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

CM Nos.28198-97-CII of 2014 and
FAO No.10229 of 2014

Date of decision: 13.02.2019

Smt. Satwant Kaur and others

….. Appellants

Versus

Sucha Singh and others

….. Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. J.S. Chatrath, Advocate for
Mr. Ashwani Talwar, Advocate for the appellants.

Mr. Suvir Dewan, Advocate for respondent No.3-Insurance Company.

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B.S. WALIA, J. (ORAL)

CM Nos.28198-97-CII of 2014

For the reasons as are mentioned in the applications, the same are allowed. Delay of 133 days in late filing of the appeal and 412 days in re-filing the same is condoned subject to all just exceptions.

FAO No.10229 of 2014

[1] Appeal has been filed by the widow, two minor daughters and parents of Mangal Singh who died in a motor vehicular accident on 05.03.2011 praying for enhancement of compensation of Rs.7,14,684/-

awarded by the learned Motor Accidents Claims Tribunal, Panchkula (hereinafter referred to as ‘the Tribunal’).

[2] Learned counsel for the appellants contended that the appeal was liable to be allowed, award modified and compensation payable enhanced by awarding appropriate compensation on account of funeral expenses, loss of estate besides, loss of spousal and parental consortium as also awarding appropriate interest on the compensation as against interest @ 6% awarded by the learned Tribunal.

[3] Per contra, learned counsel for respondent No.3-Insurance Company contended that established income of the deceased which was taken into account towards future prospects while computing compensation payable was @ 30% whereas in view of the deceased being between the age of 40 to 50 years and self-employed, 25% of the established income of the deceased was to be taken into account towards future prospects while computing compensation payable.

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

[5] Admittedly, the deceased was 48 years of age and was treated as unskilled labourer. Accordingly, notional income of Rs.4502/- per month as is payable to a casual labourer as per the notification issued by the State of Haryana under the Minimum Wages Act for the relevant period was taken into account. Thereafter, by making deduction of 1/4th of the income of the deceased towards his personal expenses on account of five dependents and by applying multiplier of 13 and further by awarding Rs.10,000/- on account of funeral expenses, Rs.10,000/- on account of loss of estate and Rs.10,000/-

on account of loss of spousal consortium, total compensation of Rs.7,14,684/- was awarded.

[6] As per paragraph No.61 (viii) of the decision of Hon'ble the Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009** 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 is entitled to ₹ 40,000/- on account of loss of spousal consortium in accordance with 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 minor children of the deceased on account of loss of parental consortium. Since, the deceased left behind two minor daughters, 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 two minor daughters of the deceased on account of loss of parental consortium. However, no compensation is payable to the mother (i.e. appellant No.4) of the deceased on account of filial consortium in view of the decision of Hon'ble the Supreme Court in Magma General Insurance Company Ltd.'s case (Supra) since the deceased was married.

[7] Faced with the aforementioned position, learned counsel for respondent No.3 – Insurance Company contended that in view of subsequent decision of Hon'ble the Supreme Court in **Vimla Devi and others v. 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 liable to be restricted to ₹ 1,00,000/-.

Accordingly, in the light of the position as noted above, the compensation on account of loss of spousal and parental consortium to the widow and two minor daughters of the deceased is restricted to ₹ 1,00,000/-.

[8] Since, the deceased was 48 years of age, therefore, it is 25% of the established income of the deceased which is to be taken into account towards future prospects while computing the compensation payable and not 30% as was taken into account by the learned Tribunal.

[9] Learned counsel for appellants further contended that interest awarded @ 6% per annum is on the lower side and that minimum of 9% per annum ought to have been awarded.

Hon'ble the Supreme Court in **Smt. Neeta, W/o Kallappa Kadolkar and others v. The Division Manager, MSRTC, Kolhapur, 2015 (3) SCC 590** by relying upon its earlier decision in <u>Municipal Corporation of Delhi, Delhi v. Uphaar Tragedy Victims Association & Ors., 2011 (14) SCC 481</u> was pleased to increase the rate of interest awarded from 8% to 9% per annum.

Accordingly, in the light of the aforementioned decision, rate of interest payable is enhanced from 6% to 9% per annum

[10] 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	₹ 4502/-	₹ 4502/-

2.	Future Prospects	30% of ₹ 4502/- = ₹1350.6/- (i.e. ₹ 1350/-)	25% of ₹ 4502/- = ₹ 1125.5/- (i.e. ₹ 1125/-)
3.	Total Income Assessed	₹ 4502/- + ₹ 1350/- = ₹ 5852/-	₹ 4502/- + ₹ 1125/- = ₹ 5627/-
4.	Multiplier applied	13	13
5.	Deduction (towards personal expenses of deceased)	1/4th of ₹ 5852/- = ₹ 1463.5/- (i.e. ₹1463/-)	1/4th of ₹ 5627/- = ₹ 1406.75/- (i.e. rounded off ₹ 1407/-)
6.	Dependency (Annual)	(₹ 5852/- - ₹ 1463/-) = ₹ 4839/- (per month) and (₹ 4839/- x 12) = ₹52,688/- (Annually)	(₹ 5627/- - ₹1407/-) = ₹ 4220/- (per month) and (₹ 4220/- x 12) = ₹ 50,640/- (Annually)
7.	Compensation awarded by applying multiplier	₹ 52,688/- x 13 = ₹ 6,84,684/-	₹ 50,640/- x 13 = ₹ 6,58,320/-
8.	Loss of consortium	₹ 10,000/-	₹ 40,000/- (widow) ₹ 40,000/- (to each of two minor daughters 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).

9.	Funeral Expenses	₹ 10,000/-	₹ 15,000/-
10.	Loss of Estate	₹ 10,000/-	₹ 15,000/-
11.	Rate of interest	6% per annum	7.5% per annum
Total		**₹ 7,14,684/-**	**₹ 7,88,320/-**

[11] Accordingly, as against compensation of ₹ 7,14,684/- awarded by the Tribunal, the appellants/claimants are held entitled to compensation of ₹ 7,88,320/- along with interest @ 9 % per annum on the enhanced amount with effect from the date of claim petition till date of payment, less payment, if any, made earlier after first making payment of compensation on account of loss of spousal/parental consortium to the widow and the minor daughters of the deceased. Apportionment of compensation shall be made in accordance with the ratio stipulated in the award passed by the learned Tribunal.

[12] Accordingly, appeal is allowed by modifying Award dated 18.12.2012 passed by the learned Tribunal to the extent as noted above.

(B.S. WALIA)
JUDGE

13.02.2019
amit

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