IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1401 of 2011 (O&M)
Date of decision: 08.04.2019

Avtar Kaur and others

…. Appellants

Versus

Gurnam Singh and others

….Respondents

CORAM : HON'BLE MR.JUSTICE ARUN KUMAR TYAGI

Present : Mr. Malhar Singh Dhami, Advocate for the appellants.

None for respondents No.1 and 2.

Mr. R.C. Gupta, Advocate for respondent No.3-Insurance Company.

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ARUN KUMAR TYAGI, J.

1. The claimants-mother, sister and brother of the deceased-Davinder Kumar, have filed present appeal seeking enhancement of compensation awarded by the learned Motor Accident Claims Tribunal, Shaheed Bhagat Singh Nagar (Nawanshahar) (for short 'the Tribunal') vide award dated 28.08.2010 passed in **MACT Case No.73 of 2008 titled as Avtar Kaur and others Vs. Gurnam Singh and others** on account of death of Davinder Kumar due to injuries suffered in motor vehicle accident which took place on 22.05.2008.

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 22.05.2008 at about 09:30 A.M. deceased-Davinder

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Kumar was going from Banga to Nawanshahar on his motorcycle bearing registration No.PB-32-2860. When he reached near Govt. Senior Secondary School, Kahma, Nawanshahar, truck bearing registration No.HP-12-2871, owned by respondent No.2 and insured with respondent No.3, came driven by respondent No.1 in a rash and negligent manner at a very high speed without blowing any horn and by coming on wrong side hit the motorcycle of Davinder Kumar who suffered multiple injuries and died on the spot. FIR No.113 dated 22.05.2008 was registered under Sections 279, 304-A and 427 of the Indian Penal Code, 1860 at Police Station Banga, Nawanshahar. While pleading that the deceased was aged about 22 years and was employed in Education Department of Punjab Government earning ₹8,210/- at the time of his death and loss of their dependency, the claimants sought award of compensation of ₹25 lacs with costs and interest against respondents No.1 to 3.

3. On notice, the petition was contested by the respondents. In their written statements respondents No.1 and 2 denied the accident and also their liability while pleading the vehicle to be insured with respondent No.3. In its written statement respondent No.3 took objections as respondent No.1 not having valid and effective driving licence and breach of the terms and conditions of the insurance policy due to want of route permit and fitness certificate. While controverting the material averments made in the petition, respondent No.3 also denied its liability.

4. The Tribunal framed the issues and recorded the evidence produced by the parties. On perusal of the material on record and

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consideration of the submissions made by the learned Counsel for the parties, the Tribunal held that Davinder Kumar died due to injuries suffered in accident caused by rash and negligent driving of truck bearing registration No.HP-12-2871 driven by respondent No.1 and that the claimant No.1 being dependent and legal representative of the deceased is entitled to recover compensation for his death from the respondents. The Tribunal dismissed the claim petition qua claimants No.2 and 3 sister and brother of the deceased as there was no evidence on record that they were dependent on the deceased. The Tribunal assessed the income of the deceased as ₹8,210/- per month, added 50% towards future prospects, deducted 50% towards personal expenses, applied the multiplier of 11, assessed loss of dependency as ₹8,12,724/- and by adding ₹10,000/- towards loss of estate and funeral expenses awarded total compensation of ₹8,22,724/- to claimant No.1 with costs and directed the respondents to pay the amount jointly and severally within three months from the receipt of certified copy of the order failing which the claimant No.1 was to be entitled to recover the same with interest at the rate of 7.5% per annum.

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

6. I have heard arguments addressed by learned Counsel for the appellants and learned Counsel for respondent No.3 and have gone through the record.

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7. Learned Counsel for the appellants has argued that the deceased was aged about 22 years at the time of his death. The deceased was working as Clerk in the Department of Education, Punjab Government and earning ₹8,210/- per month. The father of appellants/claimants No.2 and 3 died about four years before the accident of their brother and both were minor at that time. There was no other earning member in the family. Hence they were dependent on the deceased and are also entitled to payment of compensation for his death. The Tribunal has wrongly rejected their claim. The Tribunal did not properly assess income of the deceased. For the purpose of application of multiplier, the Tribunal had wrongly taken into account the age of appellant No.1-mother of the deceased instead of the age of the deceased. The Tribunal deducted 50% towards personal expenses of the deceased whereas in view of the number of dependents on the deceased being three, the Tribunal was required to deduct 1/3rd towards personal expenses of the deceased. Family pension and ex gratia paid by the Government of Punjab was liable to be excluded in assessment of the compensation payable to the claimants which was not liable to be reduced on account of the same. The Tribunal awarded meagre amount towards funeral expenses and did not award any amount towards loss of love and affection. The claimants are also entitled to award of compensation for loss of filial consortium at the rate of ₹40,000/- each and ₹15,000/- towards funeral expenses and ₹15,000/- towards loss of estate. The Tribunal also awarded inadequate rate of interest and also unjustifiably made the same

