IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Date of Decision: 28.02.2019

(1) FAO No.5207 of 2009 (O&M)

Pepsu Road Transport Corporation, Patiala
…..Appellant
Versus

Salochna Devi and others
…..Respondents

(2) FAO No.1447 of 2010 (O&M)

Salochna Devi and others
…..Appellants/Claimants
Versus

Kulbir Singh and others …..Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Argued by: Mr. Aman Sharma, Advocate
for the appellant in FAO No.5207 of 2009 and
respondent No.3 in FAO No.1447 of 2010.

Mr. Lalit Garg, Advocate for respondents No.1 to 5
in FAO No.5207 of 2009 and
for the appellants in FAO No.1447 of 2010.

None for respondents No.6 and 7
in FAO No.5207 of 2009 and
for respondent No.2 in FAO No.1447 of 2010.

ARUN KUMAR TYAGI, J.

1. This order disposes of **FAO No.5207 of 2009** titled Pepsu Road Transport Corporation, Patiala Vs. Salochna Devi and others filed by respondent No.3 owner of Bus No.PB-11-AB-7317 for setting aside the award dated 03.06.2009 passed by the Motor Accidents Claims Tribunal, Patiala (for short, 'the Tribunal') and **FAO No.1447 of 2010** titled Salochna Devi and others Vs. Kulbir Singh

and others filed by the claimants-Salochna Devi and others for enhancement of the compensation awarded vide above said award.

2. Claimants-Salochna Devi-widow, Yogesh Kumar and Vikesh Kumar-minor sons and Surta Ram and Rachni Devi-parents of deceased Garib Dass, filed claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the M.V. Act') on the averments that on 15.06.2007 at about 3:35 p.m. when Garib Dass was travelling in bus bearing registration No.PB-11-AB-7317 from Rajpura to Patiala and was about to alight from the bus near bye pass chowk, respondent No.1 rashly and negligently moved the bus due to which Garib Dass fell down and was run over by its left side tyre. Garib Dass succumbed to the injuries on the spot. The accident was witnessed by Khem Raj and FIR No.281 dated 15.06.2007 under Section 304-A of the Indian Penal Code, 1860 was registered in Police Station Sadar, Patiala regarding the same.

3. The claimants further averred in the petition that Garib Dass was aged about 43 years, was working as mechanic in D.C.W. Patiala and was getting ₹12,000/- per month as salary. The claimants spent an amount of ₹20,000/- on his funeral expenses. While claiming themselves to be the dependents and legal representatives of the deceased, the claimants sought award of compensation of ₹25 lacs with costs and interest at the rate of 18% per annum against respondents No.1 to 3.

4. The petition was contested by the respondents. In his written statement, respondent No.1 pleaded the accident to have occurred due to negligence of the deceased and

registration of false case by the police against him in order to help the claimants to get easy money. In their joint written statement, respondents No.2 and 3 denied material averments made in the claim petition and their liability to pay compensation.

5. On the basis of the pleadings of the parties, issues were framed and the parties were given opportunity to produce their evidence.

6. On consideration of the evidence produced by the parties and submissions made by the learned Counsel for the parties, the Tribunal held that Garib Dass died due to injuries suffered in accident caused due to negligence of respondent No.1-driver. The Tribunal assessed the income of the deceased as ₹12,000/- per month, deducted 1/3rd towards his personal expenses, applied multiplier of 11 and added ₹2,000/- towards funeral expenses and ₹5,000/- on account of loss of consortium and directed respondents No.1 to 3 to pay a total sum of ₹10,63,000/- as compensation amount jointly and severally to the claimants with costs and interest at the rate of 8% per annum from the date of filing of the petition till realization.

7. Feeling aggrieved, respondent No.3 filed FAO No.5207 of 2009 for setting aside of the award while the claimants have filed FAO No.1447 of 2010 for enhancement of the compensation awarded.

