

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.4312 of 2007

Date of Decision: 02.04.2019

Asha Rani and others

...Appellants

versus

Ghupeshwar Yadav and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. A.K. Jindal, Advocate,
for the appellants.

Mr. Vinod Chaudhary, Advocate,
for respondent no.3.

Amol Rattan Singh, J. 1

By this appeal, the claimants before the learned Motor Accident Claims Tribunal, Karnal, seek enhancement of the compensation awarded to them vide the impugned Award dated 09.06.2007, such compensation being Rs.9,16,144/-, on account of the unfortunate death of Prem Kumar (husband of the 1st appellant, father of appellants no.2, 3 & 4 and son of appellants no.5 and 6), due to a motor vehicle accident that took place on 04.01.2006. Upon the aforesaid compensation awarded, the learned Tribunal also awarded interest @ 7.5% per annum, running from the date of filing of the claim petition till the realization of the amount.

Though no detail with regard to the accident would otherwise be necessary, the factum of the accident or the negligence of respondent no.1 herein in driving the vehicle with which Prem Kumar met with an accident, not having been challenged by any of the respondents, yet a brief background is still given hereinafter.

2. As per the appellant-claimants, Prem Kumar alongwith one Jeevan Jyoti Batra was going from the State Bank of India, Taraori, on an Activa scooter bearing registration no.HR-05Q-1911, which Prem Kumar was driving. When the scooter reached near the turning of village Ramba on the G.T. Road, a car bearing registration no.DL-3CG-3662, driven by respondent no.1 herein, in a rash and negligent manner, at a high speed, hit the scooter from behind while coming on the wrong side.

Prem Kumar sustained multiple grievous injuries including a head injury and was shifted to the Civil Hospital, Karnal, where he was declared dead, with a post mortem examination thereafter conducted on his body.

The car was owned by respondent no.2 herein and insured by 3rd respondent, i.e. the United India Insurance Company Ltd.

3. Prem Kumar was stated to have been employed in the State Bank of India, drawing a salary of Rs.25,000/- per month.

On the aforesaid contentions, the claim petition was filed, seeking compensation of Rs.50,00,000/- from the respondents.

4. Notice having been given to the respondents, the driver and the owner of the vehicle filed a joint written statement with the usual preliminary objections taken of non-maintainability, lack of *locus standi* etc., and on merits, generally denying the contents of the claim petition.

The insurance company filed a written statement also taking similar preliminary objections, further contending that the driver of the car insured by them was not holding a valid and effective driving licence and therefore the company was not liable to pay any compensation.

5. The following issues were framed by the learned Tribunal:-

- “1. Whether the accident in question resulting into death of Prem Kumar was caused due to rash and negligent driving of vehicle no.DL-3CG-3662 by respondent no.1? OPP
2. If issue no.1 is proved in favour of the claimants, to what amount of compensation the claimants are entitled and from? OPP
3. Whether the claim petition is not maintainable? OPR
4. Whether respondent no.1 was not holding a valid and effective driving license at the time of accident, if so, to what effect? OPR
5. Relief.”

6. Upon appraising the evidence, including the testimony of the pillion rider, Jeevan Jyoti, who appeared as PW2, as also of the Ahlmad of the court of the C.J.M. Karnal, who testified with regard to the registration of a criminal case against respondent no.1, the learned Tribunal held the Ist respondent herein guilty of causing the accident due to rash and negligent driving.

7. On the question of quantum of compensation (issue no.2) the learned Tribunal, on the basis of the salary certificate of the deceased, Ex.PC, found that he was earning Rs.24,632/- per month, further recording a finding that his date of birth was 03.01.1959 and therefore he was 47 years of age.

It was also found that as per his income tax returns for the assessment year 2006-07, his gross annual income was shown to be Rs.2,64,476/-, with income tax of Rs.23,000/- having been paid on it.

The Tribunal thereafter also deducted Rs.31,498/- towards General Provident Fund, Rs.20,000/- towards Public Provident Fund, Rs.8903 towards life insurance premium, Rs.9973/- towards another insurance policy and Rs.13,410/- towards house loan installments being paid and held that after

the aforesaid annual deductions, the total income of the deceased was Rs.1,57,691/-.

8. Seeing that there were six dependents upon the deceased, it was held that he would be spending $\frac{1}{4}$ th of the salary on himself and therefore the loss of annual (dependent) income to the claimants would be Rs.1,13,268/-. Thereafter, citing judgments of the Supreme Court in Tamil Nadu State Transport Corporation Ltd. v. S. Rajapriya and others (2005-2) PLR 650 SC, as also in Director TNSTC Ltd. v. K. I. Bindu and others (2006-1) PLR 224 SC, the multiplier applied to the aforesaid income was 8, with the total loss of income to the claimants held to be Rs.9,06,144/-.

To that was added Rs.5000/- towards funeral expenses, another Rs.5000/- towards the loss of consortium to the widow, thus bringing the total compensation awarded to Rs.9,16,144/-.

All three respondents were found jointly and severally liable to pay the compensation.

