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

**FAO No.2590 of 2011
Date of decision:19.03.2019**

Pala Ram and another

…. Appellants

Versus

Mohammad Sarik and others

….Respondents

CORAM : HON'BLE MR.JUSTICE ARUN KUMAR TYAGI

Present : Mr. Sant Lal Barwala, Advocate
as Amicus Curiae for the appellants.

Mr. D.K. Prajapati, Advocate for respondent No.3.

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ARUN KUMAR TYAGI, J.

1. The claimants-Pala Ram, husband and Pardeep, son of deceased-Chander Kala have filed present appeal seeking enhancement of compensation awarded by the learned Motor Accidents Claims Tribunal, Fast Track Court, Hisar (for short 'the Tribunal') vide award dated 15.04.2010 passed in **MACT Case No.12 of 2006/2010 titled as Pala Ram and others Vs. Mohammad Sarik and others** on account of death of Chander Kala due to injuries suffered in a motor vehicle accident which took place on 27.05.2006.

2. The claimants-Pala Ram, husband, Rajesh, Vinod, Kuldeep and Pardeep, sons and Kailsao and Usha, daughters of deceased-Chander Kala filed above-said claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the M.V. Act') on the

averments that on 27.05.2006 deceased-Chander Kala was travelling with Geeta and other passengers in jeep bearing registration No.HR-64T-0451 driven by respondent No.1. The said Jeep was owned by respondent No.2 and insured with respondent No.3. Respondent No.1-driver was driving the jeep at a high speed and in a zig-zag manner. When the jeep reached near village Jarnawari, it turned turtle due to high speed. Chander Kala and Geeta suffered injuries and Chander Kala died due to injuries suffered in the said accident. FIR No.146 dated 27.05.2006 was registered under Sections 279, 337 and 304-A of the Indian Penal Code, 1860 in Police Station Sadar Hansi, District Hisar regarding the accident initially against Bindra but during investigation it was found that respondent No.1 was driving the Jeep. The deceased was aged about 50 years and was earning ₹8,000/- per month by selling milk, doing agricultural work and rendering household services. Claiming themselves to be dependents/legal representatives of the deceased, the claimants sought compensation of ₹15,00,000/- with costs and interest against respondents No.1 to 3.

3. Notice of the petition was given to the respondents. Respondent No.1-driver suffered himself to be proceeded against ex-parte. The petition was contested by respondents No.2-owner and 2-A-subsequent purchaser and respondent No.3-insurer. In his written statement respondent No.2 pleaded respondent No.2-A to be owner of the Jeep. In his written statement, respondent No.2-A denied the accident and pleaded that the Jeep was insured with respondent No.3. In its written statement respondent No.3 took objections as to the petition being collusive, respondent No.1 not having valid and effective

driving licence and breach of terms and conditions of the insurance policy by respondent No.2. Respondent No.3 controverted the material averments made in the petition and denied its liability.

4. Injured-Geeta filed separate claim petition under Section 166 of the M.V. Act bearing **MACT Case No.11 of 2006/2010 titled Geeta Vs. Mohammad Sarik and others** which was contested by the respondents and tried with the above-said claim petition filed by Pala Ram and others.

5. The Tribunal framed issues and recorded 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 Chander Kala died due to injuries suffered in accident caused by rash and negligent driving of Jeep bearing registration No.HR-64T-0451 by respondent No.1. The Tribunal held claimant No.1-husband and claimant No.7-son to be dependent on the income of the deceased and to be entitled for compensation but rejected the claim of claimants No.2 to 6 on the ground that they were not living with the deceased and were not dependent on her income. The Tribunal held Chander Kala to be aged about 60 years, assessed her income as ₹18,000/- per annum, deducted 1/3rd towards personal expenses, applied the multiplier of 9 assessed loss of dependency as ₹1,08,000/- and by adding an amount of ₹5,000/- towards loss of estate, ₹5,000/- towards loss of consortium, ₹5,000/- towards funeral expenses awarded compensation of ₹1,23,000/- and directed respondents No.1, 2-A and 3 to pay the same jointly and severally with costs and interest at the rate of 6%.

6. Feeling aggrieved the claimants No.1 and 7 have filed present appeal for enhancement of compensation.

7. I have heard arguments addressed by learned Amicus Curiae appointed for presenting the case of the appellants and learned Counsel for respondent No.3 and have gone through the record.

8. Mr. Sant Lal Barwala, learned Amicus Curiae for the appellants has argued that the deceased was earning ₹8,000/- per month from dairy business but the Tribunal did not properly assess income of the deceased. The deceased was aged about 50 years at the time of the accident which is clear from the post mortem report but the Tribunal wrongly assessed the age of the deceased as 60 years on the basis of Ration Card. The Tribunal wrongly applied multiplier of 9 which should have been 11 as per age of the deceased. The Tribunal awarded meager amount towards funeral expenses, loss of estate and loss of consortium. 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.

9. On the other hand Mr. D.K. Prajapati, learned Counsel for respondent No.3-Insurance Company has argued that the Tribunal has awarded just and adequate compensation and the appellants are not entitled to enhancement thereof. Therefore, the appeal may be dismissed.

10. Even though the claimants pleaded and PW-2 Pala Ram testified that deceased-Chander Kala was doing the work of selling milk, agriculture work and household work and used to earn ₹8,000/- per month but this self serving testimony of PW-2 Pala Ram, which is

not supported by any other oral or documentary evidence as to running of dairy and doing of agricultural work by her, could not be relied upon. Assessment of her annual income by the Tribunal as ₹18,000/- merely on the basis of entries in the Ration Card was not proper. In these facts and circumstances of the case, Chander Kala must be held to be house wife and her notional income was required to be taken into consideration for assessment of compensation for loss of dependency of appellant/claimant No.1-Pala Ram, husband and appellant/claimant No.7-Pardeep Kumar, son due to being beneficiaries of her household services.

