IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.7311 of 2010
Date of decision : 01.07.2019

Harbans Kaur and others

…. Appellants

Versus

Jeon Singh and others

….Respondents

CORAM : HON'BLE MR.JUSTICE ARUN KUMAR TYAGI

Present : Mr. Akashdeep Singh, Advocate
as Amicus Curiae for the appellants.

None for respondents No.1 and 2.

Mr. Vinod Chaudhari, Advocate for
respondent No.3-Insurance Company.

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ARUN KUMAR TYAGI, J.

1. The claimants Harbans Kaur-mother, Iqbal Kaur-widow Rukmandeep Kaur and Simarandeep Kaur minor daughters of deceased-Kulwinder Singh filed the present appeal seeking enhancement of the compensation awarded by learned Motor Accident Claims Tribunal, Bathinda (for short 'the Tribunal') vide award dated 14.11.2009 passed in **MACT Case No.29 of 2007 titled as Harbans Kaur and others Vs. Jeon Singh and others** on account of death of Kulwinder Singh due to injuries suffered in a motor vehicle accident which took place on 13.05.2007.

2. Hasanpreet Kaur, minor daughter of deceased-Kulwinder Singh born on 08.02.2008 after filing of the claim petition was impleaded as appellant/claimant during pendency of the appeal vide order dated 02.04.2019.

3. 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 13.05.2007 Kulwinder Singh, his friend Gurmit Singh and his uncle Balbir Singh were coming from Barnala on their motor cycles. Gurmit Singh was driving the motor cycle and Kulwinder Singh was pillion rider and Balbir Singh was on his own motor cycle. When they reached near Yadgari Gate of Village Jethuke on Barnala-Bathinda main road, Canter bearing registration No.PB-31-A-4425, owned by respondent No.2 and insured with respondent No.3, came from opposite side driven by respondent No.1 in a rash and negligent manner. When the motor cycle of Gurmit Singh came parallel to the tractor trolley coming from opposite direction, respondent No.1 all of a sudden turned the canter on its extreme right hand side, in order to overtake the tractor trolley without noticing the motor cycle coming from the opposite side due to which, the Canter struck against the motor cycle of Gurmit Singh. The Canter dragged the motor cycle along with deceased-Kulwinder Singh upto considerable distance before stopping. Kulwinder Singh succumbed to the injuries on the spot. FIR No.59 dated 14.05.2007 was registered at Police Station Rampur regarding the accident.

4. While pleading that the deceased-Kulwinder Singh was aged about 27 years and was earning ₹15,000/- per month by working

as Mason on contract basis and claiming themselves to be dependents and legal representatives of the deceased, the claimants prayed for award of compensation of ₹20 lacs with costs and interest at the rate of 18% per annum against respondent No.1-driver, respondent No.2-owner and respondent No.3-insurer of the canter jointly and severally.

5. The petition was contested by respondents. In their written statement respondents No.1 and 2 denied the accident and their liability. In its written statement respondent No.3 took objections as to respondent No.1 not having valid and effecting driving licence and breach of the terms and conditions of the insurance policy, controverted 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 Kulwinder Singh died due to injuries suffered in accident caused by rash and negligent driving of Canter bearing registration No. PB-31-A-4425 by respondent No.1, assessed his income as ₹3,000/- per month, deducted 1/3rd towards personal expenses, applied the multiplier of 14 and by adding ₹5,000/- towards loss of consortium, ₹2,000/- towards funeral expenses, ₹2,500/- towards loss of estate and ₹4,500/- towards transportation awarded total compensation of ₹3,50,000/- to the claimants with costs and interest at the rate of 6% 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 Amicus Curiae representing the appellants and learned Counsel for respondent No.3-Insurance Company and have gone through the record.

9. Learned Amicus Curiae representing the appellants has argued that the Tribunal did not properly assess income of the deceased, did not make any addition towards future prospects, deducted 1/3rd instead of 1/4th towards his personal expenses and applied wrong multiplier of 14 instead of applying multiplier of 17 as per age of the deceased. The Tribunal awarded meager amounts towards loss of consortium, loss of estate and funeral expenses. 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.

