

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

Date of Decision: 03.05.2019

(1)

FAO-493-2012

Sewa Singh and others

.....Appellants

Versus

Thandi Ram and others

.....Respondents

(2)

FAO-494-2012

Jangbir and others

.....Appellants

Versus

Thandi Ram and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present: Mr. Manoj Chahal, Advocate
for the appellants-claimants.

Mr. R.C. Kapoor, Advocate
for respondent No.3-Insurance Company.

ARUN KUMAR TYAGI, J.

1. This order disposes of **FAO-493-2012 titled Sewa Singh and others Vs. Thandi Ram and others** filed by claimants-parents and minor sisters of deceased-Sunil and **FAO-494-2012 titled Jangbir and others Vs. Thandi Ram and others** filed by claimants-parents and sister of deceased-Rohit respectively for enhancement of compensation awarded vide common award dated 02.11.2011 passed by learned Motor Accidents Claims Tribunal, Bhiwani (for short 'the Tribunal') in **MACT Petition No.327 of 2011 titled Sewa Singh and**

others Vs. Thandi Ram and others and MACT Petition No.328 of 2011 titled Jangbir and others Vs. Thandi Ram and others, on account of death of Sunil and Rohit due to injuries suffered in motor vehicle accident which took place on 12.12.2010.

2. Both the above-said claim petitions were filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the M.V. Act') on the common facts that on 12.12.2010, Sunil, Rohit, Dharmender and Amit were coming from school on foot on their proper left side of the road from the side of Jhanwari bus stand. Jeep bearing registration No.HR-26C-8103, owned by respondent No.2 and insured with respondent No.3, came from the back side driven by respondent No.1 rashly, negligently and at a very high speed, without blowing horn and hit all of them due to which they suffered injuries. Sunil and Rohit, who sustained serious injuries, were taken to Sarvodya Hospital, Hisar where they died. FIR No.417 dated 13.12.2010 was registered under Sections 279, 337 and 304-A of the Indian Penal Code, 1860 in Police Station Tosham against respondent No.1-driver.

3. In **MACT Petition No.327 of 2011 titled Sewa Singh and others Vs. Thandi Ram and others** the claimants averred that Sunil was aged about 16 years and was student of 9th Class in Government Senior Secondary School, Jhanwari. While claiming themselves to be his legal heirs/representatives the claimants-parents and minor sisters sought award of compensation of ₹20 lacs against respondents No.1 to 3 with costs and interest.

4. In **MACT Petition No.328 of 2011 titled Jangbir and others Vs. Thandi Ram and others** the claimants averred that Rohit

was aged about 14 years and was student of 10th Class in Government Senior Secondary School, Jhanwari. While claiming themselves to be his legal heirs/representatives the claimants-parents and sister sought award of compensation of ₹20 lacs against respondents No.1 to 3 with costs and interest.

5. The petitions were contested by the respondents. In his written statement, respondent No.1 denied the accident and contended that the offending Jeep was falsely involved in the accident. In his written statement respondent No.2 contended that the Jeep was on its proper left side and it was being driven carefully at moderate speed by respondent No.1 and accident was caused due to carelessness of the deceased and their friends. Respondent No.2 denied his liability pleading that the Jeep was insured with respondent No.3 and respondent No.1 was holding a valid and effective driving licence. In its written statement respondent No.3 took objections that there was breach of the terms and conditions of insurance policy. No accident took place with the Jeep. False FIR against respondent No.1 was lodged in collusion with the police. Respondent No.3 controverted the material averments made in the petition and denied its liability.

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 Sunil and Rohit died due to injuries suffered in accident caused by rash and negligent driving of Jeep bearing registration No.HR-26C-8103 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. In **MACT Petition No.327 of 2011 titled Sewa Singh and others Vs. Thandi Ram and others** the Tribunal took age of the deceased-Sunil as 17 years, assessed his income as ₹4,200/- per month, deducted $\frac{1}{2}$ towards personal expenses, applied multiplier of 16 as per age of his parents, added amount of ₹5,000/- towards funeral expenses, ₹2,500/- towards transportation and ₹10,000/- towards loss of estate and awarded compensation of ₹4,20,700/- with costs and interest at the rate of 6% per annum from the date of filing of the claim petition till payment to the claimants. In **MACT Petition No.328 of 2011 titled Jangbir and others Vs. Thandi Ram and others** the Tribunal took age of the deceased-Rohit as 16 years, assessed his income as ₹4,200/- per month, deducted $\frac{1}{2}$ towards personal expenses, applied multiplier of 14 as per age of his parents, added amount of ₹5,000/- towards funeral expenses, ₹2,500/- towards transportation and ₹10,000/- towards loss of estate and awarded compensation of ₹3,70,300/- with costs and interest at the rate of 6% per annum from the date of filing of the claim petition till payment to the claimants. The Tribunal directed the respondents No.1 to 3 to pay the compensation amounts jointly and severally.

