

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

**FAO No.2318 of 2008
Date of decision: 05.03.2019**

Simarjeet Kaur and others

.... Appellants

Versus

Khushi Ram and others

.... Respondents

CORAM : HON'BLE MR.JUSTICE ARUN KUMAR TYAGI

Present : Mr. Balkar Singh, Advocate
for the appellants.

Service of respondents No.1 to 3 dispensed with.

Mr. Suvir Dewan, Advocate
for respondent No.4-Insurance Company.

ARUN KUMAR TYAGI, J.

1. The claimants, widow, minor son and parents of the deceased-Mehnga Singh, have filed present appeal seeking enhancement of compensation awarded by the learned Motor Accidents Claims Tribunal, Yamuna Nagar at Jagadhri (for short 'the Tribunal') vide award dated 01.09.2007 passed in **MACT Case No.118 of 2005 titled as Simarjeet Kaur and others Vs. Khushi Ram and others** on account of death of Mehnga Singh due to injuries suffered in a motor vehicular accident which took place on 09.10.2005.

2. The above said claimants filed claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the M.V. Act') on the

averments that on 09.10.2005 at about 6:00 p.m. deceased-Mehnga Singh was going to Patiala on motor cycle bearing registration No.HR-02M-7560 with Luvpreet Singh alias Gurjant Singh as pillion rider. When they reached near bus stand Majal, District Patiala, Toyota Qualis bearing registration No.PB-56-4444, owned by respondent No.2 and 3 and insured with respondent No.4-Insurance Company, driven by respondent No.1 came from the opposite side and by going to the wrong side of the road hit their motor cycle due to which Mehnga Singh and Gurjant Singh suffered multiple injuries. Kabal Singh witnessed the accident and took Mehnga Singh and Gurjant Singh to Rajindra Hospital, Patiala where Mehnga Singh was declared dead. FIR No.556 dated 10.10.2005 under Sections 279 and 304-A of the Indian Penal Code, 1860 was registered at Police Station Sadar, Patiala. While pleading that the deceased was aged about 26 years and earning ₹20,000/- at the time of his death and loss of their dependency, the claimants sought award of compensation with cost and interest against respondents No.1 to 4.

3. On notice, the petition was contested by the respondents. In their written statements respondents No.1 and 3 denied the accident and also their liability while pleading the vehicle to be insured with respondent No.4. In his written statement respondent No.2 pleaded sale of the vehicle by him to respondent No.3 on 06.12.2003 and denied his liability. In its written statement the respondent No.4 took objections as to maintainability, non-joinder of parties, respondent No.1 not having valid and effective driving licence and breach of the terms and conditions of the insurance policy. While controverting the

material averments made in the petition, respondent No.4 denied its liability.

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

5. On perusal of the material on record and consideration of the submissions made by the learned Counsel for the parties the Tribunal held that Mehnga Singh died due to injuries suffered in accident caused by rash and negligent driving of Toyota Qualis bearing registration No.PB-56-4444 driven 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 respondent No.4-Insurance Company. The Tribunal assessed the income of the deceased as ₹3,000/- per month, deducted 1/3rd towards personal expenses, applied the multiplier of 18, assessed loss of dependency as ₹4,32,000/- and by adding ₹5,000/- towards loss of spousal consortium (payable to claimant No.1-widow) and ₹10,000/- towards funeral expenses awarded total compensation of ₹4,47,000/- to the claimants with costs and interest at the rate of 7.5% and directed respondent No.4 to pay the compensation amount.

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

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

8. Mr. Balkar Singh, learned Counsel for the appellants has argued that the deceased was aged about 26 years at the time of his death and was earning Rs.20,000/- from agriculture and dairy work.

The Tribunal did not properly assess income of the deceased. The Tribunal also did not make any addition towards future prospects. The Tribunal deduced 1/3rd towards personal expenses of the deceased whereas in view of the number of dependents on the deceased being four, the Tribunal was required to deduct 1/4th towards personal expenses of the deceased. The Tribunal awarded meagre amount towards funeral expenses and loss of spousal consortium and did not award any amount towards loss of estate. Compensation for loss of filial and parental consortium may also be awarded to the parents and minor son of the deceased 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**.