9. As regards issues no.3 and 4, i.e. the non-maintainability of the claim petition and whether or not respondent no.1 was holding a valid driving licence at the time of the accident, those issues were decided against the respondents, the first because obviously the claim petition was found maintainable and the second because no evidence had been led to show that the driving licence, Ex.R1, was not valid, it carrying a date of validity upto 09.08.2010.

10. Thus, the claimants, aggrieved of the aforesaid compensation awarded, are in appeal, with no appeal filed by the respondents brought to the notice of this court, by any counsel appearing for them.

When this case had come up for hearing on September 18, 2018, learned counsel for the appellants had submitted that the deductions made by the Tribunal from the income of the deceased towards the provident fund, life insurance premium and house installments loans, were all contributions made for his own benefit and that of his family and obviously they are not deductible as per settled law, which learned counsel for the respondent insurance company could not refute, that actually being so. Obviously, the money which was being paid by the deceased from his salary, was in the form of savings made by him in various forms, or for the payment of house installments, which again was for the benefit of him and his family, and if such contributions were not made, he naturally would be taking home a higher salary.

Learned counsel for the respondent insurance company very fairly having stated on that date that he could not refute the factual position as settled, this court had directed both learned counsel to submit calculation sheets as regards the compensation payable to the appellants in terms of the law now settled by the Constitution Bench in **National Insurance Company Limited v. Pranay Sethi and others** 2017 (4) RCR (Civil) 1009, which on the next date of hearing thereafter, had been shown to be Rs.35,25,002.20P as per the chart submitted by learned counsel for the appellants.

11. Mr. Chaudhary, learned counsel for the respondent insurance company, had thereafter submitted that though the calculation made by learned counsel for the appellant was otherwise as per the ratio of the law laid down in *Pranay Sethi's* case, he would not refute the principle on which the calculation has been made, but that the income tax that would have been payable by the deceased would need to be deducted from the component of loss of future

prospects of an increased income.

After that, learned counsel for the appellants had even shown to this court the income tax payable yearwise from 2006-07 till date, taking that had the deceased remained alive, he would have been taking a standard deduction on contributions made to provident fund etc., under Section 80-C of the Income Tax Act, 1961, with the total amount of tax payable in the past 13 years shown to be Rs.57,138/-, the yearwise breakup being as follows:-

Financial Year	Amount
2006-07	13019
2007-08	13019
2008-09	7868
2009-10	7868
2010-11	7868
2011-12	5808
2012-13	1688
2013-14	Nil
2014-15	Nil
2015-16	Nil
2016-17	Nil
2018-19	Nil
2019-20	Nil
Total	57138

In view of the fact that tax slabs were changing from time to time, I see no reason to reject that calculation made, with nothing to the contrary also shown to this Court.

The breakup of compensation payable would therefore, in terms of the ratio of the judgment in *Pranay Sethis'* case, be as follows:-

Heads	Amount
Last drawn salary of the deceased	Rs.24,632/- (Ex.PC)
Annual salary	Rs.24,632/- x 12 = 2,95,584/-

Towards loss of future prospects of an increased income @ 30% as per <i>Pranay Sethis'</i> judgment, the deceased being an employee of the State Bank of India, aged 47 years	Rs.2,95,584+88675 = Rs.3,84,259/-
Deduction towards personal expenses:1/4 th as applicable in the case of 4 to 6 dependents as per the judgment in <i>Sarla Verma v. Delhi Transport Corporation and others</i> (2009) 6 SCC 121.	Rs.3,84,259/-Rs.96,065/- =Rs.2,88,194/-
Multiplier of 13 (as settled in <i>Sarla Verma's</i> case for the age group 46-50 years of the deceased.	Rs.2,88,194.40 x 13 = Rs.37, 46, 527/-
Compensation towards funeral expenses= Towards loss of consortium= Towards loss of estate=	Rs.15,000/- Rs.40,000/- =Rs.70,000/- Rs.15,000/-
Total compensation	Rs.37,46,527/- +Rs.70,000/- = Rs.38,16,527.20
Tax liability after deduction under Section 80-C benefit	Rs.38,16,527- Rs.57,138/- = Rs.37,59,389.

Hence, in my opinion, the aforesaid compensation is actually payable to the appellants after the death of the deceased, who was a permanent employee of the State Bank of India and consequently, keeping in view his age and loss of future prospectus of an increased income in terms of the ratio of the judgment in *Pranay Sethis'* case (supra), the Tribunal wholly erred in granting only Rs.9,16,144/- (of course, keeping in view the fact that *Pranay Sethis'* judgment was not there in the year 2007 to guide the Tribunal).

12. The appeal is allowed to the aforesaid extent. However, the enhancement being considerable, the rate of interest running upon the enhanced amount would be 6% per annum, running from the date of the filing of the claim petition, till the realization of the amount, with the enhanced

amount to be also divided and paid in the same ratio and proportion amongst the appellant-claimants, as given by the learned Tribunal in paragraph 14 of its Award.

The costs awarded by the Tribunal would be maintained, with the cost of this appeal to be borne by the parties themselves.

April 02, 2019
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(AMOL RATTAN SINGH)
JUDGE

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| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | Yes |