

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

Date of Decision: 12.03.2019

(1)

FAO-6214-2011

Bimla Devi alias Nirmala

.....Appellant

Versus

Paryas alias Sonu and others

.....Respondents

(2)

FAO-6215-2011

Bimla Devi alias Nirmala

.....Appellant

Versus

Paryas alias Sonu and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present: Mr. Kartar Singh Malik, Advocate for the appellant.

Mr. Naveen Nandal, Advocate for
Mr. Rajesh Bansal, Advocate for
respondents No.1 and 2.

Mr. Tajender K. Joshi, Advocate for
respondent No.3-Insurance Company.

ARUN KUMAR TYAGI, J.

1. This order disposes of **FAO-6214-2011** titled 'Bimla Devi alias Nirmala Vs. Paryas alias Sonu and others' and **FAO-6215-2011** titled 'Bimla Devi alias Nirmala Vs. Paryas alias Sonu and others' both filed by Bimla Devi alias Nirmala, mother of deceased-Krishan and Binder for enhancement of compensation awarded vide common award dated 18.03.2010 passed by the learned Motor

Accidents Claims Tribunal, Panipat (for short 'the Tribunal') in **MACT case No.34 of 2009 titled 'Bimla Devi alias Nirmala and another Vs. Paryas alias Sonu and others'** and **MACT case No.35 of 2009 titled 'Bimla Devi alias Nirmala and another Vs. Paryas alias Sonu and others'** on account of death of Krishan and Binder due to injuries suffered in motor vehicle accident which took place on 14.04.2009.

2. The claimants filed abovesaid claim petitions under Section 166 of the Motor Vehicles Act, 1988 (for short 'the M.V. Act') on the common facts that on 14.04.2009 deceased-Krishan and Binder were going on their bi-cycle from Panipat towards village Garhi Sikanderpur. When they reached near village Garhi Sikanderpur truck bearing registration No.HR67A-2220, owned by respondent No.2 and insured with respondent No.3, came from the opposite side driven by respondent No.1 rashly and negligently and struck against their bi-cycle due to which Krishan and Binder suffered injuries resulting in their death. FIR No.134 dated 14.04.2009 was registered under Sections 279 and 304-A of the Indian Penal Code, 1860 in Police Station Model Town, Panipat regarding the accident. Krishan was aged about 9 years and Binder was aged about 14 years and both of them were students of 3rd and 6th class respectively. While claiming themselves to be legal representatives of the deceased, the claimants-parents prayed for award of compensation of ₹6,000,00/- each in both the petitions with costs and interest against respondents No.1 to 3 jointly and severally.

3. On notice, the petitions were contested by respondents. In their written statements in both the petitions respondents No.1 and 2 denied accident and their liability while pleading that the truck was insured with respondent No.3. In its written statements in both the petitions respondent No.3 took objections as to respondent No.1 not having valid and effective driving licence and breach of the terms and conditions of insurance policy and controverted the material averments made in the petitions and denied its liability.

4. 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 Krishan and Binder died due to injuries suffered in accident caused by rash and negligent driving of truck bearing registration No.HR67A-2220 by respondent No.1 and that the claimants were entitled to recover compensation for their death from respondents No.1 to 3 jointly and severally. The Tribunal awarded compensation of ₹2,00,000/- for death of Krishan and ₹2,50,000/- for death of Binder and directed respondents No.1 to 3 to pay the compensation amounts with costs and interest at the rate of 7.5% per annum from the date of filing of the petitions till realization.

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

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

7. Mr. Kartar Singh Malik, learned Counsel for the appellants has argued that the Tribunal did not make any assessment of the notional income of the deceased and did not assess death compensation by applying the multiplier to the same. The Tribunal did not award any amount under conventional heads, funeral expenses, loss of consortium and loss of estate. The Tribunal awarded interest at a very lesser rate. Therefore, the amount awarded may be enhanced and the award may be modified. In support of his arguments learned Counsel for the appellants has placed reliance on the decisions of Hon'ble Coordinate Benches of this Court in **Himkanti Misra and another Vs. Ajay Kumar and others, 2017 AAC 612** and **Sunita Devi and another Vs. Vijay Pal and others, 2018 (2) Law Herald 1659**.

