. Total Income:	Rs 2,800/ (2/3rd of(3000+1200)
v. Multiplier:	18
vi. Loss of future income:	Rs.6,04,800/(2800x12x18)
vii. Loss of love and affection:	Rs 1,00,00/(Rs. 50000/ each)
viii. Funeral expenses	Rs.15000/
ix. Loss of estate	Rs.15000/
x. Loss of Filial Consortium	Rs. 80,000/(Rs 40,000/ payable to each appellants Nos 1 and 2)
Total compensation awarded:	Rs. 8,14,800/ along with interest @12%p.a from the date of filing the claim petition till payment.

Both appellants – claimants would be entitled to the compensation in equal proportion.

14. In the FAO No. 361 of 2000 preferred by the widow and children of deceased driver Bijender aged 26 years income as Rs.2,000/ per month.

Head	Compensation awarded
i. Income:	Rs 2,000/
ii. Future Prospects:	Rs.800/ (i.e 40% of the income)
Iii. Deduction towards personal expenditure	Rs.933/(1/3rdof (2000+800)
iv. Total Income:	Rs 1,866/ (2/3rd of(2000+800)
v. Multiplier:	17
vi. Loss of future income:	Rs.3,67,200/(1800x12x17)
vii. Loss of love and affection:	Rs 1,00,00/(Rs. 50000 each)
viii. Funeral expenses	Rs.15,000/
ix. Loss of estate	Rs.15,000/
x. Loss of Consortium	Rs. 2,00,000/(Rs 40000 payable to each appellants)
Total compensation awarded:	Rs. 6,97,200/ along with interest @12%p.a from the date of filing the claim petition till payment.

Out of the amount awarded, appellant No.1 is granted 60% while appellants No.2 to 4 shall be granted 40% along with interest as specified above. The amount of the minors would be deposited in the FDR in a scheduled bank earning maximum interest rate and will be disbursed to them on their attaining the age of 21 years. If required earlier, they may move application before the MACT specifically giving the reason for their early need, such as higher education and medical treatment etc.

15. Both the FAOs are accordingly allowed, award of MACT is modified in above terms with no order as to costs. All pending applications, if any, stand disposed of accordingly.

(ARUN MONGA)
JUDGE

FEBRUARY 28, 2019
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1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No