7. Feeling aggrieved, the claimants have filed present appeals 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 in **MACT Petition No.327 of 2011 titled Sewa Singh and others Vs. Thandi Ram and others** the Tribunal did not properly assess income of deceased-Sunil, wrongly deducted $\frac{1}{2}$ instead of $\frac{1}{4}^{\text{th}}$ towards his personal expenses and wrongly applied multiplier of 16 as per age of the parents instead of age of deceased-Sunil. In **MACT Petition No.328 of 2011 titled Jangbir and others Vs. Thandi Ram and others** the Tribunal did not properly assess income of deceased-Rohit, wrongly deducted $\frac{1}{2}$ instead of $\frac{1}{3}^{\text{rd}}$ towards his personal expenses and wrongly applied multiplier of 14 as per age of the parents instead of age of deceased-Rohit. In both the cases the Tribunal awarded meager amounts towards funeral expenses and loss of estate and did not award any amount towards loss of consortium. The Tribunal also awarded lesser interest at the rate of 6% per annum instead of 18% per annum. Therefore, the award may be modified and amounts of compensation awarded in both the above-said cases may be enhanced.

10. On the other hand, learned Counsel for respondent No.3 has argued that the father and sisters of deceased-Sunil and father and sister of deceased-Rohit not being dependent on the deceased could not be treated as their legal representatives and are not entitled to payment of compensation. In both the cases mother of the deceased alone is entitled for payment of compensation. However, the Tribunal has awarded just and adequate compensation and enhancement thereof is not warranted. Therefore, with modification of

the award as to entitlement of the mother of the deceased alone for payment of compensation, the appeals may be dismissed.

11. In the present case, the findings of the Tribunal as to both the deceased-Sunil and Rohit having died due to injuries suffered in accident caused by rash and negligent driving of the Jeep by respondent No.1 and joint and several liability of respondents No.1 to 3 to pay compensation for their death are not challenged.

12. So far as the question as to entitlement of the claimants in both the cases for payment of compensation for death of deceased-Sunil and Rohit is concerned, it may be observed that Sewa Singh father of deceased-Sunil and Jangbir father of deceased-Rohit, having independent source of income cannot be said to be dependent on them and not being their class-I legal heirs cannot be considered to be their legal representatives. Therefore, they are not entitled to payment of compensation for their death. Reference in this regard may be made to observations made by Hon'ble Supreme Court in para No.15 of its judgment in **Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009 (3) R.C.R. (Civil) 77**. Similarly, Laxmi and Kavita, both the sisters of deceased-Sunil and Kavita, sister of deceased-Rohit, being dependent on their father and not being legal heirs of deceased-Sunil and Rohit respectively also cannot be said to be legal representatives of deceased-Sunil and Rohit respectively. Therefore, they are also not entitled to payment of compensation for their death. Consequently, Sunita mother of deceased-Sunil and Raj Bala mother of deceased-Rohit being class-I legal heir and legal

representative of deceased-Sunil and Rohit respectively are entitled to payment of compensation for their death.

13. In the present case, the Tribunal has held deceased-Sunil to be aged 17 years and Rohit to be aged 16 years at the time of their death evidently on the basis of their Post Mortem Reports Ex.P-2 and Ex.P-1 respectively. However, it may be observed that in their respective claim petitions the claimants pleaded that deceased-Sunil was aged about 16 years and deceased-Rohit was aged about 14 years at the time of their death. In support of their claim, the claimants produced School Migration Certificates Ex.P-4 of deceased-Sunil and Ex.P-8 of deceased-Rohit in which date of birth of deceased-Sunil is recorded as 24.10.1994 and date of birth of Rohit is recorded as 20.05.1996 respectively. The respondents did not produce any evidence challenging/rebutting the same. In Post Mortem Report Ex.P-2 age of deceased-Sunil was mentioned as 17 years and in Post Mortem Report Ex.P-1 age of Rohit was mentioned as 16 years. However, the entries in these Post Mortem Reports were based on approximation/information provided by some relative and not on any scientific determination/documentary proof of the age of the deceased. Therefore, the entries in Post Mortem Reports Ex.P-2 and Ex.P-1, being based on hearsay, were liable to be discarded in the face of School Migration Certificates Ex.P-4 and Ex.P-8 whereby both the deceased-Sunil and Rohit are proved to be 16 and 14 years of age respectively at the time of their death. Consequently, the findings of the Tribunal as to the deceased-Sunil and Rohit being 17 and 16 years of age respectively at the time of their death is reversed and the

deceased-Sunil and Rohit are held to be aged 16 and 14 years respectively at the time of their death.