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

9. Mr. Aman Sharma, learned Counsel for respondent No.3 has argued that deceased Garib Dass alighted of his own from

moving bus in front of his office without informing the conductor or the driver prior to its actual stoppage at the bus stop. Khem Raj, examined by the claimants as PW-3 in support of their claim was a planted witness. The respondents examined respondent No.1- Kulbir Singh-driver as RW-1 and Krantipal Singh-conductor of the bus as RW-2. The Tribunal accepted the version of the claimants as gospel truth and ignored the version of respondent No.1-driver RW-1 Kulbir Singh and RW-2 Krantipal Singh-conductor of the bus without assigning any cogent reasons. The accident took place due to negligence of the deceased himself and not due to any negligence on the part of respondent No.1. Therefore, the claim petition may be dismissed.

10. On the other hand, Mr. Lalit Garg, learned Counsel for the claimants has argued that the finding of the Tribunal as to death of Garib Dass due to injuries suffered in accident caused by negligence of respondent No.1-driver is based on cogent and reliable material produced by the claimants on record and is not liable to be set aside.

11. In order to discharge the onus of proving negligence on the part of respondent No.1 to be the cause of the accident, the claimants examined Khem Raj, witness to the accident as PW-3, who in his affidavit Ex.PW-3/A had sworn as to the version of the claimants that on 15.06.2007 at about 3:35 p.m. when Garib Dass was travelling in bus bearing registration No.PB-11-AB-7317 from Rajpura to Patiala and was about to alight from the bus near bye pass chowk, respondent No.1 rashly and negligently moved the bus due to which Garib Dass fell down and was run over by its left side

tyre. Testimony of PW-3 Khem Raj is supported by FIR Ex.P-1 promptly lodged regarding the accident. Pursuant to registration of FIR, the police also investigated the case and found that the accident had occurred due to negligence on the part of respondent No.1-driver and accordingly filed report under Section 173(2) of the Cr.P.C. against him who was facing trial under Sections 279 and 304-A of the IPC. The respondents did not make any complaint to higher police authorities regarding false implication of respondent No.1. The respondents have claimed that the deceased tried to get down from moving bus at the bye pass chowk without there being any stoppage and without heeding to warning given by the conductor but lost balance and suffered head injury due to striking of his head on pucca road. The respondents have examined RW-1 Kulbir Singh-driver and RW-2 Krantipal Singh-conductor in support of their case who have deposed in these terms. However, it is significant to note that it was the duty of RW-1 Kulbir Singh-driver and RW-2 Krantipal Singh-conductor to ensure that no person alighted or boarded moving bus and that the bus was stopped and not moved at the time of alighting and boarding of the passengers. The facts of the case speak for themselves and the principle of res ipsa loquitur is applicable. The fact that deceased fell from moving bus, suffered head injury and was run over by left tyre of the bus by itself proves negligence on the part of RW-1 Kulbir Singh-driver and RW-2 Krantipal Singh-conductor as the accident would not have occurred had they exercised due care. Therefore, testimony of RW-1 Kulbir Singh-driver and RW-2 Krantipal Singh-conductor is unworthy of credit and has been rightly ignored by the Tribunal. The findings of the Tribunal are based on proper appreciation of the evidence on record and also supported by judicial precedents **Venkataswami Motor Service Vs. C.K. Chinnaswamy and other 1989 ACJ 371, Nirmal and others Vs. Ram Kanwar and other 2007 ACJ 2766 (Punjab & Haryana High Court) and Andhra Pradesh State Road Transport Corporation and another Vs. Telugu Narasayamma and another 2007 ACJ 469 (Andhra Pradesh High Court)** referred to by the Tribunal in its award. Therefore, the findings of the Tribunal on issue No.1 cannot be said to be perverse and are not liable to be set aside.

12. Mr. Lalit Garg, learned Counsel for the claimants has argued that the deceased was employed as Mechanic 3rd rank in D.C.W., Patiala and his last drawn salary was ₹11,994/- out of which no deduction except income tax could be made. In support of this argument, learned Counsel for the claimants has relied on the observations in **Vimal Kanwar and others Vs. Kishore Dan and others, 2013 (2) RCR (Civil) 945, Sunil Sharma and others Vs. Bachitar Singh and others, 2011 (2) RCR (Civil) 708** and **Shyamwati Sharma and others Vs. Karam Singh and others, 2010 (3) RCR (Civil) 741**.

