IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Date of Decision: 02.07.2019

(1) FAO-5628-2011

Ravinder Kumar and others

…..Appellants

Versus

Ved Parkash and another

…..Respondents

(2) FAO-6118-2011

Ravinder Kumar and others

…..Appellants

Versus

Ved Parkash and another

…..Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present: Mr. Namit Sharma, Advocate
for the appellants.

Mr. Neeraj Khanna, Advocate for
Mr. Ravinder Arora, Advocate for
respondent No.2-Insruance Company.

ARUN KUMAR TYAGI, J.

1. This order disposes of **FAO-5628-2011 titled Ravinder Kumar and others Vs. Ved Parkash and another and FAO-6118-2011 titled Ravinder Kumar and others Vs. Ved Parkash and another** filed by claimants-Ravinder Kumar and Sunil Kumar sons and Sapna Rani daughter of deceased-Roshan Lal and Smt. Jogindro Devi for enhancement of compensation awarded vide common award dated 11.05.2011 passed by learned Motor Accidents Claims Tribunal, Karnal (for short 'the Tribunal') in **MACT Case No.138 of 2010 titled**

Ravinder Kumar and others Vs. Ved Parkash and another and **MACT Case No.139 of 2010 titled Ravinder Kumar and others Vs. Ved Parkash and another**, on account of death of Roshan Lal and Jogindro Devi due to injuries suffered in motor vehicle accident which took place on 20.08.2008.

2. The claimants filed the above said claim petitions under Section 166 read with Section 140 of the Motor Vehicles Act, 1988 (for short 'the M.V. Act') on the common facts that on 20.08.2008 both the deceased Roshan Lal and his wife Jogindro Devi were going to their village Ratangarh from Shahabad on a bicycle peddled by Roshan Lal with his wife Jogindro Devi sitting on the carrier thereof. When they reached near Village Ratangarh, Ford Fiesta Car bearing registration No.HR-10-G-0050 driven by respondent No.1 in a rash and negligent manner came from behind and hit their bicycle as a result of which both of them fell down, suffered multiple grievous injuries and succumbed to their injuries. After the accident, respondent No.1 also lost control of the car which fell into the ditches. In this regard FIR No.305 dated 20.08.2008 was registered under Sections 279 and 304-A of the Indian Penal Code, 1860 in Police Station Shahabad, District Kurukshetra against respondent No.1.

3. In **MACT Case No.138 of 2010 titled Ravinder Kumar and others Vs. Ved Parkash and another** the claimants averred that Roshan Lal was aged about 45 years and earning ₹20,000/- by working as wholesaler of fruits and vegetables. While claiming themselves to be his dependents/legal representatives the claimants

sought award of compensation of ₹25 lacs against respondents No.1 and 2 with costs and interest.

4. In **MACT Case No.139 of 2010 titled Ravinder Kumar and others Vs. Ved Parkash and another** the claimants averred that Jogindro Devi was aged about 40 years and was earning ₹5,000/- by stitching and embroidery work. While claiming themselves to be her dependents/legal representatives the claimants sought award of compensation of ₹25 lacs against respondents No.1 and 2 with costs and interest.

5. The petitions were contested by the respondents. Initially the respondent No.1 appeared through his counsel but later on did not contest the petition and suffered himself to be proceeded against ex parte. In its written statement respondent No.2-Insurance Company took preliminary objections as to maintainability, mis-joinder and non-joinder of necessary parties, respondent No.1 not having valid and effective driving licence at the time of the accident and breach of the terms and conditions of insurance policy. Respondent No.2-Insurance Company also controverted the material averments made in the petition. While admitting the accident but denying the manner of its occurrence, respondent No.2-Insurance Company 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 Roshan Lal and Jogindro Devi died due to injuries suffered in accident caused by rash and negligent driving of car bearing registration No.HR-10-G-0050 by respondent No.1 who

had valid and effective driving licence and that the claimants were entitled to recover compensation for their death from respondents No.1 and 2 jointly and severally. In **MACT Case No.138 of 2010 titled Ravinder Kumar and others Vs. Ved Parkash and another** the Tribunal took age of deceased-Roshan Lal as 45 years, assessed his income as ₹4,500/- per month, deducted 1/3rd towards personal expenses, applied multiplier of 12 and assessed compensation for loss of dependency as ₹4,32,000/-. In **MACT Case No.139 of 2010 titled Ravinder Kumar and others Vs. Ved Parkash and another** the Tribunal took age of deceased-Jogindro Devi as 40 years, assessed her income as ₹3,000/- per month, deducted 1/3rd towards personal expenses, applied multiplier of 13 and assessed compensation for loss of dependency as ₹3,12,000/-. By adding ₹50,000/- under the head of loss of love and affection and ₹25,000/- on account of funeral expenses, the Tribunal awarded total compensation amount of ₹8,25,000/- to the claimants in both the claim petitions with costs and interest at the rate of 6% per annum from the date of filing of the claim petitions till payment and directed respondents No.1 and 2 to pay the compensation amount jointly and severally.