14. In the present case both the deceased-Sunil and Rohit were students 9th and 10th Class and were not having actual income at the time of their death. However, immediately on attaining of majority/completion of their education within a few years, they would have secured employment. Therefore, for determination of compensation payable for their death, their notional income has to be assessed as equivalent to that payable to unskilled labourer. In view of the rates of minimum wages payable to unskilled labourer in Haryana during the relevant period income of both the deceased was rightly assessed by the Tribunal as ₹4,200/- each. However, the Tribunal did not make any addition in the income of the deceased 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 40% was required to be made towards future prospects. When so added, income of both the deceased comes to (₹4,200/- + ₹1,680/- =) ₹5,880/- respectively.

15. In view of the observations made by Hon'ble Supreme Court in para No.15 of its judgment in **Sarla Verma's Case (Supra)** deduction of ½ was required to be made and was rightly so made by the Tribunal towards their personal expenses. On such deduction annual dependency of the claimants No.2-mother of the deceased in both the cases on the deceased comes to ₹5,880/- – ₹2,940/- (1/2) = ₹2,940/- X 12 = ₹35,280/- respectively.

16. So far as the question of multiplier is concerned, 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.

17. In view of the age of the deceased-Sunil being 16 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. When multiplier of 18 is applied to annual dependency of the claimant No.2-mother of deceased-Sunil, compensation payable for loss of dependency comes to (₹35,280 X 18 =) ₹6,35,040/-.

18. In view of the age of the deceased-Rohit being 14 years at the time of his death it will be appropriate to apply multiplier of 15. When multiplier of 15 is applied to annual dependency of the claimant No.2-mother of deceased-Rohit, compensation payable for loss of dependency comes to (₹35,280 X 15 =) ₹5,29,200/-.

19. In the present case, the Tribunal merely awarded amount of ₹10,000/- towards loss of estate, ₹5,000/- towards funeral expenses, ₹5,000/- towards transportation and did not award any amount towards loss of consortium. 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 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 above referred judicial precedents, Sunita mother of deceased-Sunil and Raj Bala mother of deceased-Rohit are entitled to award of compensation for loss of consortium, funeral expenses and loss of estate. In the present case the accident took place on **12.12.2010** and therefore, the amounts under conventional heads are liable to be reduced by **20%**. Therefore, Sunita mother of deceased-Sunil and Raj Bala mother of deceased-Rohit 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 in both the cases respectively.

20. 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.

21. 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.

22. 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.”

23. 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.

24. 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.

25. 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 6% per annum awarded by the Tribunal to 9% per annum.

26. It follows from the above discussion that the compensation awarded is liable to be enhanced and

- (i) in **MACT Petition No.327 of 2011 titled Sewa Singh and others Vs. Thandi Ram and others**, claimant No.2-mother is entitled to payment of compensation of ₹6,91,040/- on account of death of Sunil with costs and interest at the rate of 9% per annum from the date of filing of the petition till realization out of which the amount of ₹4,20,700/- awarded to the claimants by the Tribunal on account of death of Sunil shall be liable to be deducted; and
- (ii) in **MACT Petition No.328 of 2011 titled Jangbir and others Vs. Thandi Ram and others** the claimant No.2-mother is entitled to payment of compensation of ₹5,85,200/- on account of death of Rohit with costs and interest at the rate of 9% per annum from the date of filing of the petition till realization out of which the amount of ₹3,70,300/- awarded to the claimants by the Tribunal on account of death of Rohit shall be liable to be deducted.

27. In both the cases the amount, if any, paid to other claimants shall be liable to be paid by them to claimant No.2-mother of

the deceased. In both the cases 50% of the enhanced compensation shall be payable to the claimant No.2-mother in cash and remaining 50% shall be deposited in FDRs in her name in some nationalized Bank for three years.

28. The appeals are accordingly allowed with costs in terms of the above-said modifications of the award dated 02.11.2011.

(ARUN KUMAR TYAGI)
JUDGE

03.05.2019
Kothiyal

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