IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.6046-2011
Date of decision: 10.04.2019

Gurinder Kaur and another

…. Appellants

Versus

Pankaj Shukla and another

….Respondents

CORAM : HON'BLE MR.JUSTICE ARUN KUMAR TYAGI

Present : Mr.Vipul Dharmani, Advocate
for the appellants.

Mr. Vijay Lath and Mr. Naveen Sharma, Advocates
for respondent No.1.

Mr. R.N. Singal, Advocate
for respondent No.2-Insurance Company.

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ARUN KUMAR TYAGI, J.

1. The claimants-widow and son of deceased-Tarlok Singh have filed present appeal seeking enhancement of compensation awarded by the learned Motor Accidents Claims Tribunal, Rupnagar (for short 'the Tribunal') vide award dated 23.02.2011 passed in **MACT Case No.54 of 19.05.2010 titled as Gurinder Kaur and another Vs. Pankaj Shukla and another** on account of death of Tarlok Singh due to injuries suffered in a motor vehicle accident which took place on 15.04.2010.

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 15.04.2010 at about 6:45 p.m. deceased-Tarlok

Singh was going to Anandpur Sahib on scooter bearing registration No.PB-16-1907. When he reached near Gas Agency, Nangal, Bajaj Pulsar motorcycle bearing registration No.PB-12-J-8015 driven by respondent No.1-owner in a rash and negligent manner and at high speed came from behind and struck against his scooter due to which he suffered multiple injuries resulting in his death. FIR No.28 dated 15.04.2010 was registered under Sections 279 and 304-A of the Indian Penal Code, 1860 at Police Station Nangal, District Rupnagar regarding the accident.

3. The claimants further averred in the petition that the deceased was aged about 52 years and was earning ₹20,000/- per month by working as cashier in the Nangal Cooperative Truck Operators Goods Carriers Transport Society Ltd. Nangal & Naya Nangal, District Ropar and carrying on dairy farming. While claiming themselves to be dependents and legal representatives of the deceased, the claimants prayed for award of compensation of ₹22,000,00/- with costs and interest at the rate of 18% per annum against the respondent No.1-owner/driver and respondent No.2-insurer.

4. The petition was contested by the respondents. In his written statement respondent No.1 denied the accident and also his liability while pleading the vehicle to be insured with respondent No.2. In its written statement respondent No.2 took objections as to petition being collusive and not maintainable, non-joinder of parties, respondent No.1 not having valid and effective driving licence and breach of the terms and conditions of the insurance policy by

respondent No.1. While controverting the material averments made in the petition, respondent No.2 also denied its liability.

5. 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 Tarlok Singh died due to injuries suffered in accident caused by rash and negligent driving of motorcycle bearing registration No.PB-12-J-8015 by respondent No.1 and that the claimants being dependents and legal representatives of the deceased were entitled to recover compensation for his death from the respondents jointly and severally. The Tribunal assessed the income of the deceased as ₹6000/- per month, deducted 1/3rd towards personal expenses, applied the multiplier of 10, assessed loss of dependency as ₹4,80,000/- and by adding ₹5,000/- towards loss of consortium and ₹5,000/- towards loss of estate and funeral expenses awarded total compensation of ₹4,90,000/- to the claimants with costs and interest at the rate of 6% per annum from the date of award till realization and directed respondents to pay the compensation amount.

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

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

8. Learned Counsel for the appellants has argued that the deceased was aged about 53 years and was earning ₹20,000/- per month by working as cashier in the Nangal Co-operative Truck Operators Goods Carriers, Transport Society Ltd. Nangal & Naya

Nangal, District Ropar and carrying on dairy business. The Tribunal wrongly discarded the cogent and reliable oral and documentary evidence produced by the claimants as to income of the deceased by his employment under the above-said Society and carrying on of dairy business. In view of age of the deceased and permanent nature of his job addition of 15% was required to be made to his income but the Tribunal erred in not doing so. The Tribunal wrongly applied multiplier of 10 instead of 11. The Tribunal awarded a meager amount of ₹5,000/- towards loss of consortium and ₹5,000/- on account of loss of estate and funeral expenses. The claimants are entitled to payment of amount of ₹40,000/- towards loss of consortium, ₹15,000/- towards funeral expenses and ₹15,000/- towards loss of estate. The Tribunal also awarded lesser interest at the rate of 6% per annum from the date of award instead of 12% per annum from the date of filing of the petition. Therefore, the impugned award may be modified and the compensation awarded by the Tribunal may be enhanced.

