IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.3099 of 2012
Date of decision : 14.11.2019

Sharda Devi and others

…. Appellants

Versus

Ashok Gajraj and others

….Respondents

CORAM : HON'BLE MR.JUSTICE ARUN KUMAR TYAGI

Present : Mr. J.P. Sharma, Advocate for the appellants.

Service upon respondents No.1 and 2 dispensed with vide order dated 29.01.2013.

Mr. R.N. Singal, Advocate for respondent No.3.

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ARUN KUMAR TYAGI, J.

1. The claimants-Sharda Devi-widow, Bhagwani Devi-mother, Manish Kumari and Sihnu Kumari-daughters and Sandeep Kumar-son of deceased-Mahender Singh have filed the present appeal seeking enhancement of the compensation awarded by learned Motor Accident Claims Tribunal, Narnaul (for short 'the Tribunal') vide award dated 31.01.2012 passed in **MACT Petition No.3 of 2009 titled as Sharda Devi and others Vs. Ashok Gajraj and others** on account of death of Mahender Singh due to injuries suffered in a motor vehicle accident which took place on 27.10.2008.

2. The claimants filed the above-said claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the M.V. Act')

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on the averments that on 27.10.2008 deceased-Mahender Singh, was going to fill petrol in his moped and when he was returning to his village, canter bearing registration No.RJ-14-GA-7401, owned by respondent No.2 and insured with respondent No.3, driven by respondent No.1 in a rash and negligent manner hit his moped near bus stand of village Goad situated within the jurisdiction of Police Station Sadar, Narnaul. Mahender Singh sustained multiple injuries and died on the spot. FIR No.270 dated 28.10.2008 under Sections 279, 304-A and 427 of the Indian Penal Code, 1860 was registered in Police Station Sadar Narnaul, District Mahendergarh regarding the accident.

3. While pleading that the deceased-Mahender Singh was aged about 52 years and earning Rs.10,000/- per month by working as agriculturist and dairy farming and claiming themselves to be dependents and legal representatives of the deceased, the claimants prayed for award of compensation of Rs.20 lacs with costs and interest against respondents No.1 to 3 jointly and severally.

4. On notice, respondent No.1 appeared initially but defaulted subsequently on which respondent No.1 was proceeded against ex-parte vide order dated 29.04.2009. In its written statement respondent No.2 denied the accident and pleaded that a false FIR has been registered in connivance with the police for claiming compensation. In its written statement respondent No.3-Insurance Company took preliminary objections as to claim petition being false, collusion between claimants and respondents No.1 and 2, respondent No.1 not

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having valid and effective driving licence and breach of the terms and conditions of the insurance policy, controverted 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 Mahender Singh died due to injuries suffered in accident caused by rash and negligent driving of canter bearing registration No.RJ-14-GA-7401 by respondent No.1. The Tribunal assessed income of the deceased-Mahender Singh as Rs.4,000/- per month, deducted 1/4th as contribution of deceased towards his family, applied the multiplier of 11 and by adding Rs.5,000/- towards loss of estate, Rs.5,000/- towards funeral expenses and Rs.8,000/- towards loss of consortium awarded total compensation of Rs.4,14,000/- to the claimants with costs and interest at the rate of 7.5% per annum and directed respondents No.1 to 3 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 and learned Counsel for respondent No.3-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 and did not make any addition towards future prospects. The Tribunal applied

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wrong multiplier of 11 instead of 13. The Tribunal awarded lesser amount towards loss of estate, funeral expenses and loss of consortium. 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 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.

