

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

**FAO No.5801 of 2009
Date of decision: 22.08.2019**

Hans Pal Singh and others

.... Appellants

Versus

Tarsem Singh and others

.... Respondents

CORAM : HON'BLE MR.JUSTICE ARUN KUMAR TYAGI

Present : Mr. J.S. Cooner, Advocate for the appellants.

Mr. M.B. Jain, Advocate for respondent No.3.

ARUN KUMAR TYAGI, J.

1. The claimants-Hans Pal Singh, Jaspal Singh, Sohan Singh and Karan Singh sons of deceased-Ravinder Singh have filed the present appeal seeking enhancement of the compensation awarded by learned Motor Accident Claims Tribunal, Ambala (for short 'the Tribunal') vide award dated 22.07.2009 passed in **MACT Petition No.7 of 2009 titled as Hans Pal Singh and others Vs. Tarsem Singh and others** on account of death of Ravinder Singh due to injuries suffered in a motor vehicle accident which took place on 06.09.2008.

2. The 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 06.09.2008 deceased-Ravinder Singh, who was running his cycle repair shop in DWS Colony, Jalbera Road, Ambala City, had gone for urination across the road. On return when

he tried to cross the road a motor cycle bearing registration No.HR-01V-6407, owned by respondent No.2 and insured with respondent No.3, came from the side of Village Saunda driven by respondent No.1 in a rash and negligent manner and hit against Ravinder Singh due to which he fell down and suffered multiple injuries. In this regard, FIR No.131 dated 08.09.2008 was registered under Sections 279, 337 and 338 of the Indian Penal Code, 1860 at Police Station Sadar, District Ambala. Ravinder Singh was shifted to Civil Hospital, Ambala City where he was medico legally examined. Thereafter, Ravinder Singh was taken to Sarwal Hospital, Ambala City where he remained hospitalized upto 23.09.2008. He received further treatment from Leelawati Hospital, Ambala City from 01.10.2008 to 11.12.2008 but died on 11.12.2008.

3. While pleading that the deceased-Ravinder Singh was aged about 60 years and earning ₹6,000/-per month by carrying on shop for sale and repair of bicycles and claiming themselves to be dependents and legal representatives of the deceased, the claimants prayed for award of compensation of ₹10 lacs with costs and interest at the rate of 18% per annum against respondents No.1 to 3 jointly and severally.

4. The petition was contested by respondents. In their joint written statement respondents No.1 and 2 denied the accident and their liability while pleading that the accident was caused by an Auto driver, who escaped after causing the accident and motor cycle in question was falsely involved for claiming compensation and that the

motor cycle was insured with respondent No.3 and respondent No.1 was having valid and effective driving licence.

5. In its written statement respondent No.3 took preliminary objections as to the claim petition being false and mis-conceived, collusion between claimants and respondents No.1 and 2, non-maintainability, mis-joinder and non-joinder of necessary parties, respondent No.1 not having valid and effective driving licence and breach of the terms and conditions of the insurance policy. Respondent No.3 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 Ravinder Singh died due to injuries suffered in accident caused by rash and negligent driving of motor cycle bearing registration No.HR-01V-6407 by respondent No.1. The Tribunal awarded ₹71,000/- towards medical treatment, assessed income of the deceased-Ravinder Singh as ₹3,000/- to ₹3,500/- per month and 50% as contribution of the deceased towards his family, applied the multiplier of 5 assessed compensation for loss of contribution to the family as ₹94,500/- and by adding ₹2,500/- towards loss of estate and ₹2,000/- towards funeral expenses awarded total compensation of ₹1,65,500/- to the claimants with costs and interest at the rate of 7.5% per annum 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 appellants and learned Counsel for respondent No.3-Insurance Company and have gone through the record.

9. Learned Counsel for the appellants has argued that the Tribunal did not properly assess income of the deceased and applied wrong multiplier of 5. The Tribunal awarded lesser amount towards medical treatment, loss of estate and funeral expenses. The Tribunal did not award any amount towards loss of consortium. The Tribunal also awarded lesser rate of interest as 7.5% instead of 18%. 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 petitioner relied upon the judgments in **National Insurance Company Limited Vs. Pranay Sethi and Others, 2017 (4) R.C.R. (Civil) 1009, Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram and others, 2018 (4) R.C.R. (Civil) 333; P.S. Somanathan and others Vs. District Insurance Officer and another : 2011(2) RCR (Civil) 228 and New India Assurance Co. Ltd. Vs. Vinish Jain and others : 2018(1) PLR 759.**

10. On the other hand learned Counsel for respondent No.3-Insurance Company has argued that the claimants being major sons of deceased having independent source of income were not dependent on the deceased and are not entitled to payment of compensation for

loss of dependency and the compensation awarded is liable to be reduced. In any case the Tribunal has awarded just and adequate compensation and the claimants are not entitled to enhancement of the amount awarded. Therefore, the appeal may be dismissed.

