IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 4976 of 2010
Date of decision: 08.01.2019

Jai Pal Singh and others

…. Appellants

Versus

Ashlam and others

….Respondents

CORAM : HON'BLE MR.JUSTICE ARUN KUMAR TYAGI

Present : Mr. Shashi Kumar Yadav, Advocate
for the appellants

Mr.Rajneesh Malhotra, Advocate
for respondent No.3

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ARUN KUMAR TYAGI, J. (Oral)

1. The claimants (parents and minor brother) of the deceased-Mohit Kumar have filed present appeal seeking enhancement of compensation awarded by learned Motor Accidents Claims Tribunal, Rewari (for short 'the Tribunal') vide award dated 24.10.2009 passed in **MACT case No.142 of 2009/2008** titled as **Jai Pal Singh and others Vs. Ashlam and others** on account of death of Mohit Kumar due to injuries suffered in motor vehicle accident which took place on 31.05.2008.

2. The claimants filed petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the M.V.Act') on the

averments that on 31.05.2008 when the deceased was going on motorcycle bearing registration No.HR-36F-7510 to IOC Colony Chowk on the call of his maternal uncle, tanker bearing registration No.HR-47C-6615, owned by respondent No.2 and insured with respondent No.3, driven by respondent No.1 in a rash and negligent manner at a high speed came from other side and hit the motorcycle of the deceased due to which he suffered injuries and died on the spot. FIR No.167 dated 31.05.2008 was registered under Sections 279 and 304-A of the Indian Penal Code, 1860 (for short 'the I.P.C.') in Police Station Model Town, Rewari. The claimants further averred that the deceased, who was aged about 19 years at the time of his death, was a brilliant student and had completed six months computer course, passed English speaking and IELTS tests and was earning ₹3,000/- per month by giving tuitions. The claimants incurred expenses of ₹50,000/- on his last rites. The claimants, claiming themselves to be legal representatives of the deceased, sought award of compensation with costs and interest.

3. The petition was contested by the respondents. In their written statement respondents No.1 and 2 took objections as to maintainability of the petition and denied their liability but took alternative plea as to liability of respondent No.3 to pay the compensation in the event of claim petition being allowed. In its written statement respondent No.3 took usual legal objections as to respondent No.1 not having any valid and effective driving

license and respondent No.2 having committed breach of the terms and conditions of the insurance policy etc. and denied the allegations as to deceased having died due to injuries suffered in accident caused by rash and negligent driving of the tanker by respondent No.1.

4. Issues were framed on the basis of pleadings of the parties and evidence produced by the parties was recorded. On consideration of the material on record and the submissions made by the learned counsel for the parties, the Tribunal held that Mohit Kumar died due to injuries suffered in accident caused by rash and negligent driving of tanker bearing registration No. HR-47C-6615, by respondent No.1 who was having valid and effective driving license. The Tribunal held the claimants to be entitled for payment of compensation and the respondents No.1 to 3 being jointly and severally liable to pay the compensation to them. The Tribunal assessed income of the deceased as ₹3,000/-, deducted 1/3rd towards his personal expenses, assessed loss of dependency as ₹3,12,000/-, awarded ₹2,000/- towards funeral expenses and directed respondents No.1 to 3 jointly and severally pay the compensation amount of ₹3,14,000/- to the claimants in equal shares.

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

6. I have heard arguments addressed by learned Counsel for the parties and have gone through the record.

7. Mr. S.K. Yadav, learned Counsel for the appellants argues that the claimants being dependents and legal representatives of the deceased are entitled to payment of compensation. While computing the compensation, the Tribunal erred in assessing the income of the deceased as ₹3,000/- instead of ₹3,750/- as per the salary certificate Ex.-P5, did not make any addition towards future prospects, applied the multiplier of 13 instead of 18, awarded meager amount towards funeral expenses and did not award any amount towards loss of consortium and loss of estate. Also, the Tribunal ought to have awarded interest at the rate of 9% per annum instead of 7.5% per annum. Therefore, the award may be modified and amount of compensation awarded may be enhanced. To support his arguments learned Counsel for the appellants relies on the judgment of Hon'ble Supreme Court in case **Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram and others, 2018 (4) R.C.R. (Civil) 333.**

8. On the other hand Mr. Rajneesh Malhotra, learned Counsel for respondent No.3 argues that claimant No.1-father and claimant No.3-minor son cannot be considered to be dependent on the deceased and they not being his legal representatives are not entitled for payment of compensation. The claimants did not produce any cogent and reliable evidence as to income of the deceased and the Tribunal has rightly assessed the income of the deceased as ₹3,000/- per month. The Tribunal has awarded just

and adequate compensation to the claimants and no case for enhancement of the amount awarded and rate of interest is made out.