9. On the other hand learned Counsel for respondents No.1 and 2 have argued that the claimants have failed to prove employment, carrying on of dairy business and income of the deceased. The Tribunal rightly disbelieved the Salary Certificate and also the evidence as to carrying on of dairy business by the deceased but the Tribunal wrongly assessed income of the deceased as ₹6,000/- per month without any basis. Income of the deceased ought to have been assessed as ₹3,999/- per month on the basis of minimum wages payable to semi-skilled worker. Claimant No.2 being aged about 30 years having independent source of income could not be said to be

dependent on the deceased. Since claimant No.1-widow was only dependent on the deceased, the Tribunal ought to have deducted ½ of his income towards his personal expenses. The Tribunal has awarded excess amount which is liable to be reduced. The claimants are not entitled to enhancement of the compensation awarded by the Tribunal. Therefore, the appeal may be dismissed and the award may be modified by reducing the award of compensation.

10. In the present case, petition was filed by Gurinder Kaur-widow aged about 47 years and Narvir Singh-son aged about 30 years claiming themselves to be dependents and legal representatives of the deceased. However, in her cross-examination PW-1 Gurinder Kaur admitted that Narvir Singh had done engineering and was working at Mahalpur with contractor. In view of this admission, claimant No.2 having independent source of income cannot be said to be dependent and legal representative of the deceased and is not, therefore, entitled to payment of compensation for his death.

11. The claimants had pleaded in the claim petition that the deceased was earning ₹20,000/- per month by his employment as cashier in Nangal Co-operative Truck Operators Goods Carriers, Transport Society Ltd. Nangal & Naya Nangal, District Ropar and also carrying on dairy business. To prove employment and salary of the deceased, the claimants examined Mohinder Pal Singh, Manager, Nangal Co-operative Truck Operators Goods Carriers, Transport Society Ltd. Nangal & Naya Nangal, District Ropar as PW-4 who produced the summoned record and Salary Certificate Ex.PW-4/A prepared by him as per the record. As per Salary Certificate, the

deceased was drawing ₹8,690/- per month as basic salary besides ₹3,390/- as other perks (PF ₹1,043/-, Bonus ₹1,448/-, Festival ₹175/-, Gratuity ₹362/-, Earned leave ₹362/-) totaling ₹12,080/- per month. PW-4 Mohinder Pal Singh admitted that Salary Certificate Ex.PW-4/A was not signed by him but he testified that the same was signed by Amarjit Singh, Manager and he identified his signature. In the very nature of things, the Salary Certificate was required to be signed by the concerned Manager and was not required to be signed by the President of the employer Society or the Registrar of the Societies. Therefore, the mere fact that the certificate does not bear signature of the President of the Society or Registrar of the Societies does not in any manner detract from its evidentiary value. The Salary Certificate could not be discarded on the ground of non-production of the record regarding payment of salary to the deceased as PW-4 Mohinder Pal Singh had testified that he had prepared the Salary Certificate from the record. It is pertinent to observe here that neither his cross-examination was got deferred by the respondents for production of record regarding payment of salary to the deceased nor evidence in rebuttal was produced by the respondents to challenge the genuineness and correctness thereof. Therefore, the oral and documentary evidence produced by the claimants as to employment and salary of the deceased could not be and was wrongly discarded by the Tribunal. By the cogent and reliable oral and documentary evidence on record deceased was proved to be employee of Nangal Co-operative Truck Operators Goods Carriers, Transport Society Ltd. Nangal & Naya Nangal, District Ropar and his salary was proved to be

₹12,080/- inclusive of perks as mentioned above. No deduction except income tax was required to be made from gross salary of ₹12,080/- of the deceased. Reference in this regard may be made to the observations in **Vimal Kanwar and others Vs. Kishore Dan and others, 2013 (2) RCR (Civil) 945, Sunil Sharma and others Vs. Bachitar Singh and others, 2011 (2) RCR (Civil) 708** and **Shyamwati Sharma and others Vs. Karam Singh and others, 2010 (3) RCR (Civil) 741**. As per income tax rates for the financial year 2009-2010 no income tax was deductible on gross salary of ₹1,44,960/- of the deceased.