8. On the other hand, Mr. Naveen Nandal, learned Counsel for respondents No.1 and 2 and Mr. Tajender K. Joshi, learned Counsel for respondent No.3 have argued that the Tribunal has awarded just and adequate compensation to the claimants who are not entitled to enhancement of the amount awarded. Therefore, the appeals may be dismissed.

9. The Tribunal is duty bound to award just and adequate compensation. While the compensation cannot be a bonanza or a source of profit the same should not be a pittance (**See State of Haryana Vs. Jasbir Kaur : 2003 (4) RCR (Civil) 140**). In conformity with the above basic principle compensation more than that claimed by the claimants can be awarded (**See Sanjay Verma Vs. Haryana Roadways : 2014 (1) RCR (Civil) (SC) 914**).

10. In the present case, the Tribunal was required to assess notional income of the deceased and assess compensation by applying multiplier to the same. The Tribunal committed material irregularity by awarding lump sum amounts without assessment of notional income and determining compensation payable by applying multiplier to the same which has resulted in miscarriage of justice. In **Krishan Gopal Vs. Lala, 2013 (4) RCR (Civil) 276** Hon'ble Supreme Court assessed notional income of child aged about 10 years, who died in an accident which took place in the year 1992, as ₹30,000/- per annum. In **Himkanti Misra's case (supra)** an Hon'ble Coordinate Bench of this Court assessed notional income of child aged 10 years as ₹30,000/- per annum and by applying multiplier of 15 and adding amount of ₹50,000/- towards love and affection awarded compensation of ₹5,00,000/-. In **Beet Nath and another Vs. Gulab Singh and others FAO No.159 of 2015 decided on 10.07.2017** an Hon'ble Coordinate Bench of this Court assessed notional income of child aged 15 years, who died in an accident which took place in the year 2012, as ₹50,000/-. In **Sunita Devi's case (supra)** an Hon'ble Coordinate Bench of this Court assessed notional income of child aged about 4/5 years, who died in an accident which took place on 16.04.2014, as ₹50,000/- and by applying multiplier of 15 and adding amount of ₹15,000/- under conventional heads awarded compensation of ₹7,56,000/- with costs and interest at the rate of 7.5% per annum.

11. In the present case, accident took place in the year 2009. In view of the facts and circumstances of the case notional income of deceased Krishan and Binder is assessed as ₹40,000/- per annum and by applying multiplier of 15 to notional annual income of ₹40,000/- of the deceased death compensation payable to the claimants comes to ₹6,00,000/-. In cases of assessment of death compensation on the basis of notional income no deduction is required to be made towards personal expenses of the deceased.

12. In the present case, the Tribunal did not award any amount under conventional heads of funeral expenses, loss of consortium and loss of estate. In **National Insurance Company Limited Vs. Pranay Sethi and Others, 2017 (4) R.C.R. (Civil) 1009** 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. 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 observation 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 **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 judicial precedents, the claimants-parents of the deceased will be entitled to award of compensation of ₹28,000/- in equal shares towards loss of filial consortium, ₹10,500/- towards funeral expenses and ₹10,500/- towards loss of estate in both the cases respectively.

13. 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. 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.”

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. 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. 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.

14. It follows from the above discussion that the claimants are entitled to payment of compensation of ₹6,49,000/- on account of death of Krishan and compensation of ₹6,49,000/- on account of death of Binder with costs and interest at the rate of 9% per annum from the date of filing of the petition till realization. The amount of ₹2,00,000/- and ₹2,50,000/- awarded to the claimants by the Tribunal on account of death of Krishan and Binder respectively shall be liable to be deducted from the amounts calculated as above. The enhanced amounts of ₹4,49,000/- and ₹3,99,000/- shall be payable to the claimants in equal shares. The directions of the Tribunal as to manner of disbursement of compensation amounts to

the claimants shall also apply to disbursement of enhanced compensation.

15. The appeals are accordingly allowed with costs in terms of the above said modifications of the award dated 18.03.2010.

12.03.2019
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(ARUN KUMAR TYAGI)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No