IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2108 of 2012
Date of decision:03.07.2019

Salochana Devi and others

…. Appellants

Versus

Suresh Kumar and others

….Respondents

CORAM : HON'BLE MR.JUSTICE ARUN KUMAR TYAGI

Present : Mr. R.S. Mamli, Advocate for the appellants.

Mr. Praveen Bhadu, Assistant A.G. for respondents No.1 to 3.

Mr. Aman Mittal, Advocate for respondent No.4-Insurance Company.

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<u>ARUN KUMAR TYAGI, J.</u>

1. The claimants-Salochana Devi-mother and Nisha Rani and Komal-sisters of deceased-Sandeep Kumar have filed the present appeal seeking enhancement of the compensation awarded by learned Motor Accident Claims Tribunal, Kurukshetra (for short 'the Tribunal') vide award dated 21.12.2011 passed in **MACT Case No.179 of 2010 titled as Salochana Devi and others Vs. Suresh Kumar and others** on account of death of Sandeep Kumar due to injuries suffered in a motor vehicle accident which took place on 09.11.2010.

2. 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 09.11.2010 at about 9/9:30 a.m. when

Sandeep Kumar was in the process of boarding the bus bearing registration No.HR-65-0503, owned by respondents No.2 and 3 and insured with respondent No.4, at bus-stand, Kaulapur for going to Pipli, respondent No.1-driver of the said bus all of a sudden drove the bus in rash and negligent manner due to which Sandeep Kumar fell down and was run over by the bus. Due to the accident Sandeep Kumar suffered multiple injuries. Sandeep Kumar was taken to Apna Hospital, Kurukshetra from where he was referred to PGI, Chandigarh but he succumbed to the injuries on the way to the hospital. FIR No.414 dated 09.11.2010 was registered under Sections 279 and 304-A of the Indian Penal Code, 1860 at Police Station Sadar, Thanesar against respondent No.1.

3. While pleading that deceased-Sandeep Kumar was aged about 18 years, student of 12th standard and earning ₹4,000/- per month by tuition work and claiming themselves to be dependents and legal representatives of the deceased, the claimants prayed for award of compensation of ₹8 lacs with costs and interest at the rate of 18% per annum against respondents No.1 to 4 jointly and severally.

4. The petition was contested by the respondents. In his written statement respondent No.1 took preliminary objections as to locus standi, maintainability, non-joinder and mis-joinder of parties and cause of action and denied his liability by pleading that the accident was caused due to negligence of deceased-Sandeep Kumar himself and the petitioners lodged false FIR against respondent No.1. Respondents No.2 and 3 filed joint written statement and denied their liability pleading that the accident had taken place due to negligence of

deceased-Sandeep Kumar himself who while travelling on the footrest of the front door of the bus slipped down from the bus. In its written statement respondent No.3 took preliminary objections as to want of locus standi and cause of action, non-maintainability, respondent No.1 not having valid and effecting driving licence and breach of the terms and conditions of the insurance policy. Respondent No.3 also controverted the material averments made in the petition and 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 Sandeep Kumar died due to injuries suffered in accident caused by rash and negligent driving of Bus bearing registration No.HR-65-0503 by respondent No.1 who had valid and effective driving licence at the time of the accident. The Tribunal assessed notional income of deceased-Sandeep Kumar as ₹15,000/- per annum, applied the multiplier of 14 and by adding ₹75,000/- towards future prospects and ₹75,000/- towards non-pecuniary damages awarded total compensation of ₹3,60,000/- to the claimants with costs and interest at the rate of 7.5% per annum and directed respondentsNo.1 to 4 to pay the compensation amount jointly and severally.

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

7. I have heard arguments addressed by learned Counsel for the appellants, learned State Counsel for respondents No.1 to 3 and

learned Counsel for respondent No.4-Insurance Company and have gone through the record.

8. Learned Counsel for the appellants has argued that the Tribunal did not properly assess income of the deceased, awarded lesser amount towards future prospects and applied wrong multiplier of 14 instead of applying multiplier of 18 as per age of the deceased. The Tribunal awarded lesser amount 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.

9. On the other hand learned State Counsel for respondents No.1 to 3 and learned Counsel for respondent No.4-Insurance Company have 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.

10. In the present case, the findings of the Tribunal as to death of Sandeep Kumar due to injuries suffered in the accident caused by rash and negligent driving of Bus bearing registration No.HR-65-0503 by respondent No.1, respondent No.1 having valid and effective driving license and the claimants being entitled to recover compensation for death of Sandeep Kumar from respondents No.1 to 4 jointly and severally have not been challenged by the respondents by filing appeal, cross-objections or even during arguments and the same being based on proper appreciation of evidence are not liable to be interfered with.

11. In the present case the Tribunal assessed notional income of the deceased as ₹15,000/- per annum on the basis of provisions in this regard made in Second Schedule of the M.V. Act and awarded compensation by relying on the observations in **Lata Wadhwa Vs. State of Bihar : 2001 ACJ 1735 (Supreme Court)** and **M.S. Grewal Vs. Deep Chand Sood, 2001 ACJ 1719 (Supreme Court)** but in **Reshma Kumari and Others Vs. Madan Mohan and another, 2013 (2) RCR (Civil) 660** Hon'ble Supreme Court held that in the applications for compensation made under Section 166 of the MV Act in death cases where the age of the deceased is 15 years and above, the Claims Tribunals shall select the multiplier as indicated in Column (4) of the table prepared in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another 2009 (3) R.C.R. (Civil) 77** read with para 42 of that judgment. In cases where the age of the deceased is upto 15 years, irrespective of the Section 166 or Section 163-A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in **Sarla Verma's Case (Supra)** should be followed. While considering the claim applications made under Section 166 in death cases where the age of the deceased is above 15 years, there is no necessity for the Claims Tribunals to seek guidance or for placing reliance on the Second Schedule in the MV Act.