9. In the present case, claimant No.2-mother being class-I legal heir is liable to be and has been rightly treated as dependent and legal representative of the deceased by the Tribunal. Even though in the present case, the Tribunal held father and minor brother of the deceased to be entitled for payment of compensation on account of being dependents and legal representatives of the deceased but claimant No.1-father being a healthy and able bodied person aged about 49 years cannot be said to be dependent on the deceased. Reference in this regard may be made to observations made by Hon'ble Supreme Court in para 15 of **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and Anr. 2009 (3) R.C.R. (Civil) 77.** Similarly, claimant No.3-minor brother must be held to be dependent on his father and claimant No.3-minor brother could not also be said to be dependent on the deceased. No doubt, respondent No.3 did not file any appeal or cross objections challenging their entitlement to award of compensation but in view of Order 41 Rule 33 of the Code of Civil Procedure, 1908, question of entitlement of claimant no.1-father and claimant No.3-minor brother can be adjudicated upon by this Court even in the absence of filing of any appeal or cross objections by respondent No.3. Since, claimants No.1 and 3 cannot be said to be

dependents and legal representatives of the deceased, they are not entitled for payment of any amount of compensation and only claimant No.2-mother is entitled for payment of compensation on account of death of Mohit Kumar.

10. So far as, question of income of the deceased is concerned, in their claim petition the claimants themselves pleaded that the deceased was earning ₹3,000/- at the time of his death. Even in his affidavit, PW-2- Jaipal, father of the deceased, had sworn that the deceased was earning ₹3,000/- per month at the time of his death. No doubt, the claimants placed on reliance salary certificate Ex.P-5 according to which the deceased was paid an amount of ₹3750/- per month as salary but the claimants did not prove the salary certificate by examining the employer. Consequently, the same could not be relied and acted upon and has been rightly ignored by the Tribunal.

11. It follows that the Tribunal has rightly assessed the income of the deceased at the time of his death as ₹3,000/- per month. However, the Tribunal did not make any addition towards future prospects. In view of the observations made by Hon'ble Supreme Court in para No.61(iv) of its judgment in **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) R.C.R. (Civil) 1009** addition of 40% is required to be made in the income of the deceased towards future prospects.

12. The Tribunal made deduction of 1/3rd towards personal expenses of the deceased and applied the multiplier of

13. Since, the deceased was a bachelor and aged about 19 years at the time of his death, the Tribunal was required to make deduction of ½ instead of 1/3rd towards personal expenses of the deceased and apply the multiplier of 18 instead of 13 in view of the observations made by Hon'ble Supreme Court in para No.15 and 21 of its judgment in **Smt. Sarla Verma's case (Supra).**

13. 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 funeral expenses should be ₹15,000/-, ₹40,000/- and ₹15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.

14. The Tribunal merely awarded ₹2,000/- towards funeral expenses and did not award any amount under the head loss of estate. In view of observations made by Hon'ble Supreme Court in para No. 61 (viii) of its judgment in **Pranay Sethi's case (Supra)**, the claimant No.2-mother is entitled to award of ₹15,000/- towards funeral expenses and ₹15,000/- towards loss of estate.

15. In **Magma General Insurance Co. Ltd.'s case (Supra)**, relied upon by the learned Counsel for the appellants, a Two Judge Bench of the 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)**. In view of these observations, award of compensation of ₹40,000/- each for loss of filial consortium to father and sister of the deceased in **Magma General Insurance Co Ltd.'s case (Supra)** has to be construed as being in exercise of powers under Article 142 of the Constitution of India. However, since claimants No.1 and 3 are not entitled to award of compensation, the question of award of compensation for loss of consortium to them does not arise.

16. In view of the principles of awarding compensation under 'Loss of Consortium' as laid down in para No.61 (viii) **Pranay Sethi's case (Supra)** referred to above, the claimant No.2-mother of the deceased will be entitled to award of compensation of ₹40,000/- only towards loss of filial consortium.

17. Accordingly, compensation payable to the claimant No.2-mother on account of death of Mohit Kumar is re-worked out as under:-

Sr. No.	**Head**	**Compensation**
1.	Monthly income of the deceased	₹3000/-
2.	Income after addition of future prospects at the rate of 40%	₹3000 + ₹1200 = ₹4200
3.	Deduction of ½ on account of personal expenses	₹4200 x ½ = ₹2100

4.	Annual dependency	₹4200 - ₹2100 = ₹2100 x 12 = ₹25200/-
5.	Loss of Dependency	₹25200 x 18 = ₹4,53,600/-
6.	Funeral Expenses	₹15,000/-
7.	Compensation payable for loss of filial consortium	₹40,000/-
8.	Loss of Estate	₹15,000/-
	Total Compensation	**₹5,23,600/-**

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 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.

20. 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."

21. 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.

22. 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.

23. 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 7.5% per annum awarded by the Tribunal to 9% per annum.

24. As per above discussion claimant No.2-mother will be entitled to payment of compensation of ₹5,23,600/- with interest at the rate of 9% per annum from the date of filing of petition till realization. The amount of ₹3,14,000/- already awarded to the claimants shall be liable to be deducted from the amount calculated as above. The enhanced amount of compensation shall be payable to the claimant No.2-mother by crediting the

same to her Bank Savings Account. Claimants No.1-father and claimant No.3-minor brother shall be liable to pay the amount received by them to claimant No.2-mother of the deceased.

25. The appeal is allowed with costs of in terms of the above said modifications of the award dated 24.10.2009.

(ARUN KUMAR TYAGI)
JUDGE

08.01.2019
Kavneet Singh

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No