13. Learned counsel for the claimants has further argued that the pay of the deceased was revised in October, 2007 after the accident and benefit of enhanced salary is also admissible to the claimants. Bal Govind and Ashok Kumar, co-employees of the deceased were getting salary of ₹17,855/- and ₹14,537/- after pay revision. The Tribunal wrongly assessed the income of the deceased as ₹12,000/- instead of ₹20,000/- and did not make any addition

towards future prospects. The Tribunal wrongly deducted 1/3rd instead of 1/4th towards his personal expenses and wrongly applied multiplier of 11 instead of 15.

14. Learned counsel for the claimants has further argued that the claimants are entitled to award of amount of ₹40,000/- each towards loss of spousal, parental and filial consortium. In support of his arguments, learned Counsel for the claimants has referred to judgement of Hon'ble Supreme Court in **Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram and others, 2018 (4) R.C.R. (Civil) 333** and judgments of Hon'ble Coordinate Benches of this Court in **Smt. Roshni Devi and others Vs. Sandeep Kumar and others, FAO No.4906 of 2013 decided on 30.10.2018, Shinder and another Vs. Daljit Singh alias Goldy and others, FAO No.1750 of 2017 decided on 01.10.2018** and **New India Assurance Co. Ltd. Vs. Zamsida Khattun and others, FAO No.5623 of 2016 decided on 05.10.2018** whereby compensation was awarded to claimants widow, parents and children respectively for spousal, parental and filial consortium at the rate of ₹40,000/- each.

15. Learned Counsel for the claimants has further argued that the Tribunal has awarded meager amounts towards funeral expenses and did not award any amount towards loss of estate. The Tribunal also committed grave error in awarding interest at the rate of 8% per annum whereas it should have awarded interest at the rate of 12% per annum. Therefore, the compensation amount awarded may be enhanced and the award may be modified.

16. On the other hand, Mr. Aman Sharma, learned Counsel for respondent No.3 has argued that the Tribunal had erred in relying on the statement of PW-4 Manmohan Singh, Chief Office Superintendent that Bal Govind and Ashok Kumar, co-employees of the deceased were getting salary of ₹17,855/- and ₹14,537/- after pay revision. The pay was revised in October, 2007 after the accident and benefit of enhanced salary is not admissible to the claimants.

17. Learned counsel for respondent No.3 has further argued that after making deductions of ₹3,991/- carry home salary of the deceased was ₹7,953/. The Tribunal was also required to make statutory deduction of income tax while assessing carry home salary of the deceased in view of law laid down in **Ranjana Prakash Vs. Divisional Manager and another, 2011 (4) RCR (Civil) 218** and **National Insurance Company Ltd. Vs. Indira Srivastava and others, 2008 (1) RCR (Civil) 359**. The Tribunal ought to have taken carry home salary of the deceased into consideration for calculation of compensation payable for his death. The Tribunal wrongly took higher salary into consideration, applied higher multiplier and awarded interest on the higher side. Therefore, amount awarded and rate of interest specified may be reduced.

18. In the present case PW-2 Salochna Devi has testified that deceased was aged about 43 years at the time of his death and was employed as Mechanic in the D.C.W., Patiala. PW-1 Gurmit Singh, Clerk office of D.C.W., Patiala produced Salary Certificate Ex.P-Y according to which carry home salary of the deceased was ₹7,953/- after making deductions of ₹3991/- out of gross salary of

₹11,944/-. PW-4 Manmohan Singh, Chief Office Superintendent inter-alia has proved notification regarding revision of pay Ex.P-14 and salary slips Ex.P15 and Ex.P16 of Bal Govind and Ashok Kumar, co-employees of the deceased according to which they were getting salary of ₹17,855/- and ₹14,537/- after pay revision.