12. In the claim petition the claimants pleaded and PW-1 Salochana Devi testified before the Tribunal that the deceased-Sandeep Kumar was aged about 18 years, was a student of 12th

Standard and used to earn ₹4,000/- per month by doing tuition work after school time. Even if testimony of PW-1 Salochana Devi as to the deceased earning ₹4,000/- per month by doing tuition work after school time is disbelieved for want of corroboration, even then in view of the fact that the deceased, who is proved by School Certificate Ex.P-5 to be aged about 17½ years at the time of his death, would have secured employment immediately on attaining of majority/completion of his education within a few months/years, his income has to be assessed as equivalent to the minimum wages payable to unskilled labourer. In view of the rates of minimum wages of ₹4348.21ps notified to be payable to unskilled labourer in the State of Haryana during the relevant period income of the deceased was required to be assessed by the Tribunal as ₹4,400/- per month. In view of the observations made by 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% was required to be made to income of the deceased towards future prospects. When so added, income of the deceased comes to (₹4,400/- + ₹1,760/- =) ₹6,160/-.

13. In the present case the widowed mother and two sisters of the deceased are proved by the testimony of PW1 Salochana Devi to be dependent on the deceased. In view of the observations made by Hon'ble Supreme Court in para No.14 of its judgment in **Sarla Verma's Case (Supra)** and the number of the claimants dependent on the deceased being three, deduction of 1/3rd was required to be made by the Tribunal towards his personal expenses. On such deduction

annual dependency of the claimants on the deceased comes to ₹6,160 - ₹2,053 (1/3) = ₹4,107/- X 12 = ₹49,284/-.

14. So far as the question of multiplier is concerned, 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 17½ years at the time of his death and observations of Hon'ble Supreme Court in para No.21 of its judgment in **Sarla Verma's Case (Supra)** multiplier of 18 was applicable and the Tribunal wrongly applied multiplier of 14. When multiplier of 18 is applied to annual dependency of the claimants on the deceased, compensation payable for loss of dependency comes to (₹49,284/- X 18 =) ₹8,87,112/-.

15. In the present case, the Tribunal merely awarded lump sum amount of ₹75,000/- towards non-pecuniary damages. 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)**.

16. It may also be observed here that in **Pranay Sethi's Case (Supra)** Hon'ble Supreme Court directed that the amounts on 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 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 **09.11.2010** and therefore, the amounts under conventional heads will be liable to be reduced by **20%**. Accordingly, the claimants will be entitled to amount of ₹32,000/- towards loss of filial consortium, ₹12,000/- towards funeral expenses and ₹12,000/- towards loss of estate.

17. In view of the above discussion, compensation payable to the claimants on account of death of Sandeep Kumar is tabulated as under:-

Sr. No.	Head	Compensation
1.	Monthly income of the deceased	₹4,400/- per month
2.	Income after addition of future prospects at the rate of 40%	₹4400+ ₹1760 = ₹6160/-
3.	Deduction of 1/3rd on account of personal expenses	₹6160–₹2053 (1/3) = ₹4,107/-
4.	Annual Dependency	₹4107 x 12 = ₹49,284/-
5.	Loss of Dependency	₹49,284/-x18 =₹8,87,112/-
6.	Funeral Expenses	₹12,000/-
7.	Compensation payable for loss of filial	₹32,000/-

	consortium	
8.	Loss of Estate	₹12,000/-
	Total Compensation	₹9,43,112**/-**

18. In the present case, in the claim petition, the claimants merely claimed compensation of ₹8,00,000/- with costs and interest but the compensation payable to the claimants comes to ₹9,43,112/- besides costs and interest. It is well settled that the Tribunal/Court is bound to award just compensation and in consonance with the said obligation compensation more than claimed can be awarded (See **Ningamma and another Vs. United India Insurance Co. Ltd. : 2009(3) R.C.R.(Civil) 435**).

19. 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.

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.

21. 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."

22. 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.

23. 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.

24. 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 7.5% per annum awarded by the Tribunal to 9% per annum.

25. It follows from the above discussion that the claimants are entitled to payment of compensation of ₹9,43,112/- with costs and interest at the rate of 9% per annum from the date of filing of the petition till realization. The amount of ₹3,60,000/- 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 ₹5,83,112/- amount of ₹2,83,112/- shall be payable to claimant No.1-mother and amount of ₹1,50,000/- each shall be payable to claimants No.2 and 3. On realization 50% of the enhanced compensation as per

shares of claimant No.1 shall be payable to her in cash and remaining 50% shall be deposited in FDRs in her name in some nationalized Bank for three years. The amount of the share of minor claimants No.2 and 3 shall be deposited in FDR 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.

26. The appeal is, accordingly, allowed with costs in terms of the above said modifications of the award dated 21.12.2011.

(ARUN KUMAR TYAGI)
JUDGE

03.07.2019
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No