11. It may be observed at the very outset that in the present case the respondents have not filed any appeal or cross-objections challenging the findings of the Tribunal as to the deceased having died due to injuries suffered in motor vehicle accident caused by rash and negligent driving of motor cycle bearing registration No.HR-01V-6407 by respondent No.1; joint and several liability of respondents No.1 to 3 for payment of compensation to the claimants and entitlement of the claimants to payment of compensation on the ground of being sons and legal representatives of the deceased. In the absence of filing of any appeal or cross-objections by the respondents and in particular by respondent No.3-Insurance Company, the contention raised by learned Counsel for respondent No.3-Insurance Company as to the claimants not being entitled to payment of compensation for loss of dependency/contribution due to not being dependent on the deceased cannot be gone into and adjudicated upon. Reference in this regard may be made to observations of Hon'ble Supreme Court in its judgment in **Ranjana Prakash Vs. Divisional Manager and another : 2011(4) RCR (Civil) 218**. Even otherwise PW-4 Jaspal Singh testified that the deceased used to spend the entire income for maintenance of the family as all the claimants used to reside with him. In his cross-examination PW-4 Jaspal Singh stated that his brothers Sohan Singh

and Karan Singh were not doing anything as they are mental. By testimony of PW-4 Jaspal Singh, Sohan Singh and Karan Singh are also proved to be dependent on the deceased. In **Vinish Jain's Case (Supra)** Hon'ble Supreme Court held two major sons, having their own source of income and two grand-daughters, primarily dependent on their father, who were not dependent on the deceased, to be entitled for payment of compensation of ₹9,11,250/- besides amount of ₹70,000/- under the conventional heads. In view of the above referred material on record and judgment of the Hon'ble Supreme Court, the finding as to entitlement of the claimants to payment of compensation cannot be said to be perverse or against law and facts and does not call for any interference by this Court.

12. In the claim petition the claimants pleaded that deceased-Ravinder Singh was running shop for sale and repair of bicycles. However, Ravinder Singh while lodging FIR got recorded that he was only doing the job of repair of puncture of bicycles. PW-4 Jaspal Singh testified before the Tribunal that his father deceased-Ravinder Singh used to earn ₹6,000/- per month. However, the claimants did not produce any documentary evidence regarding earning of ₹6,000/- per month by their father. In the absence of corroboration by any other cogent and reliable oral or documentary evidence self-serving solitary testimony of PW-4 Jaspal Singh son of deceased-Ravinder Singh as to quantum of income of the deceased could not be relied upon and was rightly disbelieved by the Tribunal. In view of the rate of minimum wages as well as age of the deceased, income of the deceased must

be held to have been rightly assessed by the Tribunal as ₹3,000/- to 3,500/- per month. In the facts and circumstances of the case, assessment by the Tribunal of the contribution of the deceased to his family as ₹1,500/- per month and deduction of 50% towards personal expenses of the deceased also cannot be said to be improper and does not call for any interference. This view is also supported by deduction made by Hon'ble Supreme Court in para No.6 of its judgment in **Vinish Jain's Case (Supra)** of 50% towards personal expenses of the deceased. On such deduction loss of annual dependency of the claimants on the deceased/contribution by the deceased to the claimants comes to ₹1500 X 12 = ₹18,000/-.

13. In view of the age of the deceased being 65 years at the time of his death as proved by his MLR Ex.P-A and observations of Hon'ble Supreme Court in para No.21 of its judgment in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another 2009 (3) R.C.R. (Civil) 77** multiplier of 7 was applicable and the Tribunal wrongly applied multiplier of 5. When multiplier of 7 is applied to annual dependency/contribution compensation payable for loss of annual dependency/contribution comes to (₹18000 X 7 =) ₹1,26,000/-

14. The Tribunal, by taking into consideration the deposition of PW-1 Dr. Ashok Sarwal as to charging of ₹16,000/- vide receipts Ex.P-1 and Ex.P-2 by him and production of bills/cash memos of medicines etc. Ex.P-7 to Ex.P-9 and Ex.PC showing that the appellants incurred expenses of ₹52,738.50/- on the medical treatment of their father deceased-Ravinder Singh, awarded amount of ₹71,000/- to them. In

the absence of examination of any other doctor/chemist and production of any other bill/receipt, amount of ₹71,000/- awarded to the appellants by the Tribunal towards expenses incurred on the medical treatment of their deceased father cannot be said to be unjust and inadequate.

15. However, in the present case, the Tribunal merely awarded amount of ₹2,500/- towards loss of estate and ₹2,000/- towards funeral expenses and did not award any amount towards loss of consortium. 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 **Magma General Insurance Company Limited's 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)**.

16. It may also be observed here that in **Pranay Sethi's Case (Supra)** Hon'ble Supreme Court directed that the amounts on conventional heads should be enhanced at the rate of 10% in every

three years. As a corollary to above observations of Hon'ble Supreme Court regarding enhancement of the amounts under 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 three years for assessment of compensation in cases which have arisen in the past. In the present case the accident took place on **06.09.2008** and therefore, the amounts under conventional heads will be liable to be reduced by **30%**.

17. Accordingly, the claimants-sons of the deceased will be entitled to award of compensation of ₹28,000/- towards loss of parental consortium, ₹10,500/- towards funeral expenses including transportation of the dead body and ₹10,500/- towards loss of estate in equal shares.

18. 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.

19. 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.”

20. 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.

21. 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.

22. 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 on fixed deposit receipts/charged on loans by Nationalized Banks 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.

23. It follows from the above discussion that the claimants are entitled to payment of compensation of ₹2,46,000/- in equal shares with costs and interest at the rate of 9% per annum from the date of filing of the petition till realization. The amount of ₹1,65,500/- awarded to the claimants by the Tribunal shall be liable to be deducted from the amount calculated as above. On realization the enhanced amount of compensation be credited to the Bank accounts of the claimants which they shall be entitled to withdraw as and when so desired.

24. The appeal is, accordingly, allowed with costs in terms of the above said modifications of the award dated 22.07.2009.

(ARUN KUMAR TYAGI)
JUDGE

22.08.2019
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No