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

**FAO No.959 of 2006**
**Date of decision:05.03.2019**

Parkash and another

…. Appellants

Versus

Mandeep Singh and others

….Respondents

**CORAM : HON'BLE MR.JUSTICE ARUN KUMAR TYAGI**

Present : Mr. Durgesh Aggarwal, Advocate
for the appellants.

Mr. Paul S. Saini, Advocate
for respondent No.3-Insurance Company.

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**ARUN KUMAR TYAGI, J.**

1. The claimants-parents of the deceased-Sanjay have filed present appeal seeking enhancement of compensation awarded by the learned Motor Accidents Claims Tribunal, Karnal (for short 'the Tribunal') vide award dated 07.09.2005 passed in **MACT Case No.154 of 2004 titled as Parkash and another Vs. Mandeep Singh and others** on account of death of Sanjay due to injuries suffered in a motor vehicular accident which took place on 26.06.2004.

2. The above-said claimants filed the above-said claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the M.V. Act') on the averments that on 26.06.2004 at about 7:30/8:00 p.m. the deceased-Sanjay was coming after working in a factory on

foot with his bi-cycle. When he reached near the Chautala petrol pump on G.T. Road, Hero Honda motor cycle bearing registration No.HR-06H-4210, owned by respondent No.2 and insured with respondent No.3, came from the side of Gharaunda driven by respondent No.1 in a rash and negligent manner and hit the deceased-Sanjay due to which he received serious injuries on the various parts of his body and ultimately succumbed to the same. FIR No.221 dated 27.06.2004 under Sections 279 and 304-A of the Indian Penal Code, 1860 was registered against the respondent No.1-driver at Police Station, Gharaunda.

3. The claimants further averred in the petition that the deceased was aged about 21 years and was earning ₹8,000/- per month by private service. The claimants spent amount of ₹50,000/- on transportation, last rites and other religious ceremonies of the deceased. While claiming themselves to be dependents and legal representatives of the deceased, the claimants prayed for award of compensation of ₹10,000,00/- with costs and interest against respondents No.1 to 3.

4. On notice, the respondents appeared and contested the petition. In their joint written statements respondents No.1 and 2 admitted the accident but pleaded the same to have taken place due to the deceased having suddenly come in front of and struck against the motor cycle driven by respondent No.1 at very low and moderate speed. In its written statement respondent No.3 pleaded the petition to be collusive and took objections as to respondent No.1 not having valid and effective driving licence and breach of the terms and

conditions of insurance policy by respondent No.2 and denied its liability.

5. Issues were framed and the parties were given opportunity to produce their evidence.

6. On perusal of the material on record and consideration of the submissions made by the learned Counsel for the parties the Tribunal held that Sanjay died due to injuries suffered in accident caused by rash and negligent driving of motor cycle bearing registration No.HR-06H-4210 by respondent No.1 and that the claimants being dependents and legal representatives of the deceased were entitled to recover compensation for his death from respondents No.1 to 3. The Tribunal assessed the income of the deceased as ₹3,000/- per month, deducted 1/3rd towards personal expenses, applied the multiplier of 17, assessed death compensation as ₹4,08,000/- and by adding ₹4,500/- towards funeral expenses and loss of estate awarded total compensation of ₹4,12,500/- to the claimants with costs and interest at the rate of 6% and directed respondents No.1 to 3 to pay the compensation amount jointly and severally.

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

8. I have heard arguments addressed by learned Counsel for the parties and have gone through the record.

9. Mr. Durgesh Aggarwal, learned Counsel for the appellants has argued that the deceased was a hale and hearty young man of 21 years of age. He was skilled worker and was earning ₹7,000/- per month by his employment in private factory and working as driver. The

Tribunal did not properly assess income of the deceased. The Tribunal also did not make any addition towards future prospects. The Tribunal awarded meagre amount towards funeral expenses and loss of estate. The Tribunal did not award any amount towards loss of filial consortium. Compensation for loss of filial consortium may be awarded to the claimants at the rate of ₹40,000/- each. The Tribunal also awarded lesser rate of interest. Therefore, the impugned award may be modified and the compensation awarded by the Tribunal may be enhanced. In support of his arguments learned Counsel for the appellants has placed reliance on the judgments of Hon'ble Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) R.C.R. (Civil) 1009 and Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram and others, 2018 (4) R.C.R. (Civil) 333.**

10. On the other hand Mr. Paul S. Saini, learned Counsel for respondent No.3-Insurance Company has argued that the Tribunal has properly assessed the income of the deceased and awarded just compensation. In view of the conflict with principles laid down in **Pranay Sethi's case (Supra)**, the observations in **Magma General Insurance Co. Ltd.'s Case (Supra)** regarding award of compensation for loss of spousal, filial and parental consortium at the rate of ₹40,000/- each would not be applicable as binding precedent. The claimants are not entitled to enhancement of the amount awarded. Therefore, the appeal may be dismissed.

