IN THE PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH

FAO No.831 of 2012
Date of Decision: 31.01.2019

Harjit Kaur and others. …Appellants

versus

Madhu Malhotra. …Respondents

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

Present :- Mr. Vikram Bali, Advocate for
Mr. Parminder Singh, Advocate
for the appellants.

None for respondent Nos.1 and 3.

Service of respondent No.2 dispensed with vide order dated 31.01.2017.

…

B.S. Walia, J (Oral)

1. Appeal has been filed by the widow, minor son, daughter and parents of Bhupinder Singh, who died in a motor vehicular accident on 12.05.2007. Prayer is for enhancement of compensation of ₹6,87,000/- awarded by the learned Motor Accidents Claims Tribunal, Karnal (hereinafter referred to as 'the Tribunal').

2. None is present on behalf of respondent Nos.1 and 3 despite the case having been called out twice. For that matter even on earlier dates i.e. 26.07.2017, 29.11.2017 and 19.07.2018, none was present on behalf of the respondents. Since the appeal is of the year 2012, therefore, I am not inclined to adjourn the matter any further. With the able assistance of learned counsel for the appellants, I have gone over the record.

3. The learned Tribunal by taking into account the age of the deceased as 37 years, income as ₹5000/- per month, by applying multiplier of '15' and by making deduction of 1/4th from the income of the deceased towards his personal expenses and further by awarding ₹5,000/- on account of loss of consortium to the widow, ₹2,000/- on account of funeral expenses and ₹5,000/- on account of loss of love and affection, awarded total compensation of ₹6,87,000/- along with interest @ 6% per annum from the date of filing of the claim petition till final realization while observing that in case awarded amount was not paid within three months from the date of award, then the awarded amount would carry interest @ 7.5% per annum.

4. Learned counsel contends that the appeal is liable to be allowed, award modified and compensation payable enhanced by taking 40% of the established income of the deceased minus tax component into account for the purpose of future prospects while computing compensation and secondly, by awarding loss of spousal/ parental consortium @ ₹40,000/- to the widow and each of the minor children besides ₹15,000/- on account of funeral expenses and ₹15,000/- on account of loss of estate.

5. Admittedly, the deceased was 37 years of age and was self employed. Therefore, in terms of paragraph No.61 (iv) of the decision of Hon'ble the Supreme Court in National Insurance Company Limited vs Pranay Sethi and others, 2017 (4) RCR (Civil) 1009, 40% of the established income of the deceased minus the tax component is to be taken into account towards future prospects while computing the compensation.

6. Further, 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. Besides, the widow of the deceased i.e. appellant No.1 is entitled to ₹40,000/- on account of loss of spousal consortium. Likewise, in view of the decision of Hon'ble the Supreme Court in Magma General Insurance Co. Ltd vs. Nanu Ram Alias Chuhru Ram, 2018 (4) RCR (Civil) 333, minor children i.e. appellant Nos.2 and 3 are held entitled to ₹40,000/- each on account of loss of parental consortium. However, no compensation is payable to the parents (proforma respondent Nos.4 and 5) on account of loss of filial consortium on account of the deceased being married. However, compensation awarded on account of loss of consortium to appellant Nos.1 to 3 is restricted to ₹1,00,000/- in view of the decision of Hon'ble the Supreme Court in Vimla Devi and others vs. National Insurance Company Ltd. and others 2019 RCR (Civil) 80. As regards award of ₹5,000/- on account of love and affection, the same is not awardable in view of the decision in Pranay Sethi's case (supra).

7. At this stage, learned counsel for the appellants contends that interest awarded @ 6% per annum is on the lower side and is liable to be enhanced to 9% per annum in view of the decision of Hon'ble the Supreme Court in Yadava Kumar vs National Insurance Company Ltd. 2015 SCC (Civil) 133, wherein Hon'ble the Supreme Court was pleased to award interest @ 9% per annum in respect of an accident of the year 2007. Since the accident in the instant case, is also of the year 2007, therefore, it is in

the fitness of things that interest payable is enhanced from 6% to 9% per annum.

8. In the circumstances, the appellants are held entitled to the following compensation:-

Sr. No.	**Head**	**Amount assessed by the Tribunal**	**Amount assessed by this Court**
1	Income	₹5000/-	₹5000/-
2	Future Prospects	Nil	₹2000/- i.e. 40% of ₹5000/-)
3.	Total Income	₹5000/-	₹7000/-
4.	Multiplier applied	15	15
5.	Deduction	1/4th of ₹5000/- i.e. ₹1250/-	1/4th ₹7000/- i.e. ₹1750/-
6.	Dependency	₹3750x12x15=₹6,75,000/-	₹5250x12x15=₹9,45,000/-
7.	Funeral Expenses	₹2,000/-	₹15,000/-
8.	Loss of Estate	Nil.	₹15,000/-
9.	Loss of Consortium	₹5,000/- to widow	₹40,000/- on account of loss of spousal consortium to appellant No.1. ₹40,000/- to appellant Nos.2 and 3 each on account of loss of parental consortium. However, compensation on account of loss of consortium is restricted to ₹1 Lakh in view of the decision in Vimla Devi's case (supra)
9.	Love and affection	₹5,000/-	Nil.
10.	Interest	6% per annum	9% per annum
	Total	₹6,87,000/-	₹10,75,000/-

9. Accordingly, as against the compensation of ₹6,87,000/- awarded by the learned Tribunal, the appellants and proforma respondent Nos.4 and 5 are held entitled to award of compensation of ₹10,75,000/- along with interest @ 9% per annum on the enhanced amount w.e.f. the

date of filing of the claim petition till date of payment, less amount, if any, already paid. Needless to mention, the appellants would be entitled to the award of compensation in proportion to their shares determined by the Tribunal after first making payment of ₹1,00,000/- towards loss of spousal/parental consortium to the wife and children of the deceased i.e. appellant Nos.1 to 3. The Insurance Company shall make the payment to the appellants and proforma respondent Nos.4 and 5 after making deduction of tax liability, if any, qua future prospects, in accordance with the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra).

10. Accordingly, appeal is allowed and award dated 05.11.2011, passed by the learned Tribunal, Karnal is modified to the extent as noted above.

(B.S. WALIA)
JUDGE

31.01.2019
rajesh.k.khurana

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