

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.1454 of 2006 (O&M)

Date of Decision: 22.05.2019

Sher Singh and Others

.....Appellants

Vs.

Naresh Kumar and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE DR. RAVI RANJAN

Present:- Ms.Ekta Thakur, Advocate, for the appellants.

Mr.S.K.Yadav, Advocate, for respondent/Insurance Company.

DR. RAVI RANJAN, J. (Oral Judgment)

This appeal has been filed by the claimants-appellants for enhancement of the compensation amount awarded by the Motor Accident Claims Tribunal, Chandigarh, in MACT Case No.52 of 2003.

As per the claim application, the father of the claimants (Naib Singh) met with an accident on 06.02.2003 in a motor vehicular accident while he was going along with Naresh Kumar to Sadhaura (Haryana) on motorcycle, which was being driven by Naresh Kumar and he was sitting on the pillion seat. The motorcycle was driven rashly and negligently by respondent No.1. When they reached Village Mattanwala near Bridge No.2, said motorcycle suddenly developed mechanical defect and respondent No.1 lost control over it. As a result of which, after striking against the bridge, both the occupants fell down and sustained serious and grievous injuries. Naib Singh was taken to the General Hospital, Sector-

6, Panchkula from where he was referred to PGI, Chandigarh where he succumbed to the injuries on 07.02.2003. It was claimed that at the time of death, he was 45 years old and was working as Senior Assistant in the Department of Agriculture, Punjab and was drawing a salary of Rs.12,000/- per month.

Respondents No.1 and 2, i.e., the driver and the owner filed their joint written statement alleging that no accident took place on 06.02.2003. Respondent No.3, the insurance company also filed written statement questioning the validity of driving licence of the person who was driving the motorcycle at the time of accident. It is also stated that compensation demanded was highly exaggerated.

The Tribunal has held that the accident was result of rash and negligent driving by the person who was driving the motorcycle on the date of accident. No cross-objection has been filed on behalf of insurance company assailing the such finding recorded by the Tribunal. Though, the appeal was registered in the year 2006 and the date of Tribunal's decision is dated 25.01.2006, learned counsel for the respondent/insurance company is not in a position to inform that the insurance company has filed any appeal or not against the aforesaid finding. Thus, it has to be understood that there is no cross-objection or appeal having been filed on behalf of respondent/Insurance Company which is contesting this appeal as it has been fastened with the liability to indemnify the owner and pay the compensation amount, being insurer of the motorcycle, to the claimants.

The appellants have preferred this appeal only for

enhancement of the Award on diverse grounds. First and the foremost is that though it is apparent from Ex.P-2, which is salary certificate, that the salary of the deceased was Rs.12,795/- which was issued on 07.04.2004, however, the Tribunal has held that his carry home salary was only Rs.6836/- at the time of death after deducting of Rs.5,040/-. It has further been held that the respondents No.1 and 2 i.e. the major sons of the deceased are 28 and 24 years of age respectively and no evidence has come on record as to whether they are working and completely dependent upon the deceased, however, presuming that they must be earning something, the Tribunal has come to the conclusion that the deceased was contributing Rs.4000/- per month towards his family and spending at least Rs. 2836/- per month on himself. Accordingly, for the assessment and calculation of future loss of income, his salary has been assessed at Rs.4,000/- after the aforesaid deduction.

According to the claimant/appellant, serious error has been committed by the Tribunal firstly by deducting the allowances from the salary for calculation of dependency as has been discussed above and secondly by considering that the both the major sons were not dependent upon the deceased as they must be contributing some amount for their livelihood.

Next point raised by the learned counsel is that split multiplier method has been adopted by the Tribunal for calculation taking into account that the deceased was 53 years of age and, in Punjab Government, the date of superannuation is 58 years, therefore, multiplier was chosen as 8. For five years (till the date of superannuation) it has

been taken to be 5 and for rest of the life i.e. after retirement it has been chosen as 3.

It is next contended that as per **Sarla Verma Vs. Delhi Transport Corporation and another, 2009(3) R.C.R (Civil) 77** which has been considered and accepted by the Constitution Bench of the Hon'ble Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi and others 2017(4) R.C.R.(Civil) 1009**, the multiplier should have been 11 for 51 to 55 years considering the age of the deceased on the date of accident.