11. In the present case to prove employment and income of the deceased, the claimants examined claimant No.1 Parkash as PW-

2 who has testified that the deceased was employed under M/s Shiv Electronics Works, G.T. Road, Kohand on salary of ₹4,000/- per month and was doing part time job as driver and earning ₹6/7000/- per month. The claimants also examined Anil Kumar, proprietor of M/s Shiv Electronics as PW-3 who deposed as to employment of the deceased under him on salary of ₹4,000/- per month. However, PW-3 Anil Kumar admitted that he did not issue any appointment letter and did not maintain record regarding employment and payment of salary. The claimants did not examine any witness and produce any documentary evidence to prove doing of part time job of driver by the deceased by driving of any vehicle of any person by him at any point of time. Therefore, the Tribunal must be held to have rightly rejected their claim as to employment and income of the deceased and to have rightly assessed the income of the deceased as ₹3,000/- per month on the basis of minimum wages notified to be payable to skilled labourer during the relevant period.

12. However, in the present case the Tribunal did not make any addition in the income of the deceased towards future prospects. In para No.61(iv) of its judgment in **Pranay Sethi's case (Supra)** Hon'ble Supreme Court observed as under:-

> "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."

In view of these observations and age of the deceased, addition of 40% was required to be made to the income of the deceased for computation of compensation payable for his death.

13. The deceased is proved to be aged about 21 years. 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. In **Sarla Verma's case (Supra)** Hon'ble Supreme Court of India observed in para No.21 of its judgment as under:-

> "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."

In view of the age of the deceased, multiplier of 18 was applicable and the Tribunal wrongly applied the multiplier of 17.

14. In the present case admittedly the deceased was a bachelor and the number of his dependents-parents was 2. In **Sarla Verma's case (Supra)** Hon'ble Supreme Court of India observed in para No.15 of its judgment as under:-

> "Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parents and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to

> have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family."

In view of the number of claimants dependent on the deceased being two, the Tribunal was required to deduct ½ instead of 1/3rd towards his personal expenses.

15. In the present case, the Tribunal merely awarded amount of ₹4,500/- to the claimants-parents towards funeral expenses and loss of estate and did not award any amount towards loss of filial consortium.

16. In **Pranay Sethi's case (Supra)** in para No.61 (viii) of its judgment, Hon'ble Supreme Court observed 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.

17. 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 observation 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 head will be liable to reduction at the rate of 10% for

every block of three years for assessment of compensation in cases which have arisen in the past.

18. In **Magma General Insurance Company' case (Supra)** (relied upon by learned Counsel for the appellants) 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 principles of awarding compensation under conventional heads as laid down by Hon'ble Supreme Court in **Pranay Sethi's case (Supra)** referred to above, the claimants-parents of the deceased will be entitled to award of compensation of ₹24,000/- only in equal shares towards loss of filial consortium and ₹9,000/- towards funeral expenses and ₹9,000/- towards loss of estate.

20. Accordingly, compensation payable to the claimants on account of death of Sanjay is re-worked out as under:-

| Sr. No. | Head | Compensation |
|---|---|---|
| 1. | Monthly income of the deceased | ₹3,000/- per month |
| 2. | Income after addition of future prospects at the rate of 40% | ₹3000+ ₹1200 = ₹4200/- |
| 3. | Deduction of ½ on account of personal expenses | ₹4200 – ₹2100 (1/2) = ₹2100/- |
| 4. | Annual Dependency | ₹2100 x 12 = ₹25,200/- |
| 5. | Loss of Dependency | ₹25,200 x18 = ₹4,53,600/- |
| 6. | Funeral Expenses | ₹9,000/- |

| | | |
|---|---|---|
| 7. | Compensation payable for loss of spousal, parental and filial consortium | ₹24,000/- |
| 8. | Loss of Estate | ₹9,000/- |
| | **Total Compensation** | ₹4,95,600**/-** |

21. 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.

22. 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. 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."

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. 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.

23. In view of the observations in above referred judicial precedents, RBI's lending rate of interest, 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.

24. It follows from the above discussion that the claimants are entitled to payment of compensation of ₹4,95,600/- with costs and interest at the rate of 9% per annum from the date of filing of the petition till realization. The amount of ₹4,12,500/- awarded to the claimants by the Tribunal shall be liable to be deducted from the amount calculated as above. The enhanced amount of ₹83,100/-, shall be payable to claimants-parents in equal shares.

25. The appeal is, accordingly, allowed with costs in terms of the above said modifications of the award dated 07.09.2005.

**(ARUN KUMAR TYAGI)**
**JUDGE**

**25.03.2019**
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No