IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Date of Decision: 31 .05.2019

(1) FAO-3375-2007

Meena Kumari and others

…..Appellants

Versus

Gulsher Ahmad and others

…..Respondents

(2) FAO-3376-2007

Surinder Kaur and others

…..Appellants

Versus

Gulsher Ahmad and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present: Mr. Vipul Sharma, Advocate
for the appellants.

None for respondents No.1 to 3.

Ms. Vandana Malhotra, Advocate for
for respondent No.4-Insruance Company.

ARUN KUMAR TYAGI, J.

1. This order disposes of **FAO-3375-2007 titled Meena Kumari and others Vs. Gulsher Ahmad and others** filed by claimants-widow, minor sons and parents of deceased-Harbhajan Singh **and FAO-3376-2007 titled Surinder Kaur and others Vs. Gulsher Ahmad and others** filed by claimants-widow, minor daughter and minor son of deceased-Manjit Singh respectively for enhancement of compensation awarded vide separate awards dated 17.03.2007

passed by learned Motor Accidents Claims Tribunal, Patiala (for short 'the Tribunal') in **MACT No.352T of 2002/2006 titled Meena Kumari and others Vs. Gulsher Ahmad and others** and **MACT No.5T of 2004 titled Surinder Kaur and others Vs. Gulsher Ahmad and others**, on account of death of Harbhajan Singh and Manjit Singh due to injuries suffered in motor vehicle accident which took place on 08.08.2002

2. Both the above-said claim petitions were filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the M.V. Act') on the common averments that on 08.08.2002, Manjit Singh was going from his house to Truck Union Patiala on his motor cycle bearing registration No.PB-10AK-3239 along with Harbhajan Singh as pillion rider followed by Kulwant Singh on his motor cycle with Gurnam Singh as pillion rider. At about 10:30 p.m. when they reached towards Rajpura side from old Octroi Post, Patiala, Truck bearing registration No.UP-11F-0684, owned by respondents No.2 and 3 and insured with respondent No.4, came from behind driven by respondent No.1 rashly and negligently and hit their motor cycle by going on the extreme left side of the road on kacha berm. As a result Manjit Singh and Harbhajan Singh fell down and died on the spot due to injuries suffered in the accident. The accident was witnessed by Kulwant Singh and Gurnam Singh.

3. In **MACT No.352T of 2002/2006 titled Meena Kumari and others Vs. Gulsher Ahmad and others** the claimants averred that Harbhajan Singh was aged about 36 years and was ex-serviceman. He was getting ₹4,000/- per month as pension and was

also working as Supervisor on salary of ₹4,000/- per month. While claiming themselves to be his legal heirs/representatives the claimants sought award of compensation against respondents No.1 to 4 with costs and interest.

4. In **MACT No.5T of 2004 titled Surinder Kaur and others Vs. Gulsher Ahmad and others** the claimants averred that Manjit Singh was aged about 36 years and was ex-serviceman. He was getting pension of ₹4,000/- per month and was also working as private Gunman on salary of ₹3,000/- per month. He was also earning ₹2,000/- per month from dairy farm. While claiming themselves to be his legal heirs/representatives the claimants sought award of compensation against respondents No.1 to 4 with costs and interest.

5. The petitions were contested by the respondents. In their written statement, respondents No.1 and 2 denied the accident and their liability contending that the offending Truck was falsely involved in the accident. In its written statement respondent No.4 took objections as to respondent No.1 not having valid and effecting driving licence and breach of the terms and conditions of the insurance policy. Respondent No.4 also controverted the material averments made in the petition and denied its liability.

6. The Tribunal framed the issues and recorded the evidence produced by the parties. On perusal of the material on record and consideration of the submissions made by the learned Counsel for the parties the Tribunal held that Harbhajan Singh and Manjit Singh died due to injuries suffered in accident caused by rash and negligent driving of Truck bearing registration No.UP-11F-0684 by respondent