11. The question which arises is as to what would be the appropriate determination of her notional income.

12. In **Lata Wadhwa and others v. State of Bihar and others 2001(4) R.C.R. (Civil) 673** income of housewife was assessed as ₹3,000/- per month.

13. In **Arun Kumar Aggrawal and another Versus National Insurance Company and others 2010 (3) RCR (Civil) 827 (Supreme Court)**, Hon'ble Supreme Court observed as under:-

> "In our view, it is highly unfair, unjust and inappropriate to compute the compensation payable to the dependents of a deceased wife/mother, who does not have regular income, by comparing her services with that of a housekeeper or a servant or an employee, who works for a fixed period. The gratuitous services rendered by wife/mother to the husband and children cannot be equated with the services of an employee and no evidence or data can possibly be produced for estimating the value of such services. It is virtually impossible to measure in terms of money the loss of personal care and attention suffered by the husband and children on the demise of the housewife. In its wisdom, the legislature had, as early as in 1994, fixed the notional

income of a non-earning person at Rs.15,000/- per annum and in case of a spouse, ⅓rd income of the earning/surviving spouse for the purpose of computing the compensation. Though, Section 163A does not, in terms apply to the cases in which claim for compensation is filed under Section 166 of the Act, in the absence of any other definite criteria for determination of compensation payable to the dependents of a non-earning housewife/mother, it would be reasonable to rely upon the criteria specified in clause (6) of the Second Schedule and then apply appropriate multiplier keeping in view the judgments of this Court in ***General Manager Kerala State Road Transport Corporation v. Susamma Thomas (Mrs.) and others*** (supra), ***U.P.S.R.T.C. v. Trilok Chandra*** (supra), ***Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another*** (supra) and also take guidance from the judgment in Lata Wadhwa's case......”.

14. In the present case, there is no evidence as to income of appellant/claimant No.1-Pala Ram, husband of deceased-Chander Kala and therefore, value of her services cannot be determined by adopting the criteria of $1/3^{rd}$ of the income of her husband. In the facts and circumstances of the case and in view of the observations in **Lata Wadhwa’s Case (Supra)**, notional income of deceased-Chander Kala at the time of her death is assessed as ₹3,000/- per month. In **Lata Wadhwa’s Case (Supra)** no addition was made towards future prospects to notional income of the deceased and no deduction was made towards personal expenses from the same. In **Paramjit Singh and another Vs. Dilbagh Singh @ Bagg and others Vol.CLXXII-(2013-14) the Punjab Law Reporter 328** an Hon'ble Division Bench of this Court held that no deduction is required to be made from notional income of house wife towards personal expenses. Consequently, no addition is required to be made towards future prospects to notional

income of deceased-Chander Kala and no deduction is required to be made from the same towards her personal expenses. Accordingly, annual dependency of the appellants/claimants No.1 and 7 on the deceased comes to (₹3,000 X 12 =) ₹36,000/-

15. Hon'ble Supreme Court observed in para No.61(vii) of its judgment in **National Insurance Company Limited vs. Pranay Sethi and others, 2017 (4) R.C.R. (Civil) 1009 (SC)** that the age of the deceased has to be taken as determinant of the multiplier. The claimants pleaded and PW-2 Pala Ram testified that deceased-Chander Kala was aged about 50 years at the time of her death. In post mortem report also age of the deceased was mentioned as 50 years. However, this evidence was contradicted by entry in Ration Card which showed the age of the deceased to be 60 years at the time of her death. The entry as to age of the deceased in Ration Card prepared during her lifetime was rightly relied upon by the Tribunal. In view of the age of the deceased at the time of her death being 60 years and observations in **Sarla Verma and others vs. Delhi Transport Corporation and another 2009 ACJ 1298 (Supreme Court)** multiplier of 9 was applicable. When multiplier of 9 is applied to annual dependency of the appellants/claimants No.1 and 7 compensation for loss of dependency payable to them comes to (₹36,000 X 9=) ₹3,24,000/-.

16. In the present case, the Tribunal merely awarded amount of ₹5,000/- towards loss of consortium, ₹5,000/- towards loss of estate and ₹5,000/- funeral expenses.

17. In **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) R.C.R. (Civil) 1009** 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. 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. 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 and the fact that the accident

took place on 27.05.2006, the appellants/claimant No.1-husband and claimant No.7-son of the deceased will be entitled to award of compensation of ₹28,000/- towards loss of spousal and parental consortium, ₹10,500/- towards funeral expenses and ₹10,500/- towards loss of estate.

19. In the present case, the Tribunal directed the payment of compensation amount with interest at the rate of 6% 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, 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 6% per annum awarded by the Tribunal to 9% per annum.

22. It follows from the above discussion that the appellants/claimants No.1 and 7 are entitled to payment of compensation of ₹3,73,000/- in equal shares from respondents No.1, 2-A and 3 jointly and severally with costs and interest at the rate of 9% per annum from the date of filing of the petition till realization. The amount of ₹1,23,000/- awarded to the appellants/claimants No.1 and 7 by the Tribunal shall be liable to be deducted from the amount to be calculated as mentioned above. The directions of the Tribunal as to manner of disbursement of compensation amount to the appellants/claimants No.1 and 7 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 15.04.2010.

(ARUN KUMAR TYAGI)
JUDGE

19.03.2019
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No