IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.4341-2012
Date of decision:03.05.2019

Muskan Mehta and others

…. Appellants

Versus

Sunil Kumar and others

….Respondents

CORAM : HON'BLE MR.JUSTICE ARUN KUMAR TYAGI

Present : Mr. R.K. Rana, Advocate
for the appellants.

Mr. Pardeep Goyal, Advocate
for respondent No.3-Insurance Company.

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ARUN KUMAR TYAGI, J.

1. The claimants-Widow, minor daughter, minor son and mother of the deceased-Darpan Mehta have filed present appeal seeking enhancement of compensation awarded by learned Motor Accidents Claims Tribunal, Ambala (for short 'the Tribunal') vide award dated 26.04.2011 passed in **MACT Case No.90/MACT/RBT of 2010 titled as Muskan Mehta and others Vs. Sunil Kumar and others** on account of death of Darpan Mehta due to injuries suffered in a motor vehicle accident which took place on 16.10.2009.

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 16.10.2009 Harjit Singh was going from Patiala to village Padlu, Police Station Shahbad, District Kurukshetra

on motor cycle bearing registration No.HR-01-R-8209 with Darpan Mehta as pillion rider. At about 2:30 A.M. when they reached near Guru Granth Sahib Bhawan, G.T. Road, Police Station Parao, District Ambala, Canter bearing registration No.UP-16-E-0347, owned by respondent No.2 and insured with respondent No.3, driven by respondent No.1 rashly and negligently came from back side and struck against the motorcycle due to which Harjit Singh and Darpan Mehta fell down and suffered serious and multiple injuries which proved fatal for them. FIR No.210 dated 16.10.2009 was registered under Sections 279, 337 and 304-A of the Indian Penal Code, 1980 in Police Station Parao, District Ambala against respondent No.1.

3. While pleading that the deceased was aged about 25 years and was earning ₹10,000/- per month by doing private work and claiming themselves to be dependents and legal representatives of the deceased, the claimants prayed for award of compensation of ₹25 lacs with costs and interest against respondent No.1-driver, respondent No.2-owner and respondent No.3-insurer of the canter and respondent No.4 legal representative of driver Harjit Singh and respondent No.5-owner of the motor cycle.

4. On notice, the respondents No.1 to 4 appeared and contested the petition. Respondent No.5 did not appear despite due service and was proceeded against ex-parte. In their joint written statement respondents No.1 and 2 pleaded that no accident took place due to rash and negligent driving of the Canter by respondent No1 and denied their liability. In its written statement respondent No.3 took

objections as to the respondent No.1 not having valid and effective driving licence and respondent No.2 not having route permit and RC, breach of terms and conditions of insurance policy and denied its liability. In his written statement respondent No.4 Jagir Singh father of Harjit Singh driver of the motor cycle admitted the accident but denied his liability.

5. The dependents of deceased-Harjit Singh filed separate claim petition under Section 166 of the M.V. Act bearing **MACT Case No.89/MACT/RBT of 2009-2010 titled Ramandeep Kaur and others Vs. Sunil Kumar and others** which was contested by the respondents No.1 to 3 and tried with the above-said claim petition filed by Muskan Mehta and others.

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 Darpan Mehta died due to injuries suffered in accident caused by rash and negligent driving of Canter bearing registration No.UP-16-E-0347 by respondent No.1 and that the claimants were entitled to recover compensation for his death from respondents No.1 to 3 jointly and severally. The Tribunal assessed the income of the deceased as ₹49,200/- per annum (₹4,100/- per month), deducted 1/4th towards his personal expenses, applied the multiplier of 17, assessed death compensation as ₹6,27,300/- and by adding ₹10,000/- each towards funeral expenses as well as loss of consortium and ₹50,000/- towards loss of future earnings awarded total

compensation of ₹6,97,300/- to the claimants with costs and interest at the rate of 9% per annum from the date of filing of the claim petition till realization and directed respondents No.1 to 3 to pay the compensation amount jointly and severally. In the other connected case, the Tribunal awarded compensation of ₹7,00,000/- to the widow, minor son and mother of deceased-Harjit Singh with costs and interest at the rate of 9% per annum from the date of filing of the claim petition till realization.

7. Feeling aggrieved, the claimants-Muskan Mehta and others have filed present appeal for enhancement of compensation.

8. 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.

9. Learned Counsel for the appellants has argued that the deceased was a hale and hearty young man of 25 years of age. The Tribunal wrongly assessed the age of the deceased as 26 years and wrongly applied multiplier of 17. He was working in a Liquor vend in the day time and was also selling audio cassettes in his house and was earning ₹10,000/- per month.The Tribunal did not properly assess income of the deceased. The Tribunal did not make appropriate addition in his income towards future prospects and wrongly awarded lump sum amount of ₹50,000/- towards loss of future earnings. The Tribunal awarded meager amounts towards funeral expenses and loss of consortium. The Tribunal did not award any amount towards loss of

estate. Therefore, the impugned award may be modified and the compensation awarded by the Tribunal may be enhanced.