No.1 and that the claimants were entitled to recover compensation for their death from respondents No.1 to 4 jointly and severally. In **MACT No.352T of 2002/2006 titled Meena Kumari and others Vs. Gulsher Ahmad and others** the Tribunal took age of the deceased-Harbhajan Singh as 36 years, assessed his income as ₹3,000/- per month, deducted 1/3rd towards personal expenses, applied multiplier of 13, added amount of ₹5,000/- towards funeral expenses, ₹3,000/- towards loss of spousal consortium and awarded compensation of ₹3,20,000/- with costs and interest at the rate of 6% per annum from the date of filing of the claim petition till payment to the claimants. In **MACT No.5T of 2004 titled Surinder Kaur and others Vs. Gulsher Ahmad and others** the Tribunal took age of the deceased-Manjit Singh as 35 years, assessed his income as ₹2,200/- per month, deducted 1/3rd towards personal expenses, applied multiplier of 13 as per age of his parents, added amount of ₹5,000/- towards funeral expenses, ₹3,000/- towards loss of spousal consortium and awarded compensation of ₹2,42,000/- with costs and interest at the rate of 6% per annum from the date of filing of the claim petition till payment to the claimants. The Tribunal directed the respondents No.1 to 4 to pay the compensation amounts jointly and severally.

7. Feeling aggrieved, the claimants have filed present appeals for enhancement of compensation.

8. I have heard arguments addressed by learned Counsel for the appellants and learned Counsel for respondent No.4-Insurance Company and have gone through the record.

9. Mr. Vipul Sharma, learned Counsel for the appellants has argued that in both the cases **MACT No.352T of 2002/2006 titled Meena Kumari and others Vs. Gulsher Ahmad and others** and **MACT No.5T of 2004 titled Surinder Kaur and others Vs. Gulsher Ahmad and others** the Tribunal did not properly assess income of the deceased and did not include pension in assessing income of the deceased. The pension which the deceased were getting was required to be included in their income for determining dependency of the claimants on them. In support of his arguments, learned Counsel for the appellants has placed reliance on the observations in **Helen C. Rabello Vs. Maharashtra State Road Transport Corporation : 1998(4) RCR (Civil) 177; Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and two others : 2005(4) RCR (Civil) 628; National Insurance Company Ltd. Vs. Indira Srivastava and others : 2008 (1) RCR (Civil) 359; Sebastiani Lakra and others Vs. National Insurance Company Ltd. and another : 2018(4) RCR (Civil) 837**

10. Learned Counsel for the appellants has further argued that in both the cases the Tribunal did not make any addition towards future prospects, applied wrong multiplier, awarded meager amounts towards funeral expenses and loss of consortium and did not award any amount towards loss of estate. The Tribunal also awarded lesser interest at the rate of 6% per annum instead of 12% per annum. Therefore, the award may be modified and amounts of compensation awarded in both the above-said cases may be enhanced.

11. On the other hand, Ms. Vandana Malhotra, learned Counsel for respondent No.4 has argued that the Tribunal has awarded just and adequate compensation to the claimants who are not entitled to enhancement of the amounts awarded. Interest awarded by the Tribunal at the rate of 6% per annum is also just and adequate. In support of her arguments, learned Counsel for the respondent No.4 has placed reliance on the observations in **Smt. Shantaben and others Vs. National Power Transport and another : 2019(2) RCR (Civil) 376** where interest at the rate of 6% per annum was awarded. Learned Counsel for the respondent No.4 has accordingly contended that the appeals may be dismissed.

12. In **MACT No.352T of 2002/2006 titled Meena Kumari and others Vs. Gulsher Ahmad and others** claimants examined Meena Kumari as PW-4 who deposed that her husband deceased-Harbhajan Singh was ex-serviceman and getting pension of ₹2,200/- per month and after retirement he was working as Security Guard and supervisor with Group-5 Security and Safety Services, Patiala and getting salary of ₹4,000/- per month. Testimony of PW-4 Meena Kumari is supported by testimony of PW-1 Amarjit Singh who produced the record showing that the deceased used to receive pension of ₹2,000/- per month and testimony of PW-3 P.S. Sidhu, Managing Director of Group-5 Security and Safety Services, Patiala who has deposed that deceased-Harbhajan Singh was working with him as Security Guard since 19.11.2001 and as Security Supervisor from 02.02.2002 and he paid ₹3,500/- per month and proved his Salary Certificate Ex.P-8. This evidence as to income of the deceased

by way of pension as ex-serviceman and employment as Supervisor in Group-5 Security and Safety Services, Patiala has gone virtually unrebutted and unchallenged and deserved to be relied and acted upon. However, the Tribunal wrongly assessed income of deceased-Harbhajan Singh as ₹3,000/- per month without assigning any reason for discarding testimony of PW-3 P.S. Sidhu as to payment of wages of ₹3,500/- per month to deceased-Harbhajan Singh by him which deserved credence and warranted acceptance.