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conditional to default in case of non-payment within three months. Therefore, the impugned award may be modified and the compensation awarded by the Tribunal may be enhanced and interest at the rate of 12% per annum may be awarded from the date of filing of the claim petition till realization. In support of his arguments learned Counsel for the appellants has placed reliance on the observations in **Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram and others, 2018 (4) R.C.R. (Civil) 333.**

8. On the other hand, learned Counsel for respondent No.3-Insurance Company has argued that claimants No.2 and 3 were not dependent on the deceased and their claim was rightly rejected by the Tribunal. The amount of family pension and ex gratia amount paid to the claimants by Government of Punjab were liable to be deducted from the amount of compensation payable to the claimant No.1. In **Smt. Bala @ Rajbala Vs. Sumer Singh : 2018(4) RCR (Civil) 905** and **Sebastiani Lakra and others Vs. National Insurance Company Limited and another : 2018(4) RCR (Civil) 837** amount of ₹40,000/- was awarded to the claimants for loss of consortium. In the eventuality of claimants No.2 and 3 being held to be entitled to payment of compensation the claimants may be awarded amount of ₹40,000/- only towards loss of consortium. Interest awarded by the Tribunal is also on the higher side. In **Vimla Devi and others Vs. National Insurance Company Limited : 2018 (11) JT 252** interest at the rate of 6% per annum was awarded. The claimants are not entitled to enhancement of the amount and rate of interest awarded by the Tribunal. On the other hand, the compensation awarded is liable to be reduced.

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Therefore, the appeal for enhancement of the compensation may be dismissed and the compensation awarded may be reduced.

9. The claimants had pleaded in the petition that the claimants-mother, brother and sister of the deceased were dependent on him. Claimant No.1-Avtar Kaur, mother of the deceased, had appeared in the witness box as PW-2 and claimant No.2-Ashwani Kumar, brother of the deceased, had appeared in the witness box as PW-1. PW-1 Ashwani Kumar and PW-2 Avtar Kaur had both testified that the claimants were solely dependents on the earnings of the deceased. In his cross-examination PW-1 Ashwani Kumar had stated that his father had already expired about 4 years back which averment is supported by testimony of PW-2 Avtar Kaur. PW-1 Ashwani Kumar had also stated in his cross-examination that he is unemployed and was not doing any job. In her cross-examination PW-2 Avtar Kaur had stated that her daughter-Sukhwinder Kaur (Claimant No.3) is unmarried and studying. By this oral evidence, which has gone virtually unrebutted and unchallenged, claimants No.2 and 3 are proved to be dependent on the deceased and are, therefore, entitled for payment of compensation for his death and their claim has been wrongly rejected by the Tribunal.

10. So far as assessment of income of the deceased is concerned, as per Ex.P-6 Salary Certificate the deceased was working as Clerk in the Department of Education, Government of Punjab and getting salary of ₹8,210/- per month made up by basic pay of ₹3,220/- D.Pay ₹1,610/- IR ₹242/-, DA ₹2,080/-, HRA ₹254/-, R.A.₹304, M. All.

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₹350/- Cash All. ₹150/-. No deduction except income tax was required to be made from gross salary of the deceased. Reference in this regard may be made to the decisions of Hon'ble Supreme Court in **Helen C. Rebello Vs. Maharashtra Road Transport Corporation : 1999 ACJ 10 (SC), United India Insurance Company Limited Vs. Patricia Jean Mahajan : 2002 (3) RCR (Civil) 534, Shyamwati Sharma and others Vs. Karam Singh and others, 2010 (3) RCR (Civil) 741, Sunil Sharma and others Vs. Bachitar Singh and others, 2011 (2) RCR (Civil) 708 and Vimal Kanwar and others Vs. Kishore Dan and others, 2013 (2) RCR (Civil) 945**. As per rates of income tax for the year 2007-08 no income tax was deductible on the salary of the deceased. Therefore, the income of the deceased has been rightly assessed by the Tribunal as ₹8,210/- per month at the time of his death. In view of the observations made by Hon'ble Supreme Court in para No.61(iii) of its judgment in **National Insurance Company Limited Vs. Pranay Sethi and Others, 2017 (4) R.C.R. (Civil) 1009** addition of 50% is required to be made to the income of the deceased towards future prospects.

11. The deceased is proved by the evidence on record to be aged about 22 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 **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another 2009 (3) R.C.R. (Civil) 77** Hon'ble Supreme Court of India observed in para No.21 of its judgment as under:-

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> "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 has wrongly applied the multiplier of 11.

12. In the present case the number of claimants-mother, sister and brother dependent on the deceased was 3. Hon'ble Supreme Court of India in para No.15 of its judgment in **Sarla Verma's Case (Supra)** observed 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 parent/s 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 dependent 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 dependent, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

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In view of the number of claimants dependent on the deceased being three, the Tribunal was required to deduct 1/3rd instead of ½ (50%) towards his personal expenses.

