[101] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.4664 of 2012
Date of decision: 22.02.2019

Swaranjit Kaur and others. ….. Appellants

Versus

Sewak Singh and others. ….. Respondents

Before: Hon'ble Mr. Justice B.S. Walia.

Present: Mr. Ashish Gupta, Advocate for the appellants.
Mr. L.S. Sidhu, Advocate for respondent No.1.
None for respondent No.2.
Mr. Shivender Pal, Advocate for Mr. Harkaran Singh, Advocate for respondent No.3.
Mr. Subhash Goyal, Advocate for respondent No.4-Insurance Company.

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B.S. Walia, J. (Oral).,

[1] Appeal has been filed by the widow, son and daughter of Kuldeep Singh who died in a motor vehicular accident on 18.11.2008.

[2] Prayer is for enhancement of compensation of ₹ 5,93,000/- awarded to the appellants by the learned Motor Accidents Claims Tribunal, Moga (hereinafter referred to as 'the Tribunal).

[3] The learned Tribunal took into account the age of the deceased as 44 years, occupation of the deceased as agriculturist, assessed his income as ₹ 4000/- per month, applied multiplier of 14 and by taking into account three dependents made deduction of 1/3rd of the income of the deceased towards his personal expenses and further by awarding ₹ 1,25,000/- on account of medical expenses, ₹ 10,000/- on account of funeral expenses and like amount on account of loss of consortium, awarded total compensation

of ₹ 5,93,000/- to be paid by the owner and driver (i.e. respondent Nos. 1 & 2) of the offending vehicle on account of the offending vehicle not having been insured.

[4] Learned counsel for the appellants contended that the appeal was liable to be allowed, award modified, compensation payable enhanced by taking into account 25% of the established income of the deceased minus the tax component towards future prospects and by awarding appropriate compensation under the conventional heads.

[5] Learned counsel for the appellants further contended that the policy of insurance of the motorcycle of the deceased was having a Personal Accident Cover of the deceased, therefore, an amount of ₹ 1,00,000/- was liable to be paid by the Insurance Company on said account in addition to the compensation awarded by the learned Tribunal.

[6] Learned counsel appearing for respondent No. 1 has not been able to controvert the claim of the appellants for enhancement of compensation by taking into account 25% of the established income of the deceased minus the tax component towards future prospects as also on account of award of ₹ 1,00,000/- on account of loss of spousal and parental consortium and ₹ 15,000/- on account of funeral expenses and like amount on account of loss of estate. However, as regards plea for payment of ₹ 1,00,000/- on account of Personal Accident Cover of the deceased, learned counsel for respondent No. 4 contended that the appellants had not made any claim in respect thereto before the Insurance Company and that in case any such claim was made, the same would be considered and decided upon by the Insurance Company as per the terms and conditions of the Insurance Policy in accordance with law.

[7] I have considered the submissions of learned counsel for the parties.

[8] Admittedly, the deceased was 44 years of age. As per paragraph No.61 (iv) of the decision of Hon'ble the Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009** where the deceased was self-employed and between the age group of 40 to 50 years, 25% of the established income minus the tax component is to be taken into account towards future prospects while computing the compensation. Since, in the instant case, the deceased was 44 years of age and was self-employed, therefore, 25% of the established income minus tax component is to be taken into account towards his future prospects while computing the compensation payable.

[9] Likewise, as per paragraph No.61 (viii) of the decision of Hon'ble the Supreme Court in Pranay Sethi's case (Supra), the appellants are entitled to ₹ 15,000/- on account of funeral expenses and ₹ 15,000/- on account of loss of estate. Accordingly, appellants are held entitled to ₹ 15,000/- on account of funeral expenses as against ₹ 10,000/- awarded by the learned Tribunal and ₹ 15,000/- on account of loss of estate.