13. In **MACT No.5T of 2004 titled Surinder Kaur and others Vs. Gulsher Ahmad and others** the claimants examined Surinder Kaur as PW-2 who deposed that her husband deceased-Manjit Singh Singh was ex-serviceman and getting pension of ₹1,806/- per month and after retirement he started working at Moti Bagh Dairy Farm, Patiala and used to earn ₹2,200/- per month. He also used to maintain his own dairy farm consisting of five buffaloes and two cows and used to earn ₹7,000/- per month. Testimony of PW-2 Surinder Kaur as to pension and employment of deceased Manjit Singh with New Moti Bagh Palace, Patiala is corroborated by testimony of PW-1 Nirmal Singh who produced the record and proved copies of statements of account Ex.P-2 to P-4 showing that deceased Manjit Singh was getting pension of ₹1,814/- at the time of his death and by testimony of Vijay Kumar PW-5 who deposed that the deceased was working as Supervisor in New Moti Bagh Palace, Patiala for the last 18/19 years and getting salary of ₹2,200/- per month and proved his Salary Certificate Ex.P-14. To corroborate the testimony of PW-2 Surinder

Kaur as to the running of dairy farm and income of the deceased from sale of milk the claimants have examined Raghubir Singh as PW-3 who has deposed as to purchase of milk by him from deceased-Manjit Singh and produced notebook in this regard but PW-3 Raghubir Singh was resident of a different village, did not have milk vendors licence and did not produce any receipt to prove payment by him to deceased-Manjit Singh regarding purchase of milk. In the notebook produced by him name of father and address of deceased-Manjit Singh were not mentioned and the notebook was not signed by deceased-Manjit Singh and even by PW-3 Raghubir Singh. In the absence of corroboration by any cogent and reliable documentary evidence, oral evidence as to running of dairy farm by deceased-Manjit Singh and his income from sale of milk could not be relied upon and was rightly disbelieved by the Tribunal. However, the evidence as to income of the deceased by way of pension as ex-serviceman and employment as Supervisor in Moti Bagh Palace, Patiala has gone virtually unrebutted and unchallenged and deserved to be relied and acted upon.

14. In both the cases the Tribunal wrongly excluded the amount of pension which deceased Harbhajan Singh and Manjit Singh were getting as ex-servicemen. Pension received by the deceased as ex-servicemen was part of their income and was, therefore, required to be included as such while making assessment of their income at the time of their death and could not be excluded on the ground that on their death their family members would be getting family pension. It may also be observed here that pension payable to claimant No.1-widow of the deceased in both the claim petitions is also not liable to

be deducted from the amount of compensation payable to the claimants for loss of dependency. Reference in this regard may be made to the decisions of Hon'ble Supreme Court in **Helen C. Rabello Vs. Maharashtra State Road Transport Corporation : 1998(4) RCR (Civil) 177; Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and two others : 2005(4) RCR (Civil) 628; National Insurance Company Ltd. Vs. Indira Srivastava and others : 2008 (1) RCR (Civil) 359; Sebastiani Lakra and others Vs. National Insurance Company Ltd. and another : 2018(4) RCR (Civil) 837** and **Vimal Kanwar and others Vs. Kishore Dan and others, 2013 (2) RCR (Civil) 945**. On addition of the amount of pension, which deceased Harbhajan Singh and Manjit Singh were getting as ex-servicemen, in their income at the time of their death, their income comes to ₹5,500/- and ₹4,014/- per month respectively.

15. In both the claim petitions, the Tribunal did not make any addition in the income of the deceased towards future prospects. In view of observations made by Hon'ble Supreme Court in para No.61(iv) of its judgment in **National Insurance Company Limited Vs. Pranay Sethi and Others, 2017 (4) R.C.R. (Civil) 1009** addition of 40% was required to be made towards future prospects. When so added, income of the deceased-Harbhajan Singh comes to (₹5,500/- + ₹2,200/- =) ₹7,700/- and income of the deceased-Manjit Singh comes to (₹4,014/- + ₹1,606/- =) ₹5,620/-.