It is also contended that nothing has been given under the head of future prospects as well as under conventional heads.

Per contra, learned counsel appearing for the insurance company has submitted that income tax which was being paid or was to be paid by the deceased, has to be deducted while calculating his income for assessing dependency. It is also submitted that the deductions of allowances have also been made correctly as those appear to be personal in nature and not for the family. Secondly, it is contended that the sons being major cannot be treated to be dependent upon the deceased as the presumption would be that they are working and, thus, such finding has rightly been recorded by the Tribunal. Considering as above, only the minor daughter i.e. claimant No.3 would be considered for such assessment. Accordingly, it has to be assumed that the deceased died leaving behind only one dependent. In such circumstance, 50% of the income has to be deducted towards personal expenditure of the deceased

that if the dependents are 2 to 3 in number then 1/3rd of the income would be deducted towards personal expenditure, however, it has not been stated as to what would be the deduction if the deceased died leaving behind only one dependent. However, when a question was put to him that how the deduction should be 50% of income when it has been held by the Hon'ble Supreme Court that 50% would be deducted only if the deceased was a bachelor, learned counsel was not in a position to answer the same. He only submitted to the extent that the aforesaid decision is silent upon the concerned circumstance.

It has also been submitted that in the year 2006, when the Award was being pronounced by the Tribunal, the decision of the Apex Court in **Sarla Verma (Supra)** was yet to come and, therefore, split multiplier method adopted at that point of time was correct.

However, upon consideration of rival contention, this Court finds force in the submission raised on behalf of appellants. So far deduction of allowances etc. is concerned, the issue is no longer *res integra* as the same has been considered and decided in several judicial pronouncements. One of such is by the Apex Court rendered in **Sunil Sharma and others Vs. Bachiter Singh and others 2011(3) SCC (Cri.) 206**. The Supreme Court has held that the deduction made by the Tribunal on account of HRA, CCA and Medical Allowances should have been taken into consideration and added in the income of the deceased for calculation. Accordingly, it is held that deduction could not have been made from the salary under the heads reflected in Ex.P-2 (salary certificate) issued on 07.04.2004. Accordingly, the gross Dearness

Allowance, House Rent Allowance, Fixed Medical Allowance and CCA, which have been deducted, has to be added while calculation of income of the deceased which would come at Rs.12,795/-. However, in my considered view, and as has been raised by the learned counsel for the respondent, income tax amount which was payable on such date would be required to be deducted. Both the learned counsel have come to the conclusion after getting the information from Net that for the assessment year 2003 to 2004, the income up to Rs.50,000/- was exempted from any deduction and from Rs.50,000/- to Rs.60,000/-, 10% of income was required to be deducted and for Rs.60,000/- to Rs.1,50,000/-, deduction of tax would be 20% of income and Rs.1,50,000/- above it would be 30%. Accordingly, they have calculated considering income per month of Rs.12,795/- which comes to annual income of Rs.1,53,540/-. Total deduction towards income tax would be of Rs.20,124/-. Since both parties have admitted this calculation, this Court will not go into the details and accept it as it is. Thus, in my view after deducting the taxable amount from the annual income (Rs.1,53,540/- -- Rs.20,124/-=Rs.1,33,416) and after rounding up the figure, the annual income of the deceased can be taken as Rs.1,33,400/-.

Coming to the issue of choosing the multiplier, the things are quite clear after the decision of the Apex Court rendered in **Sarla Verma (Supra)**. Thus, following the above pronouncement, in my considered opinion, the split multiplier method adopted by the Tribunal would not be permissible. As per the aforesaid decision the age of the deceased, if taken to be 53 years, the suitable multiplier would be 11. That apart, as

per the decision rendered in **Pranay Sethi (Supra)**, the deceased being government employee, there should be an addition of 15% of the salary under the head of future prospects. Accordingly, Rs.1,33,400/-p.a. + 15% of income would be admissible.