9. On the other hand Mr. Suvir Dewan, learned Counsel for respondent No.4-Insurance Company has argued that the Tribunal has awarded just compensation. The claimants are not entitled to enhancement of the amount and rate of interest awarded by the Tribunal. Therefore, the appeal may be dismissed.

10. So far as assessment of income of the deceased is concerned, PW-3 Simerjeet Kaur-widow and PW-5 Labh Singh-father of the deceased deposed that the deceased was earning Rs.20,000/-

per month from agriculture and dairy work. In the absence of documentary evidence to prove ownership of agricultural land in the name of the deceased and carrying on of dairy by him, testimony of PW-3 Simerjeet Kaur-widow and PW-5 Labh Singh-father of the deceased could not be relied upon and has been rightly disbelieved by the Tribunal. In the facts and circumstances of the case, income of the deceased has been rightly assessed by the Tribunal as Rs.3,000/- per month at the time of his death. 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 being 26 years, addition of 40% was required to be made to the income of the deceased for computation of compensation payable for his death.

11. The deceased is proved by the evidence on record to be aged about 26 years at the time of his death. 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 17 was applicable and the Tribunal has wrongly applied the multiplier of 18.

12. In the present case the number of claimants-widow, minor son and parents dependent on the deceased was 4. Hon'ble Supreme Court of India in para No.14 of its judgment in **Sarla Verma's case (Supra)** observed as under:-

“xx xxxx we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third ($1/3^{\text{rd}}$) where the number of dependent family members is 2 to 3, one-fourth ($1/4^{\text{th}}$) where the number of dependent family members is 4 to 6, and one-fifth ($1/5^{\text{th}}$) where the number of dependent family members exceed six.

In view of the number of claimants dependent on the deceased being four, the Tribunal was required to deduct $1/4^{\text{th}}$ instead of $1/3^{\text{rd}}$ towards his personal expenses.

13. In the present case, the Tribunal merely awarded amount of ₹5,000/- to claimant No.1-widow towards loss of spousal consortium and ₹10,000/- towards transportation of dead body and funeral expenses and the Tribunal did not award any amount under the head loss of estate.

14. 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.

15. 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.

16. 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)**.

17. 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 widow, minor son and parents of the deceased will be entitled to award of compensation of ₹24,000/- only in equal shares towards loss of spousal, parental and filial consortium and ₹9,000/- towards funeral expenses and ₹9,000/- towards loss of estate.

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

Sr. No.	Head	Compensation
1.	Monthly income of the deceased	₹3000/- per month
2.	Income after addition of future prospects at the rate of 40%	₹3000 + ₹1200 = ₹4200/-
3.	Deduction of 1/4 th on account of personal expenses	₹4200 – ₹1050 (1/4) = ₹3150/-
4.	Annual Dependency	₹3150x 12 = ₹37,800/-
5.	Loss of Dependency	₹37,800/- x17 = ₹6,42,600/-
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	₹6,84,600/-

19. In the present case, the Tribunal directed the payment of compensation amount with interest at the rate of 7.5% 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.

20. 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.

21. In view of the observations in above referred judicial precedents, R.B.I.'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 7.5% per annum awarded by the Tribunal to 9% per annum.

22. It follows from the above discussion that the claimants are entitled to payment of compensation of ₹6,84,600/- with costs and interest at the rate of 9% per annum from the date of filing of the petition till realization. The amount of ₹4,47,000/- awarded to the claimants by the Tribunal shall be liable to be deducted from the amount calculated as above. Out of the enhanced amount of ₹2,37,600/-, amount of ₹1,17,600/- shall be payable to claimant No.1-widow and remaining amount of ₹1,20,000/- shall be payable to claimants No.2 to 4 in equal shares. The directions of the Tribunal as to manner of disbursement of compensation amount to the claimants shall also apply to disbursement of enhanced compensation.

23. The appeal is, accordingly, allowed with costs in terms of the above said modifications of the award dated 01.09.2007.

(ARUN KUMAR TYAGI)
JUDGE

05.03.2019

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No