16. The number of claimants dependent on deceased-Harbhajan Singh was five and number of the claimants dependent on deceased-Manjit Singh was three. In view of the observations made by

Hon'ble Supreme Court in para No.14 of its judgment in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77** deduction of 1/4th was required to be made but the Tribunal wrongly made deduction of 1/3rd towards personal expenses of deceased-Harbhajan Singh while deduction of 1/3rd was required to be made and was rightly made by the Tribunal towards personal expenses of deceased-Manjit Singh. On deduction of 1/4th towards personal expenses of deceased-Harbhajan Singh, annual dependency of the claimants on deceased-Harbhajan Singh comes to ₹7,700/- – ₹1,925/- (1/4) = ₹5,775/- X 12 = ₹69,300/-. On deduction of 1/3rd towards personal expenses of deceased-Manjit Singh, annual dependency of the claimants on deceased-Manjit Singh comes to ₹5,620/- – ₹1,874/- (1/3) = ₹3,746/- X 12 = ₹44,952/-

17. So far as the question of multiplier is concerned, Hon'ble Supreme Court observed in para No.61(vii) of its judgment in **Pranay Sethi's Case (Supra)** that the age of the deceased should be the basis for applying the multiplier. As per School Leaving Certificate Ex.P-3 date of birth of deceased-Harbhajan Singh was 13.08.1964 and he is thereby proved to be aged 37 years at the time of his death due to injuries suffered in the accident which took place on 08.08.2002. As per Ex.P-9 the date of birth of deceased-Manjit Singh was 05.04.1966 and he is thereby proved to be aged 36 years at the time of his death. In view of age of both the deceased and observations of Hon'ble Supreme Court in para No.21 of its judgment in **Sarla Verma's Case (Supra)** multiplier of 15 was required to be applied. It follows that the Tribunal erred in applying multiplier of 13 in both the cases. When

multiplier of 15 is applied to annual dependency of the claimants on deceased-Harbhajan Singh, compensation payable for loss of dependency comes to (₹69,300X 15 =) ₹10,39,500/-. When multiplier of 15 is applied to annual dependency of the claimants on deceased-Manjit Singh, compensation payable for loss of dependency comes to (₹44,952 X 15 =) ₹6,74,280/-.

18. In the present case, the Tribunal merely awarded amount of ₹5,000/- towards funeral expenses, ₹3,000/- towards loss of spousal consortium and did not award any amount towards loss of estate. In **Pranay Sethi's case (Supra)**, while answering the reference on **31.10.2017** Hon'ble Supreme Court observed in para No.61 (viii) of its judgment that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be ₹15,000/-, ₹40,000/- and ₹15,000/- respectively. In **Pranay Sethi's case (Supra)** Hon'ble Supreme Court further observed that the aforesaid amounts should be enhanced at the rate of 10% in every three years. As a corollary to above observations of Hon'ble Supreme Court for enhancement of the figures on conventional heads at the rate of 10% in every three years for assessment of compensation in cases arising in future, the figures on conventional heads will be liable to reduction at the rate of 10% for every three years for assessment of compensation in cases which have arisen in the past. In the present case the accident took place on **08.08.2002** and therefore, the amounts under conventional heads will be liable to be reduced by **50%**. In **Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram and others, 2018 (4) R.C.R. (Civil) 333** Hon'ble

Supreme Court clarified that in legal parlance 'consortium' is compendious term which encompasses 'spousal consortium', 'parental consortium' and 'filial consortium' and awarded compensation of ₹40,000/- each for loss of filial consortium to father and sister of the deceased. However, the Bench observed in para No.8.7 of its judgment that the amount of compensation to be awarded for loss of consortium will be governed by the principles of awarding compensation under 'Loss of Consortium' as laid down in **Pranay Sethi's case (Supra)**.

19. In view of the above judicial precedents, the claimants in both the cases are entitled to award of compensation of ₹20,000/- towards loss of consortium, ₹7,500/- towards funeral expenses and ₹7,500/- towards loss of estate in both the cases respectively.

20. In the present case, the Tribunal directed the payment of compensation amount with interest at the rate of 6% per annum from the date of filing of the claim petition till realization of the whole amount which is challenged to be inadequate and the question which arises is as to what would be the appropriate rate of interest.