10. On the other hand learned Counsel for respondent No.3-Insurance Company has argued that 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. In the claim petition the claimants pleaded and PW-1 Harbans Kaur testified before the Tribunal that the deceased-Kulwinder Singh was working as mason with various contractors and earning ₹15,000/- per month at the time of his death but in the absence of corroboration by any other cogent and reliable oral or

documentary evidence self-serving solitary testimony of Harbans Kaur as to quantum of income of the deceased could not be relied upon and was rightly disbelieved by the Tribunal. Therefore, assessment of the income of the deceased as ₹3,000/- per month by the Tribunal on the basis of minimum wages payable to skilled labourer during the relevant period cannot be said to be improper. However, the Tribunal did not make any addition in the income of the deceased towards future prospects. In view of the age of the deceased and observations of Hon’ble Supreme Court in para No.61(iv) of its judgment in **National Insurance Company Limited Vs. Pranay Sethi and Others, 2017 (4) R.C.R. (Civil) 1009**, addition of 40% of the income was required to be made towards future prospects. When so added, income of the deceased comes to (₹3,000/- + ₹1,200/- =) ₹4,200/-.

12. In view of the observations made by Hon’ble Supreme Court of India in para No.14 of its judgment in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another 2009 (3) R.C.R. (Civil) 77** and the number of claimants dependent on the deceased being five, the Tribunal was required to deduct 1/4th instead of 1/3rd of the income of the deceased towards his personal expenses. On such deduction annual dependency of the claimants on the deceased comes to ₹4,200/- – ₹1,050/- (1/4) = ₹3,150/- X 12 = ₹37,800/-.

13. 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 view of the age of the deceased being 27 years and observations of Hon’ble

Supreme Court in para No.21 of its judgment in **Sarla Verma's Case (Supra)** multiplier of 17 was required to be applied by the Tribunal and the Tribunal erred in applying the multiplier of 14. When multiplier of 17 is applied to annual dependency of the claimants on the deceased, compensation payable for loss of dependency comes to (₹37,800 X 17 =) ₹6,42,600/-.

14. In the present case, the Tribunal merely awarded amount of ₹5,000/- towards loss or consortium, ₹2,000/- towards funeral expenses, ₹2,500/- towards loss of estate and ₹4,500/- towards transportation. 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 the said 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 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 **13.05.2007** and therefore, the amounts under conventional heads will be liable to be reduced by **30%**. 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)**. In view of the above referred judicial precedents, the claimants will be entitled to award of compensation of ₹28,000/- towards loss of spousal, filial and parental consortium, ₹10,500/- towards funeral expenses including transportation of the dead body and ₹10,500/- towards loss of estate in equal shares.

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

Sr. No.	Head	Compensation
1.	Monthly income of the deceased	₹3,000/- per month
2.	Income after addition of future prospects at the rate of 40%	₹3000 + ₹1200 = ₹4200/-
3.	Deduction of 1/4th on account of personal expenses	₹4200 – ₹1050 (1/4) = ₹3150/-
4.	Annual Dependency	₹3150 x 12 = ₹37,800/-
5.	Loss of Dependency	₹37,800/- x17 =₹6,42,600/-
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	₹6,91,600/-

16. 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.

17. 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.

18. 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."

19. 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.

20. In **Municipal Corporation of Delhi Vs. Association of Victims of Uphaar Tragedy : 2012(3) RCR (Civil) 203** and **Syed Sadiq etc. Vs. Divisional Manger, United India Insurance**

Company : 2014(1) RCR (Civil) 765 interest was awarded at the rate of 9% per annum.

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 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.

23. It follows from the above discussion that the claimants are entitled to payment of compensation of ₹6,91,600/- with costs and interest at the rate of 9% per annum from the date of filing of the petition till realization. The amount of ₹3,50,000/- awarded to the claimants by the Tribunal shall be liable to be deducted from the amount calculated as above. Out of the enhanced amount of ₹3,41,600/- amount of ₹41,600/- shall be payable to claimant No.1-mother, amount of ₹50,000/- each shall be payable to claimants No.1-mother and claimants No.3 and 4 minor daughters and amount of ₹1,50,000/- shall be payable to claimant No.5 minor daughter born after death of Kulwinder Singh. On realization 50% of the enhanced compensation as per shares of claimant No.1 and 2 shall be payable to them in cash and remaining 50% shall be deposited in FDRs in their names in some nationalized Bank for three years. The amount of the

shares of minor claimants No.3, 4 and 5 shall be deposited in FDRs fetching maximum rate of interest in some nationalized bank till attaining of majority by them and on attaining of majority they shall be entitled to payment of the same with accrued interest without the requirement of passing of any further order in this regard by this Court or the Tribunal

24. The appeal is, accordingly, allowed with costs in terms of the above said modifications of the award dated 14.11.2009.

(ARUN KUMAR TYAGI)
JUDGE

01.07.2019
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No