10. In the present case, the findings of the Tribunal as to death of Mahender Singh due to injuries suffered in the accident caused by rash and negligent driving of canter bearing registration No.RJ-14-GA-7401 by respondent No.1 having valid and effective driving license and the claimants being entitled to recover compensation for death of Mahender Singh from respondents No.1 to 3 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 claim petition the claimants pleaded and PW-4 Sharda Devi, widow testified that deceased-Mahender Singh aged about 52 years was earning Rs.10,000/- per month from agriculture and dairy farming. However, the claimants did not produce any other oral or documentary evidence regarding quantum of income of the deceased. In the absence of corroboration by any other cogent and

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reliable oral or documentary evidence, income of the deceased has to be assessed as equivalent to that payable to unskilled labourer. In view of the rates of minimum wages of Rs.3664.54/- payable to unskilled labourer in Haryana during the relevant period, income of the deceased assessed by the Tribunal as Rs.4,000/- per month cannot be considered inadequate. However, the Tribunal did not make any addition towards future prospects. In view of 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 10% was required to be made towards future prospects. When so added, income of the deceased comes to (Rs.4,000/- + Rs.400/- =) Rs.4,400/-.

12. In view of the observations made by Hon'ble Supreme Court 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, deduction of 1/4th was required to be and was rightly made by the Tribunal towards his personal expenses. On such deduction annual dependency of the claimants on the deceased comes to Rs.4,400/- – Rs.1,100 (1/4) = Rs.3,300 X 12 = Rs.39,600/-.

13. In view of the age of the deceased being 52 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),** the Tribunal rightly applied multiplier of 11. When multiplier of 11 is applied to annual dependency of the claimants on the deceased, compensation

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payable for loss of dependency comes to (Rs.39,600/- X 11 =) Rs.4,35,600/-

14. In the present case, the Tribunal merely awarded amount of Rs.5,000/ towards loss of estate and Rs.5,000/- towards funeral expenses and Rs.8,000/- towards loss of consortium. In **Pranay Sethi's Case (Supra)** 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 Rs.15,000/-, Rs.40,000/- and Rs.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 Rs.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)**.

15. It may also be observed here that in **Pranay Sethi's Case (Supra)** Hon'ble Supreme Court while answering the reference on 31.10.2014 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 regarding enhancement of the amounts under conventional heads at the rate of 10% in every

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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 **27.10.2008** and therefore, the amounts under conventional heads will be liable to be reduced by **30%**.

16. Accordingly, the claimants-widow, mother, daughters and son of the deceased-Mahender Singh will be entitled to award of compensation of Rs.28,000/- towards loss of spousal, filial and parental consortium, respectively, Rs.10,500/- towards funeral expenses including transportation of the dead body and Rs.10,500/- towards loss of estate in equal shares.

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

Sr. No.	**Head**	**Compensation**
1.	Monthly income of the deceased	Rs.4,000/- per month
2.	Income after addition of future prospects at the rate of 10%	Rs.4,000 + Rs.400 = Rs.4,400/-
3.	Deduction of 1/4th on account of personal expenses	Rs.4400 – Rs.1100 (1/4) = Rs.3,300/-
4.	Annual Dependency	Rs.3300 x 12 = Rs.39,600/-
5.	Loss of Dependency	Rs. 39,600 x 11 = Rs.4,35,600/-
6.	Funeral Expenses	Rs.10,500/-
7.	Compensation payable for loss of spousal, parental and filial consortium	Rs.28,000/-
8.	Loss of Estate	Rs.10,500/-
	Total Compensation	Rs.4,84,600/-

18. 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

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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. 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."

20. 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.

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.

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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, rate of interest payable on personal loan taken from Nationalized Banks 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.

23. It follows from the above discussion that the claimants are entitled to payment of compensation of Rs.4,84,600/- with costs and interest at the rate of 9% per annum from the date of filing of the petition till realization. The amount of Rs.4,14,000/- 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 Rs.70,600/- claimants No.2 to 5 shall be paid a sum of Rs.10,000/- each and the remaining amount shall be paid to claimant No.1.

24. The appeal is, accordingly, allowed with costs in terms of the above said modifications of the award dated 31.01.2012.

14.11.2019 **(ARUN KUMAR TYAGI)**
kothiyal **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

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