Now the next issue would be as to what would be deduction towards personal expenditure. Learned counsel for the respondent has vehemently argued since there is no evidence on record that appellant No.1 and 2 were not working, therefore, it has to be taken that they were contributing some amount and they should not be considered as dependent while calculating the deduction from income towards personal expenditure. However, the aforesaid submission is noted only to be rejected for the reason that in the affidavit in the form of examination-in-chief, the claimants have stated that all the sons and daughter were dependent upon the deceased but at the time of cross-examination, no question was asked and no suggestion was made to the witness regarding the separate earning of the sons. Once nothing has been asked in the cross-examination, it has to be understood that respondents admitted the fact that they were not earning separately and were dependent upon the deceased. A reference in this regard is made to a decision of Hon'ble Supreme Court rendered in **Santosh Devi vs. National Insurance Company Limited (2012) 6 SCC 421**, held as under:

16. The Tribunal's observation that the two sons of the appellant cannot be treated dependant on their father because they were not minor is neither here nor there. In the cross-examination of the appellant, no question was put to her about the source of sustenance of her two sons.

Therefore, there was no reason for the Tribunal to assume that the sons who had become major can no longer be regarded dependant on the deceased.

In the case in hand, the Tribunal's observation that the sons of the deceased cannot be treated to be dependent upon their father because they were major cannot be accepted as in the cross-examination no question was put to the claimant No.1 about his source of income and his dependency upon the deceased. Therefore, there was no occasion for the Tribunal to assume that the sons, who are major, can no longer be dependent on the deceased. Accordingly, it is held that the major sons of the deceased are also to be taken into consideration for calculation of the dependency. Accordingly, in my considered view 1/3rd of the income is to be deducted towards personal expenses.

Coming to the next issue, nothing has been given by the Tribunal under the conventional heads. This issue is no longer *res integra* having been considered and decided by the Hon'ble Supreme Court in **Pranay Sethi (Supra)**. According to the aforesaid decision, the claimants would be entitled for Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. So far as loss of consortium is concerned, the Hon'ble Supreme Court in **Magma General Insurance Company Vs. Nanu Ram alias Chuhru Ram and ors. 2018 (4) R.C.R. (Civil) 333**, after considering the decision of the Apex Court rendered in **Pranay Sethi (Supra)**, has held that all the sons and daughters would be entitled for parental consortium if they lose their one of the parents in motor vehicular accident. Accordingly, the claimants would be entitled

for loss of parental consortium @ Rs.40,000/- for each of the applicant/appellant as their lordship of Hon'ble Supreme court has held in clear terms loss of consortium could be of three categories; first would be spousal consortium i.e., in case one of the spouse loses life in motor vehicular accident then the other would be entitled for the same. Second would be parental consortium, i.e., if the sons and daughters lose their parents or one of the parents in the accident then they will be entitled for loss of parental consortium. Third is filial consortium which would be available in case the parents loose their child in a motor vehicular accident.

Accordingly, in view of the aforesaid discussion Award pronounced by the Tribunal stands modified as under:

Sr.No.	Heads	Award
1	Income (annual) Rs.12795/- X 12	Rs.1,53,540/-
2.	Deduction of income tax of Rs.20,124/=	Rs.1,53,540/- --- Rs.20,124/-= Rs.1,33,416/- rounding up Rs.1,33,400/-
3.	Future prospect 15%	Rs.1,33,400 + Rs20,010/-= Rs.1,53,410/-
4.	Deduction on personal expenses 1/3 rd	Rs.1,53,410/- --- Rs.51,136/-= Rs.1,02,274/-
5.	Total loss of future income applying multiplier 11.	Rs.1,02,274/- X 11= Rs.11,25,014/-
6.	Funeral expenses	Rs.15,000/-
7.	Loss of estate	Rs.15,000/-
8.	Loss of Parental Consortium 40,000/- each to the claimants No.1, 2 and 3.	Rs.1,20,000/-
	Total	Rs.12,75,014/-
	Enhanced amount of compensation	Rs.12,75,014/- ---- Rs.3,48,000/-= Rs.9,27,014/-

The total compensation amount as per aforesaid calculation comes to Rs.12,75,014/- enhancement being of Rs.9,27,014/- which shall be paid along with interest to the claimants in equal share. The Tribunal has given interest @ 6% per annum but in my view, just and proper interest payable would be 7.5% per annum. Accordingly, the aforesaid amount with interest should be paid within a period of 3 months from the date of the present order.

In the result, this appeal is allowed to the extent as indicated about, however, there would be no order as to costs.

(DR. RAVI RANJAN)
JUDGE

22.05.2019

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No