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

**FAO No.4681 of 2012
Date of decision: 14.05.2019**

Sunita Saini

…. Appellant

Versus

Bharat Bhushan and others

….Respondents

CORAM : HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Rupender Singh Rana, Advocate for
Mr. Sandeep K. Sharma, Advocate
for the appellant.

Mr. Rajbir Singh Advocate for
Mr. Sanjeev Goyal, Advocate for
respondent no.2-Insurance Company

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ARUN KUMAR TYAGI, J.

1. The claimant No.1-mother of deceased-Mohit alias Kunal has filed the present appeal seeking enhancement of the compensation awarded by the learned Motor Accidents Claims Tribunal, Rohtak (for short 'the Tribunal') in **MACT case No.95 of 2011 titled as Sunita Saini and another Vs. Bharat Bhushan and another** on account of his death due to injuries suffered in motor vehicle accident which took place on 18.04.2011.

2. The claimants-parents of deceased Mohit alias Kunal filed claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the M.V. Act') on the averments that on 18.04.2011 Mohit alias Kunal was going from Rohtak side towards Delhi Bye Pass, Rohtak on motor cycle bearing registration No.HR-12Q-8482. When he reached near Maharani Kishori Jat College, Model Town,

Rohtak, motor cycle bearing registration No.HR-16E-1697 driven by respondent No.1 in a rash and negligent manner came from the above-said College and collided with his motor cycle due to which Mohit alias Kunal suffered injuries which proved fatal for him. FIR No.211 dated 18.04.2011 was registered under Sections 279, and 304-A of the Indian Penal Code, 1860 in Police Station Rohtak Civil Lines, District Rohtak regarding the accident.

3. While pleading that the deceased being aged about 19 years was a bright student of B.Tech and earning ₹10,000/- per month by helping his father in running the business of Ice Factory and claiming themselves to be his legal representatives the claimants sought award of compensation of ₹20 lacs with costs and interest at the rate of 18% per annum against respondent No.1-owner/driver and respondent No.2-insurer.

4. The petition was contested by the respondents. In its written statement respondent No.1 while taking preliminary objections as to want of cause of action, estoppel, non-joinder of parties and concealment of material facts pleaded that the accident took place due to negligence of the deceased and denied his liability. In its written statement respondent No.2-Insurance Company took objections as to respondent No.1 not having valid and effective driving licence and breach of the terms and conditions of insurance policy. Respondent No.2 denied the accident, controverted the material averments made in the petition and prayed for dismissal of the claim petition.

5. Issues were framed on the basis of pleadings of the parties and evidence produced by the parties was recorded. On

consideration of the material on record and the submissions made by the learned Counsel for the parties, the Tribunal held that Mohit alias Kunal died due to injuries suffered in accident caused by rash and negligent driving of motor cycle bearing registration No.HR-16E-1697 by respondent No.1 and awarded lump sum amount of ₹3,25,000/- as compensation to the claimants for the death of their son Mohit alias Kunal and directed respondents No.1 and 2 to pay the compensation amount jointly and severally with costs and interest at the rate of 6% per annum.

6. Feeling aggrieved, claimant No.1-mother of the deceased has filed the present appeal for enhancement of the compensation.

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

8. In the present case, the findings of the Tribunal as to death of Mohit alias Kunal due to injuries suffered in the accident caused by rash and negligent driving of motor cycle bearing registration No.HR-16E-1697 by respondent No.1-owner/driver having valid and effective driving license and the claimants being entitled to recover compensation for his death from respondents No.1 and 2 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.

9. Learned Counsel for the appellant has argued that the Tribunal awarded a lump sum amount of ₹3,25,000/- without assessing income of the deceased, making addition of 40% towards

future prospects, deducting ½ towards his personal expenses and applying the multiplier of 18 as per his age at the time of his death and determining annual loss of dependency as per directions in **Sarla Verma and others vs. Delhi Transport Corporation and another, R.C.R. (Civil) 77 : 2009 (3)** and **National Insurance Company Limited vs. Pranay Sethi and others, 2017 (4) R.C.R. (Civil) 1009.** While also referring to the judgment of Hon'ble Supreme Court in **Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram and others, 2018 (4) R.C.R. (Civil) 333** learned Counsel for the appellant has further argued that the Tribunal did not award any amount towards funeral expenses, loss of filial consortium and loss of estate. The Tribunal also awarded meager rate of interest at the rate of 6% per annum instead of 12% per annum. 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.2-Insurance Company has argued that deceased-Mohit alias Kunal was a student and was not having any income. The Tribunal has awarded just and adequate compensation and the claimants are not entitled to enhancement thereof. Therefore, the appeal may be dismissed.

11. In the present case, the Tribunal by looking into the facts of the case, age of the deceased and the contributions which deceased would have made awarded an amount of ₹3,25,000/- to the claimants but the Tribunal did not assess (notional) income of the deceased, make any addition towards future prospects, determine the multiplicand after making deduction towards personal

expenses and apply the multiplier as per his age at the time of his death and did not award any amount under the conventional heads of funeral expenses, loss of estate and loss of consortium. Therefore, the compensation awarded by the Tribunal cannot be said to be just and adequate.