12. To prove their claim as to running of dairy business by the deceased, the claimants examined PW-1 Gurinder Kaur and PW-3 Sanjeev Kumar. PW-1 Gurinder Kaur stated that the deceased was doing dairy farming and selling milk by keeping three buffalos but she did not produce any record regarding income from selling of milk. PW-3 Sanjeev Kumar testified as to purchase of milk from the deceased but in his cross-examination, he stated that he used to take the milk from the mother of the deceased and not from the deceased. PW-3 Sanjeev Kumar could also not tell about the number of buffalos kept by the deceased and could not produce any receipt regarding payment for purchase of milk. In the absence of corroboration by any documentary evidence, testimony of PW-1 Gurinder Kaur and PW-3 Sanjeev Kumar as to dairy farming and selling of milk by the deceased could not be relied upon and was rightly discarded by the Tribunal.

13. By the oral and documentary evidence on record, the deceased is proved to be aged about 53 years at the time of his death.

PW-4 Mohinder Pal Singh has testified that the deceased was permanent employee of the above-said Society. 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 15% is required to be made to the income of the deceased towards future prospects. On such addition income of the deceased at the time of his death comes to ₹12,080 + ₹1,812/- = ₹13,892/-.

14. Since only the claimant No.2-widow was dependent on the deceased, deduction of ½ of the income was required to be made towards personal expenses instead of 1/3rd as per observations made by Hon'ble Supreme Court in para 14 of its judgment in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another 2009 (3) R.C.R. (Civil) 77**. On such deduction annual dependency of claimant No.1-widow on the deceased comes to ₹13,892 – ₹6,946 (1/2) = ₹6,946/- X 12 = ₹83,352/-

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 observations of Hon'ble Supreme Court in **Sarla Verma's case (Supra)** and age of the deceased, multiplier of 11 was applicable and the Tribunal has wrongly applied the multiplier of 10. When multiplier of 11 is applied to annual dependency of claimant No.1 on the deceased, compensation payable for loss of dependency comes to ₹83,352 X 11 = ₹9,16,872/-

16. In the present case, the Tribunal merely awarded amount of ₹5,000/- to claimant No.1-widow towards loss of spousal consortium and ₹5,000/- towards loss of estate and funeral expenses. In **Pranay Sethi's case (Supra)** in para No.61 (viii) of its judgment, while answering the reference on 31.10.2017 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 observations of Hon'ble Supreme Court regarding 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 the present case the accident took place in the year 2010 and the amount payable under the conventional heads will be liable to be reduced by 20%. Therefore, claimant No.1-widow of the deceased is entitled to award of compensation of ₹32,000/- towards loss of spousal consortium, ₹12,000/- towards funeral expenses and ₹12,000/- towards loss of estate.

17. As per the above discussion, compensation payable to the claimants on account of death of Tarlok Singh is tabulated as under:-

Sr. No.	**Head**	**Compensation**
1.	Monthly income of the deceased	₹12,080/- per month

2.	Income after addition of future prospects at the rate of 15%	₹12,080 + ₹1,812 = ₹13,892/-
3.	Deduction of ½ on account of personal expenses	₹13,892/- – ₹6,946 (1/2) = ₹6,946/-
4.	Annual Dependency	₹6,946x 12 = ₹83,352/-
5.	Loss of Dependency	₹83,352/- x 11 =₹9,16,872/-
6.	Funeral Expenses	₹12,000/-
7.	Compensation payable for loss of spousal, parental and filial consortium	₹32,000/-
8.	Loss of Estate	₹12,000/-
	Total Compensation	₹9,72,872**/-**

18. 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 award 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, 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 6% per annum awarded by the Tribunal to 9% per annum.

24. In the present case, the Tribunal awarded interest from the date of award and did not record any reason for not awarding interest from the date of filing of claim petition. In accident claim cases interest is awarded not as return on investment but as compensation for loss of value and enjoyment/utilization of money denied to the claimant. Therefore, claimant No.1 is entitled to award of interest from the date of filing of the claim petition till realization.

25. It follows from the above discussion that claimant No.1-widow is entitled to payment of compensation of ₹9,72,872/- with costs

and interest at the rate of 9% per annum from the date of filing of the petition till realization. The amount of ₹4,90,000/- awarded by the Tribunal shall be liable to be deducted from the amount calculated as above. Claimant No.2 shall be liable to pay the amount received by him to claimant No.1.

26. The appeal is, accordingly, allowed with costs in terms of the above said modifications of the award dated 23.02.2011.

(ARUN KUMAR TYAGI)
JUDGE

10.04.2019
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No