7. Feeling aggrieved, the claimants have filed present appeals for enhancement of compensation.

8. I have heard arguments addressed by learned Counsel for the appellants and learned Counsel for respondent No.2-Insurance Company and have gone through the record.

9. Learned Counsel for the appellants has argued that in **MACT Case No.138 of 2010 titled Ravinder Kumar and others Vs. Ved Parkash and another** the Tribunal did not properly assess income of deceased-Roshan Lal, the Tribunal wrongly deducted 1/3rd instead of 1/4th towards his personal expenses and wrongly applied multiplier of 12 instead of 13. In **MACT Case No.139 of 2010 titled Ravinder Kumar and others Vs. Ved Parkash and another** the Tribunal wrongly treated the deceased as housewife, deducted 1/3rd instead of 1/4th towards her personal expenses and wrongly applied multiplier of 13 instead of 15. In both the cases the Tribunal awarded consolidated amounts towards funeral expenses and loss of love and affection and did not award any amount towards loss of estate. The Tribunal also awarded lesser interest at the rate of 6% per annum instead of 12% per annum. Therefore, the award may be modified and amounts of compensation awarded in both the cases may be enhanced.

10. On the other hand, learned Counsel for respondent No.2 has argued that the claimants No.1 and 2 being major and not being dependent on the deceased cannot be treated to be their legal representatives and are not entitled to payment of compensation. Claimant No.3-minor son of the deceased alone being dependent on them is entitled for payment of compensation for their death. In view of this fact deduction of ½ ought to have been made towards personal expenses of the deceased. Apart from the above, the Tribunal has awarded just and adequate compensation and enhancement thereof is not warranted. Therefore, with modification of the award as to

entitlement of the minor son of the deceased alone for payment of compensation, the appeals may be dismissed.

11. So far as the question as to entitlement of the claimants in both the cases for payment of compensation for death of deceased-parents is concerned, it may be observed that PW1 Ravinder Kumar has deposed as to the claimants being dependent on the deceased. A perusal of statement of PW1 Ravinder Kumar (claimant No.1) shows that he was student of B.Com final year at the time of his examination. Undisputedly, claimant No.2 was unmarried and claimant No.3 was minor at the time of death of their parents. By testimony of PW1 Ravinder Kumar, which has gone unrebutted and unchallenged, the claimants are proved to be class-I legal heirs dependent on deceased-Roshan Lal and Jogindro Devi and to be their legal representatives. Therefore, all the claimants are entitled to payment of compensation for their death.

12. In the present case, deceased-Roshan Lal is proved to be aged 45 years and Jogindro Devi is proved to be aged 40 years at the time of their death by their Post Mortem Reports Ex.P-3 and Ex.P-2 respectively.

13. In **MACT Case No.138 of 2010 titled Ravinder Kumar and others Vs. Ved Parkash and another** the claimants pleaded and PW-1 Ravinder Kumar testified before the Tribunal that deceased-Roshan Lal was wholesaler of fruit and vegetables and also used to purchase fruits etc. from farmers and orchards and used to supply the same to the traders in Azadpur Market, New Delhi and other markets in Haryana and Punjab and used to earn ₹20,000/- per month at the

time of his death. To corroborate his testimony PW-1 Ravinder Kumar produced sale proceeds bills of the fruits and vegetables Ex.P-4 to Ex.P-25 which prove that the deceased was running the business of wholesale fruit seller but from these bills the exact income of deceased-Roshan Lal is not proved. The claimants did not produce copy of his income tax return or statement of account or account books. In the absence of corroboration by any other cogent and reliable oral or documentary evidence self-serving solitary testimony of PW-1 Ravinder Kumar as to quantum of income of deceased-Roshan Lal can not be relied upon and was rightly disbelieved by the Tribunal. Admittedly, the business run by deceased-Roshan Lal was continued. Therefore, compensation for loss of dependency of the claimants for his death was required to be assessed on the basis of the value of his services. In the facts and circumstances of the case and also in view of the rate of minimum wages of ₹3,586/- notified to be payable to unskilled labourer in the State of Haryana during the relevant period, assessment of the income of the deceased as ₹4,500/- per month by the Tribunal 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 deceased-Roshan Lal 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 25% of the established income was required to be made towards future prospects. When so added, income of deceased-Roshan Lal comes to (₹4,500/- + ₹1,125/- =) ₹5,625/-.