12. As per Marks Statement for Secondary School Examination, 2008 Ex.P-3, date of birth of deceased-Mohit alias Kunal was 07.11.1992. He is thereby proved to be aged about 18 years. He was a student of B.Tech. in Vaish College of Engineering, Rohtak. The deceased being a student is not proved to be having any actual income. However, for determining just compensation payable to the claimants, notional income of the deceased was required to be assessed. On completion of the education, the deceased would have secured job as highly skilled person and would have earned. In **FAO No.1502 of 2015 titled as National Insurance Company Ltd. Vs. Pushpa Singh Chauhan and others decided on 20.03.2015** an Hon'ble Coordinate Bench of this Court affirmed computation of compensation by the Tribunal whereby in regard to death of a student of B.Tech. Mechanical in Chander Mohan Jha University, Shilong (Meghalya) income was assessed as ₹10,000/- per month and addition for future prospects was made at the rate of 50% which was upheld by the Hon'ble Supreme Court in Special Leave Petition(C) S.No.19533 of 2015. In **FAO No.510 of 2015** titled as **Anita Joshi and another Vs. Sarwan Singh and another** an Hon'ble Co-ordinate Bench of this Court assessed the notional income of deceased aged about 18/20 years who was a student of Diploma in Engineering as ₹10,000/- per month and made

addition towards future prospects at the rate of 40% in view of judgment of Hon'ble Supreme Court in **Pranay Sethi's case (Supra)**.

13. In view of the facts and circumstances of the present case and above referred judicial precedents, it will be just and proper to determine by guess work notional income of the deceased as ₹10,000/- per month. In **Pranay Sethi's case (Supra)** Hon'ble Supreme Court observed in para No.61(iv) of its judgment that in case of self-employed persons or persons employed on fixed salary, addition of 40% of the established income be made towards future prospects. In view of the observations made by Hon'ble Supreme Court in the above-said case, addition of 40% is required to be made to notional income of the deceased and when so added his notional income comes to (₹10,000/- + ₹4,000/- =) ₹14,000/-.

14. Since, the deceased was a bachelor, deduction of ½ has to be made towards personal expenses as per the observations made by Hon'ble Supreme Court in para No.15 of its judgment in **Sarla Verma's case (Supra)**. On such deduction annual dependency of claimants on the deceased comes to ₹14,000/- – ₹7,000/- (1/2) = ₹7,000/- X 12 = ₹84,000/-.

15. In view of the observations made by Hon'ble Supreme Court in para No.61(vii) of its judgment in **Pranay Sethi's case (Supra)** multiplier has to be applied on the basis of age of the deceased and not age of the parents. In view of the age of the deceased being 18 years at the time of the accident and observations of Hon'ble Supreme Court in para No.21 of its judgment in **Sarla Verma's case (Supra)** multiplier of 18 is

applicable in the present case. When multiplier of 18 is applied to annual dependency of the claimants on the deceased, compensation payable for loss of dependency comes to (₹84,000 X 18 =) ₹15,12,000/-.

16. In the present case, the Tribunal did not award any amount towards funeral expenses, loss of estate and loss of consortium. In **Pranay Sethi's case (Supra)** Hon'ble Supreme Court, while answering the reference on **31.10.2017**, 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 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 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 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 **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 principles of awarding compensation under conventional heads as laid down by Hon'ble Supreme Court in **Pranay Sethi's case (Supra)** and proportionate reduction by **20%** due to accident having occurred in the year **2011**, the claimants-parents are entitled to award of compensation of ₹32,000/- towards loss of filial consortium, ₹12,000/- towards funeral expenses and ₹12,000/- towards loss of estate.

17. In the present case, the Tribunal directed the payment of compensation amount with interest at the rate of 6% 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.

18. 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.

19. 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.

22. In view of the observations in above referred judicial precedents, R.B.I.’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 6% per annum awarded by the Tribunal to 9% per annum from the date of filing of the claim petition till realization.

23. It follows from the above discussion that the claimants are entitled to payment of compensation amount of ₹15,68,000/- with interest at the rate of 9% per annum from the date of filing of the petition till realization. However, the amount of compensation of ₹3,25,000/- already awarded to the appellants shall be liable to be deducted from the above-said amount. Out of the enhanced amount of ₹12,43,000/-, amount of ₹10,00,000/- shall be payable to claimant No.1-mother and amount of ₹2,43,000/- shall be payable

to claimant No.2-father of the deceased. 50% of the enhanced compensation as per their shares shall be payable to the claimants in cash and remaining 50% shall be deposited in FDRs in their names in some nationalized Bank for three years.

24. The appeal is, accordingly, allowed with costs in terms of the above-said modifications of the award dated 28.03.2012.

(ARUN KUMAR TYAGI)
JUDGE

14.05.2019
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No