19. However, admittedly the pay was revised in October, 2007 after the accident. In **Smt. Sarla Verma v. Delhi Transport Corporation 2009 (3) R.C.R. (Civil) 77** Hon'ble Supreme Court in para No.23 of its judgment rejected the contention that the revisions in pay scale subsequent to the death and before the final hearing should be taken note of for the purpose of determining the income for calculating the compensation. Para 23 of the judgment is reproduced as under:-

> "The assumption of the appellants that the actual future pay revisions should be taken into account for the purpose of calculating the income is not sound. As against the contention of the appellants that if the deceased had been alive, he would have earned the benefit of revised pay scales, it is equally possible that if he had not died in the accident, he might have died on account of ill health or other accident, or lost the employment or met some other calamity or disadvantage. The imponderables in life are too many. Another significant aspect is the non-existence of such evidence at the time of accident. In this case, the accident and death occurred in the year 1988. The award was made by the Tribunal in the year 1993. The High Court decided the appeal in 2007. The pendency of the claim proceedings and appeal for nearly two decades is a fortuitous circumstance and that will not entitle the appellants to rely upon the two pay revisions which took place in the course of the said two decades. If the claim petition filed in 1988 had been disposed of in the year 1988-89 itself and if the appeal had been decided by the High Court in the year 1989-90, then obviously the compensation would have been decided only with reference to the scale of pay applicable at the time of death and not with reference to any future revision in pay scales. If the contention urged by the claimants is accepted, it would lead to the following

> situation: The claimants only could rely upon the pay scales in force at the time of the accident, if they are prompt in conducting the case. But if they delay the proceedings, they can rely upon the revised higher pay scales that may come into effect during such pendency. Surely, promptness cannot be punished in this manner. We therefore reject the contention that the revisions in pay scale subsequent to the death and before the final hearing should be taken note of for the purpose of determining the income for calculating the compensation."

20. In view of the above referred observations of the Hon'ble Supreme Court, benefit of revision in pay scale subsequent to the death and before the final hearing cannot be taken into consideration for determining the income of the deceased for calculating the compensation payable for his death.

21. No deduction except income tax was required to be made from gross salary of ₹11,944/- of the deceased. Reference in this regard may be made to the observations in **Vimal Kanwar and others Vs. Kishore Dan and others, 2013 (2) RCR (Civil) 945, Sunil Sharma and others Vs. Bachitar Singh and others, 2011 (2) RCR (Civil) 708** and **Shyamwati Sharma and others Vs. Karam Singh and others, 2010 (3) RCR (Civil) 741**. However, the Tribunal was required to make statutory deduction of income tax from gross salary of the deceased for assessment of his income. Reference in this regard may be made to the observations in **Ranjana Prakash Vs. Divisional Manager and another, 2011 (4) RCR (Civil) 218** and **National Insurance Company Ltd. Vs. Indira Srivastava and others, 2008 (1) RCR (Civil) 359.** As per income tax rates for the financial year 2007-2008 no income tax would be deductible on income of the deceased as per his gross salary of

₹1,43,328/- in view of the permissible deductions under the Income Tax Act towards H.R.A., P.F., G.I.S. etc.

22. In the present case the Tribunal rightly assessed the income of the deceased as ₹12,000/- by rounding of his salary. However, the Tribunal did not make any addition in the income of the deceased towards future prospects. In para No.61(iii) of its judgment in **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) R.C.R. (Civil) 1009**, Hon'ble Supreme Court observed as under:-

> "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."

In view of these observations and the fact that the deceased was aged about 43 years and was permanent employee at the time of his death, addition of 30% was required to be made to the income of the deceased for computation of compensation payable for his death. On addition income of the deceased at the time of his death comes to (12,000 + 3600=) ₹15,600/- per month.

23. In the present case the number of claimants-widow, minor children and parents dependent on the deceased was 5. Hon'ble Supreme Court of India in para No.14 of its judgment in **Sarla Verma's case (Supra)** observed as under:-

> "xx xx xx 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 (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent

> family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceed six."