13. When multiplier of 18 is applied to annual loss of dependency of the claimants on the deceased, compensation payable to the claimants for loss of dependency comes to ₹8,210/- + 50% (₹4,105/-) = ₹12,315/- - 1/3 (₹4,105/-)= ₹8,210/- X 12 X 18 = ₹17,73,360/-.

14. In his cross-examination AW-1 Ashwani Kumar has admitted that his mother is getting pension of ₹8,000/- per month. It is not disputed that ex gratia amount was also paid to claimant No.1-mother of the deceased. However, pension payable to claimant No.1-mother of the deceased and ex gratia amount paid by Government of Punjab to her are not liable to be deducted from the amount of compensation payable to the claimants for loss of dependency. For judicial precedents in support of this view reference may be made to the decisions in **Vimal Kanwar and others Vs. Kishore Dan and others, 2013 (2) RCR (Civil) 945** and **Municipal Corporation and another Vs. Smt. Ajit Kaur and others : 2008 (3) RCR (Civil) 29**.

15. In the present case, the Tribunal merely awarded amount of ₹10,000/- towards loss of estate and funeral expenses and did not award any amount towards loss of 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

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funeral expenses should be ₹15,000/-, ₹40,000/- and ₹15,000/- respectively. In that case 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 three years for assessment of compensation in cases which have arisen in the past.

17. In **Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram and others, 2018 (4) R.C.R. (Civil) 333** 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)**.

18. 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-mother, brother and sister of the deceased will be entitled to award of compensation of ₹28,000/- towards loss of filial consortium and

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₹10,500/- towards funeral expenses and ₹10,500/- towards loss of estate in equal shares.

19. Accordingly, compensation payable to the claimants on account of death of Davinder Singh is tabulated as under:-

Sr. No.	Head	Compensation
1.	Monthly income of the deceased	₹8,210/- per month
2.	Income after addition of future prospects at the rate of 50%	₹8210 + ₹4105 = ₹12,315/-
3.	Deduction of 1/3rd on account of personal expenses	₹12315–₹4105 (1/3) = ₹8,210/-
4.	Annual Dependency	₹8210 x 12 = ₹98,520/-
5.	Loss of Dependency	₹98,520/- x 18 =₹17,73,360/-
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	₹18,22,360/-

20. In the present case, the Tribunal directed the respondents to pay the amount jointly and severally within three months from the receipt of certified copy of the order failing which the claimant No.1 was to be entitled to recover the same with interest at the rate of 7.5% per annum. The award of interest is challenged on both counts of being inadequate and being unjustifiably conditional to default - in case of non-payment of compensation within three months. The questions which arise are as to what would be the appropriate rate of interest and from which date the claimants are entitled to grant of interest.

21. In the present case, the accident took place on 22.05.2008. The claim petition was filed on 27.08.2008. Award was

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passed on 28.08.2010. The Tribunal was required to award interest from the date of filing of claim petition or give reasons justifying not awarding of the same. The Tribunal did not give any reason for not awarding interest on the amount of compensation awarded by it from the date of filing of claim petition till realization which constitutes material irregularity on the part of the Tribunal. In such cases, interest is awarded not as return on investment but as compensation for loss of value and enjoyment of money denied to the claimant. Therefore, it will be just and reasonable that interest is awarded to the appellants from the date of filing of the claim petition till realization.

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 **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."

23. 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.

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24. 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.

25. In **Vimla Devi and others Vs. National Insurance Company Limited : 2018 (11) JT 252** interest was awarded by Hon'ble Supreme Court at the rate of 6% per annum. However, award of interest in that case was in view of the particular facts and circumstances thereof and Hon'ble Supreme Court did not specifically consider the question as to what would be the appropriate rate of interest in motor accidents claim cases with reference to its earlier judgments referred to above and therefore, the observations in the abovesaid decisions of Hon'ble Supreme Court are not of any help to respondent No.2-Insurance Company.

26. 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.

27. It follows from the above discussion that the claimants areentitled to payment of compensation of ₹18,22,360/- with costs and interest at the rate of 9% per annum from the date of filing of the petition till realization. The amount of ₹8,22,724/- awarded to the claimant No.1 by the Tribunal shall be liable to be deducted from the amount calculated as above. Out of the enhanced amount of

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₹9,99,636/-, amount of ₹3,99,636/- shall be payable to claimant No.1-mother and remaining amount of ₹6,00,000/- shall be payable to claimants No.2 and 3 in equal shares. 50% of the enhanced compensation as per their shares shall be payable to the claimants in cash and remaining 50% shall be deposited in FDRs in their names in some nationalized Bank for three years.

28. The appeal is accordingly allowed with costs in terms of the above said modifications of the award dated 28.08.2010.

(ARUN KUMAR TYAGI)
JUDGE

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

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