14. 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 deceased-Roshan Lal being three, the Tribunal was required to deduct 1/3rd of the income of deceased-Roshan Lal towards his personal expenses. On such deduction annual dependency of the claimants on deceased-Roshan Lal comes to ₹5,625 – ₹1,875/- (1/3) = ₹3,750/- X 12 = ₹45,000/-.

15. 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 deceased-Roshan Lal being 45 years and observations of Hon'ble Supreme Court in para No.21 of its judgment in **Sarla Verma's Case (Supra)** multiplier of 14 was required to be applied by the Tribunal and the Tribunal erred in applying the multiplier of 12. When multiplier of 14 is applied to annual dependency of the claimants on deceased-Roshan Lal, compensation payable to them for loss of dependency comes to (₹45,000/- X 14 =) ₹6,30,000/-.

16. In **MACT Case No.139 of 2010 titled Ravinder Kumar and others Vs. Ved Parkash and another** the claimants pleaded and PW-1 Ravinder Kumar son of deceased-Jogindro Devi testified before the Tribunal that deceased-Jogindro Devi was earning ₹5,000/- per month by stitching and embroidery work but in the absence of corroboration by any other cogent and reliable oral or documentary evidence solitary self serving testimony of PW-1 Ravinder Kumar as to

quantum of income of deceased-Jogindro Devi cannot be relied upon. However, deceased-Jogindro Devi cannot be treated to be mere house wife on that count particularly when in low income sections of the society both husband and wife work to sustain the family. In view of the minimum wages of ₹3,586/- notified to be payable to unskilled labourer in the State of Haryana during the relevant period deceased-Jogindro Devi must be held to be having income of ₹3,600/- per month at the time of her death. 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 25% of the established income was required to be made towards future prospects. When so added, income of deceased-Jogindro Devi comes to (₹3,600/- + ₹900/- =) ₹4,500/-.

17. In view of the observations made by Hon'ble Supreme Court of India in para No.14 of its judgment in **Sarla Verma's Case (Supra)** and the number of claimants dependent on deceased-Jogindro Devi being three, the Tribunal was required to deduct 1/3rd of the income of deceased-Jogindro Devi towards her personal expenses. On such deduction annual dependency of the claimants on deceased-Jogindro Devi comes to ₹4,500 – ₹1,500/- (1/3) = ₹3,000/- X 12 = ₹36,000/-.

18. In view of the age of deceased-Jogindro Devi at the time of her death being 40 years and observations in **Sarla Verma's Case (Supra)** multiplier of 15 was required to be applied and the Tribunal erred in applying the multiplier of 13. When multiplier of 15 is applied

to annual dependency of the claimants on deceased-Jogindro Devi compensation payable to them for loss of dependency comes to (₹36,000 X 15=) ₹5,40,000/-.

19. In the present case, the Tribunal merely awarded consolidated amount of ₹50,000/- towards loss of love and affection and ₹25,000/- towards funeral expenses in both the appeals and did not award any amount towards loss of estate. 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 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)**.

20. It may also be observed here that in **Pranay Sethi's case (Supra)** Hon'ble Supreme Court also observed that the amounts under 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 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 heads 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 **20.08.2008** and therefore, the amounts under conventional heads are liable to be reduced by **30%**. Therefore, the claimants are entitled to award of compensation of ₹28,000/- towards loss of parental consortium, ₹10,500/- towards funeral expenses and ₹10,500/- towards loss of estate in both the cases separately.

21. 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.

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 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.

23. 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."

24. 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.

25. 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.

26. 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.

27. It follows from the above discussion that the compensation awarded is liable to be enhanced and

(i) in **MACT Case No.138 of 2010 titled Ravinder Kumar and others Vs. Ved Parkash and another**, the claimants are entitled to payment of compensation of ₹6,79,000/- in equal shares with costs and interest at the rate of 9% per annum from the date of filing of the petition till realization; and

(ii) in **MACT Case No.139 of 2010 titled Ravinder Kumar and others Vs. Ved Parkash and another** the claimants are entitled to payment of compensation of ₹5,89,000/- in equal shares with costs and interest at the rate of 9% per annum from the date of filing of the petition till realization.

28. The total amount of ₹8,25,000/- awarded to the claimants by the Tribunal shall be liable to be deducted from the total amount of compensation of ₹12,68,000/-.

29. On realization 50% of the enhanced compensation as per shares of claimants 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 share of minor claimant No.3 shall be deposited in FDR fetching maximum rate of interest in some nationalized bank till attaining of majority by him and on attaining of majority he 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.

30. The appeals are accordingly allowed with costs in terms of the above-said modifications of the award dated 11.05.2011.

(ARUN KUMAR TYAGI)
JUDGE

02.07.2019
Kothiyal

Whether Speaking/reasoned Yes/No

Whether Reportable Yes/No