[10] Likewise, the widow of the deceased is entitled to ₹ 40,000/- on account of loss of spousal consortium in accordance with paragraph No.61 (viii) of the decision in Pranay Sethi's case (Supra) whereas as per paragraph No.8.7 of the decision of Hon'ble the Supreme Court in **Magma General Insurance Co. Ltd. v. Nanu Ram @ Chuhru Ram and others, 2018 (4) RCR (Civil) 333**, a sum of ₹ 40,000/- is payable to each of the children of the deceased on account of loss of parental consortium. Since, the deceased left behind two children, therefore, apart from sum of ₹ 40,000/- payable to the widow of the deceased on account of loss of spousal consortium,

₹ 80,000/- is payable to the children on account of loss of parental consortium. Thus, in totality the widow and two children of the deceased are entitled to award of compensation of ₹ 1,20,000/-.

[11] Faced with the aforementioned position, learned counsel for respondent No. 1 contended that in view of subsequent decision of Hon'ble the Supreme Court in **Vimla Devi and others vs National Insurance Company Ltd. and others, 2019 (1) RCR (Civil) 86,** award of compensation on account of loss of spousal/parental consortium in the case of widow and two minor children was restricted to ₹ 1,00,000/-. Accordingly, in the light of the position as noted above, compensation on account of loss of spousal and parental consortium to the widow and two minor children of the deceased is restricted to ₹ 1,00,000/-.

[12] In the light of the position as noted above, the appellants are held entitled to the following compensation:-

Sr. No.	**Heads**	**Amount assessed by the Tribunal**	**Amount assessed by the Court**
1.	Income	₹ 4000/- (per month)	₹ 4000/- (per month)
2.	Future Prospects	Nil	25% of ₹ 4000/- = ₹1000/-
3.	Total Income Assessed	₹ 4,000/-	(₹ 4000/- + ₹ 1000/-) = ₹ 5000/-
4.	Multiplier applied	14	14
5.	Deduction (towards personal expenses of deceased)	1/3rd of ₹ 4,000/- ₹ 1333/-	1/3rd of ₹ 5,000/- = ₹ 1666.66/- (rounded off ₹ 1667/-)

6.	Dependency (Annual)	(₹ 4,000/- - ₹ 1333/- = ₹ 2667/- x 12 = ₹ 32,004/- (Annually) (rounded off ₹ 32,000/-)	(₹ 5,000/- - ₹ 1667/-) = ₹ 3333/- ₹ 39,996/- (Annually)
7.	Compensation awarded by applying multiplier	₹ 32,000/- x 14 = ₹ 4,48,000/-	₹ 39,996/- x 14 = ₹ 5,59,944/-
8.	Medical Expenses	₹ 1,25,000/-	₹ 1,25,000/-
9.	Loss of consortium	₹ 10,000/-	₹ 40,000/- (widow) ₹ 40,000/- (to each of the children of the deceased i.e. ₹ 80,000/-) Total = ₹ 1,20,000/- Restricted to ₹ 1,00,000/- in view of decision of Hon'ble the Supreme Court in Vimla Devi's case (Supra)
10.	Funeral Expenses	₹ 10,000/-	₹ 15,000/-
11.	Loss of Estate	NIL	₹ 15,000/-
12.	Rate of interest	9% per annum	9 % per annum
Total		**₹ 5,93,000/-**	**₹ 8,14,944/-**

[13] Accordingly, as against compensation of ₹ 5,93,000/- awarded by the Tribunal, the appellants are held entitled to compensation of

₹ 8,14,944/-along with interest @ 9 % per annum with effect from the date of claim petition till date of payment, less payment, if any, made earlier. Apportionment of the compensation shall be made in accordance with the ratio stipulated in the award passed by the learned Tribunal.

[14] Needless to mention in view of statement of learned counsel for respondent No.4-Insurance Company, it would be open to the appellants to make a claim with regard to the Personal Accident Cover of the deceased to the Insurance Company which on receipt of the same would consider and decide the same as per the terms and conditions of the Insurance Policy and in accordance with law as expeditiously as possible preferably within a period of three month's from the date of receipt of the claim application.

[16] Accordingly, appeal is allowed by modifying Award dated 20.04.2012 passed by the learned Tribunal to the extent as noted above.

(B.S. Walia)
Judge

22.02.2019
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1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.