21. In claim petitions under Section 163-A or 166 of the M.V. Act, the Motor Accidents Claims Tribunal is empowered by Section 171 of the M.V. Act to award interest from the date of making the claim at such rate as may be specified by it. In awarding interest, the Motor Accident Claims Tribunal is not bound by the provisions of Section 34 of the Code of Civil Procedure, 1908 to restrict the award of interest to 6% per annum.

22. In **Puttamma and others Vs. K.L.Narayana Reddy and another 2014 (1) R.C.R. (Civil) 443,** Hon'ble Supreme Court observed in para 60 as under:-

> "This Court in **Abati Bezbaruah Vs. Deputy Director General, Geological Survey of India and another (2003) 3 SCC 148** noticed that varying rate of interest is being awarded by the Tribunals, High Courts and this Court. In the said case, this Court held that the rate of interest must be just and reasonable depending on the facts and circumstances of the case and should be decided after taking into consideration relevant factors like inflation, change in economy, policy being adopted by the Reserve Bank of India from time to time, how long the case is pending, loss of enjoyment of life etc."

23. In **Supe Dei and others Vs. National Insurance Company Ltd. and another 2009 (4) SCC 513**, Hon'ble Apex Court held that 9% per annum would be the appropriate rate of interest to be awarded in Motor Accidents Claims compensation cases.

24. In **Municipal Corporation of Delhi Vs. Association of Victims of Uphaar Tragedy : 2012(3) RCR (Civil) 203** and **Syed Sadiq etc. Vs. Divisional Manger, United India Insurance Company : 2014(1) RCR (Civil) 765** interest was awarded at the rate of 9% per annum.

25. In **Sube Singh and another Vs. Shyam Singh (Dead) and others 2018 (2) R.C.R. (Civil) 131 (SC)** rate of interest of 6% per annum awarded by the Motor Accidents Claims Tribunal was modified by Hon'ble Supreme Court of India to 9% per annum.

26. In view of the observations in above referred judicial precedents, mercantile rate of interest prevalent, rate of interest allowed by Nationalized Banks on fixed deposit receipts and other relevant factors, it will be appropriate to modify the rate of interest of

6% per annum awarded by the Tribunal to 9% per annum and observations in **Smt. Shantaben and others Vs. National Power Transport and another : 2019(2) RCR (Civil) 376** (relied upon by learned Counsel for respondent No.4) as to award of interest at the rate of 6% per annum in view of the particular facts of that case are not applicable and are not of any help to respondent No.4.

27. It follows from the above discussion that the compensation awarded is liable to be enhanced as follows:-

(i) in **MACT No.352T of 2002/2006 titled Meena Kumari and others Vs. Gulsher Ahmad and others**, the claimants are entitled to payment of compensation of ₹10,74,500/- on account of death of Harbhajan Singh with costs and interest at the rate of 9% per annum from the date of filing of the petition till realization out of which the amount of ₹3,20,000/- awarded to the claimants by the Tribunal on account of death of Harbhajan Singh shall be liable to be deducted. Out of the enhanced amount of ₹7,54,500/- amount of ₹2,54,500/- shall be payable to claimant No.1-widow, amount of ₹1,50,000/- each shall be payable to claimants No.2 and 3 and amount of ₹1,00,000/- each shall be payable to claimants No.4 and 5. On realization 50% of the enhanced compensation as per their shares shall be payable to the claimants in cash and remaining 50% shall be deposited in FDRs in their names in some nationalized Bank for three years; and

(ii) in **MACT No.5T of 2004 titled Surinder Kaur and others Vs. Gulsher Ahmad and others** the claimants are entitled to payment of compensation of ₹7,09,280/- on account of death of Manjit Singh with costs and interest at the rate of 9% per annum from the date of filing of the petition till realization out of which the amount of ₹2,42,000/- awarded to the claimants by the Tribunal on account of death of Manjit Singh shall be liable to be deducted. Out of the enhanced amount of ₹4,67,280/- amount of ₹1,67,280/- shall be payable to claimant No.1-widow and amount of ₹1,50,000/- each shall be payable to claimants No.2 and 3. On realization 50% of the enhanced compensation as per their shares shall be payable to the claimants in cash and remaining 50% shall be deposited in FDRs in their names in some nationalized Bank for three years.

28. The appeals are accordingly allowed with costs in terms of the above-said modifications of the awards dated 17.03.2007.

(ARUN KUMAR TYAGI)
JUDGE

31.05.2019
Kothiyal

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No