In view of the number of claimants/family members dependent on the deceased being 5, the Tribunal was required to deduct 1/4th instead of 1/3rd towards his personal expenses. On deduction of 1/4th towards personal expenses dependency of the claimants on the deceased comes to (15,600 - 3,900=) ₹11,700/- per month.

24. 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 **Smt. 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 being 43 years, multiplier of 14 was applicable and the Tribunal wrongly applied the multiplier of 11. On application of multiplier of 14 to dependency of the claimants of ₹11,700/- per month, compensation for loss of their dependency comes to (11,700 X 12 X 14 =) ₹19,65,000/-

25. In the present case, the Tribunal merely awarded amount of ₹5,000/- to claimant No.1-widow towards loss of spousal consortium and ₹2,000/- towards funeral expenses and the Tribunal did not award any amount under the head loss of estate. Hon'ble

Supreme Court in para No.61(viii) of its judgment in **Pranay Sethi's case (Supra)** observed as under:-

> "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."

26. As a corollary to above direction 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.

27. In **Magma General Insurance Company' case (Supra)**, 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)**.

28. 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, children and mother of the deceased will be entitled to award of compensation of ₹28,000/- only in equal shares towards loss of

spousal, parental and filial consortium and ₹10,500/- towards funeral expenses and ₹10,500/- towards loss of estate.

29. The observations in **Smt. Roshni Devi and others Vs. Sandeep Kumar and others, FAO No.4906 of 2013 decided on 30.10.2018, Shinder and another Vs. Daljit Singh alias Goldy and others, FAO No.1750 of 2017 decided on 01.10.2018** and **New India Assurance Co. Ltd. Vs. Zamsida Khattun and others, FAO No.5623 of 2016 decided on 05.10.2018** relied upon by learned Counsel for the claimants in support of his arguments for award of compensation for loss of spousal, filial and parental consortium to the claimants at the rate of ₹40,000/- each are not applicable and are not of any help to the claimants.

30. In view of the above discussion, compensation payable to the claimants on account of death of Garib Dass is summarized as under:-

Sr. No.	**Head**	**Compensation**
1.	Monthly income of the deceased	₹11,944/- per month rounded of to 12,000/-
2.	Income after addition of future prospects at the rate of 30%	₹12000 + ₹3,600 =₹15,600/-
3.	Deduction of 1/4th on account of personal expenses	₹15,600 – ₹3,900 = ₹11,700/-
4.	Annual Dependency	₹11,700 x 12 = ₹1,40,400/-
5.	Loss of Dependency	₹1,40,400 x 14 = ₹19,65,600/-
6.	Funeral Expenses	₹10,500/-
7.	Compensation payable for loss of spousal, parental and filial consortium	₹28,000/-
8.	Loss of Estate	₹10,500/-
	Total Compensation	**₹20,14,600/-**

31. In the present case, the Tribunal directed the payment of compensation amount with interest at the rate of 8% 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.

32. In claim petitions under Section 163-A or 166 of the M.V. Act, the Motor Accident Claims Tribunal is empowered by Section 171 of the M.V. Act to award interest, in the eventuality of claim petition being allowed, 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 Apex 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.

33. 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 interest awarded by the Tribunal to 9% per annum.

34. It follows from the above discussion that the claimants will be entitled to payment of compensation of ₹20,14,600/- with costs and interest at the rate of 9% per annum from the date of filing of the petition till realization. The amount of ₹10,63,000/- awarded to the claimants by the Tribunal shall be liable to be deducted from the amount calculated as above. The directions of the Tribunal as to apportionment and manner of disbursement of compensation amount to the claimants shall also apply to apportionment and disbursement of enhanced compensation.

35. The appeal filed by the claimants is, accordingly, allowed while appeal filed by respondent No.3 is dismissed with costs in terms of the above said modifications of the award dated 03.06.2009.

(ARUN KUMAR TYAGI)
JUDGE

28.02.2019
Vinay/kothiyal

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