10. On the other hand learned Counsel for respondent No.3-Insurance Company has argued that the Tribunal has properly assessed the income of the deceased and awarded just and adequate compensation. The claimants are not entitled to enhancement of the amount awarded. Therefore, the appeal may be dismissed.

11. So far as the question as to age of the deceased is concerned, in their claim petition the claimants pleaded that the deceased was aged about 25 years at the time of the accident. In support of this claim, the claimants produced middle examination Certificate Mark A-3 of deceased-Darpan Mehta. In middle examination Certificate Mark A-3 date of birth of deceased-Darpan Mehta is recorded as 20.03.1984. The respondents did not produce any evidence challenging/rebutting the same. In Post Mortem Report Ex.P-6 age of the deceased was mentioned as 26 years but the entry was based on hearsay and not on any documentary proof of the date of birth of the deceased. Therefore, the entry in Post Mortem Report Ex.P-6, being based on hearsay, was liable to be discarded in the face of middle examination Certificate Mark A-3 whereby the deceased is proved to be 25 years of age at the time of his death. Consequently, the finding of the Tribunal as to the deceased being 26 years of age at the time of his death is liable to be reversed and the deceased must be held to be aged 25 years at the time of his death.

12. The claimants pleaded that the deceased used to earn ₹10,000/- per month by working with Kuljit Singh Contractor as well as selling audio cassettes at his house. To prove employment and income of the deceased, the claimants examined claimant No.1-Muskan Mehta as PW-2, claimant No.4-Pooja Mehta as PW-1 and Kuljit Singh owner of liquor vend as PW-3 to prove employment and income of the deceased. However, the claimants did not produce account books of Kuljit Singh owner of liquor vend to prove employment of the deceased by him in his liquor vend and payment of salary by him to the deceased at the claimed rate. The claimants also did not produce account books and back account statement of the deceased to prove income from sale of audio cassettes by him. In the absence of corroboration by documentary evidence, oral evidence produced by the claimants could not be relied upon. Therefore, for determination of compensation payable for death of deceased-Darpan Mehta, his income has to be assessed as equivalent to that payable to unskilled labourer. In view of the rate of minimum wages payable to unskilled labourer in Haryana during the relevant period income of the deceased was rightly assessed by the Tribunal as ₹49,200/- per annum (₹4,100/- per month). However, in the present case the Tribunal did not make any addition in the income of the deceased towards future prospects and wrongly awarded amount of ₹50,000/- towards loss of future earnings. 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 40% was required to be made towards future prospects. When so added, income of the deceased comes to (₹4,100/- + ₹1,640/- =) ₹5,740/- per month.

13. Admittedly, the number of claimants-widow, minor daughter, son and mother dependent on the deceased was 4. 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** deduction of 1/4th was required to be made and was rightly so made by the Tribunal towards his personal expenses. On such deduction annual dependency of the claimants on the deceased comes to ₹5,740 – ₹1,435 (1/4th) = ₹4,305/- X 12 = ₹51,660/-.

14. 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 25 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 committed an error in applying the multiplier of 17. When multiplier of 18 is applied to annual dependency of the claimants on the deceased, compensation payable for loss of dependency comes to (₹51,660 X 18 =) ₹9,29,880/-.

15. In the present case, the Tribunal merely awarded amount of ₹10,000/-each to the claimants towards funeral expenses and loss of consortium 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 the said 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 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 **16.10.2009** and therefore, the amounts under conventional heads will be liable to be reduced by **20%**. 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 are entitled to award of compensation of ₹32,000/- towards loss of spousal, parental and filial consortium, ₹12,000/- towards funeral expenses and ₹12,000/- towards loss of estate.

16. Accordingly, compensation payable to the claimants on account of death of Darpan Mehta is tabulated as under:-

Sr. No.	Head	Compensation
1.	Monthly income of the deceased	₹4,100/- per month
2.	Income after addition of future prospects at the rate of 40%	₹4100 + ₹1640 = ₹5740/-
3.	Deduction of 1/4th on account of personal expenses	₹5740–₹1435 (1/4th) = ₹4,305/-
4.	Annual Dependency	₹4305 x 12 = ₹51,660/-
5.	Loss of Dependency	₹51,660x18 =₹9,29,880/-
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	₹9,85,880/-

17. It follows from the above discussion that the claimants are entitled to payment of compensation of ₹9,85,880/- with costs and interest at the rate of 9% per annum from the date of filing of the petition till realization. The amount of ₹6,97,300/- 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 ₹2,88,580/-, amount of ₹1,38,580/- shall be payable to claimant No.1-widow and amount of ₹50,000/- each shall be payable to claimants No.2 and 3 minor daughter and son and claimant No.4-mother of the deceased. On realization, the amounts of the share of claimant No.1-widow and claimant No.4-mother of the deceased be disbursed to

them in cash while the amounts of the share of claimants No.2 and 3 minor daughter and son of the deceased be deposited in FDR in some nationalized back till attaining of majority by them and shall be payable to them on attaining of majority without the requirement of any further order from this Court/Tribunal.

18. The appeal is, accordingly, allowed with costs in terms of the above said modifications of the award dated 26.04.2011.

(ARUN KUMAR TYAGI)
JUDGE

03.05.2019
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No