IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.3102 of 2013 (O&M)
Date of decision: 30 .05.2019

Jiwani Devi and others

…. Appellants

Versus

Mahipal and others

….Respondents

CORAM : HON'BLE MR.JUSTICE ARUN KUMAR TYAGI

Present : Mr. Namit Sharma, Advocate for the appellants.

Mr. M.B. Jain, Advocate for respondent No.4-Insurance Company.

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ARUN KUMAR TYAGI, J.

1. The claimants-widow and sons of deceased-Kapoor Singh have filed the present appeal seeking enhancement of the compensation awarded by learned Motor Accidents Claims Tribunal, Jind (for short 'the Tribunal') vide award dated 08.08.2012 passed in **MACT Case No.166 of 2011 titled as Jiwani Devi and others Vs. Mahipal and others** on account of death of Kapoor Singh due to injuries suffered in a motor vehicle accident which took place on 11.03.2011.

2. The claimants filed the above-said claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the M.V. Act') on the averments that on 11.03.2011 at about 10:00 p.m. Kapoor Singh along with Rinku was returning to his village Gusain Khera from Railway Station, Kinana by travelling as pillion riders on motor cycle

bearing registration No.HR-11B-1350 driven by his son Shiv Kumar. Tractor bearing registration No.HR-33-A-8229, owned by respondents No.2 and 3 and insured with respondent No.4, driven by respondent No.1 in a rash and negligent manner on wrong side came from the side of village Gusain Khera and struck against their motor cycle due to which they fell down and suffered multiple injuries resulting into death of Rinku at the spot. Injured Kapoor Singh and Shiv Kumar were shifted to General Hospital, Jind and then referred to PGIMS, Rohtak. However, Kapoor Singh also succumbed to his injuries on the way. FIR No.51 dated 12.03.2011 was registered under Sections 279, 337 and 304-A of the Indian Penal Code, 1980 in Police Station Jind regarding the accident.

3. While pleading that the deceased-Kapoor Singh was aged about 45 years and was earning ₹25,460/- per month by working as cleaner in Northern Railway, Delhi Division and claiming themselves to be dependents and legal representatives of the deceased, the claimants prayed for award of compensation of ₹50 lacs with costs and interest against respondent No.1-driver, respondents No.2 and 3-owner and respondent No.4-insurer of the Tractor.

4. The petition was contested by respondents. In their joint written statement respondents No.1 to 3 while taking preliminary objections as to want of cause of action, mis-joinder and non-joinder of parties, maintainability and petition being collusive denied the accident and their liability. In its written statement respondent No.4 took preliminary objections as to the motor cycle carrying three persons, want of locus standi and cause of action, mis-joinder and non-joinder

of necessary parties, respondent No.1 not having valid and effecting driving licence and breach of the terms and conditions of the insurance policy. Respondent No.4 controverted the material averments made in the petition while pleading that no accident took place of the tractor in question and denied its liability.

5. The dependents of deceased-Rinku and injured-Shiv Kumar filed separate claim petitions under Section 166 of the M.V. Act bearing **MACT Case No.167 of 2011 titled Sunita and others Vs. Mahipal and others** and **MACT Case No.168 of 2011 titled Shiv Kumar and others Vs. Mahipal and others** respectively which were contested by the respondents and tried and disposed of with the above-said claim petition filed by Jiwani Devi and others.

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 Kapoor Singh and Rinku died and Shiv Kumar suffered injuries in accident caused by rash and negligent driving of Tractor bearing registration No.HR-33-A-8229 by respondent No.1. The Tribunal assessed income of deceased-Kapoor Singh as ₹11,450/- per month after deducting HRA and family pension from his gross salary, deducted 1/3rd towards personal expenses, applied the multiplier of 10 and by adding ₹5,000/- towards loss of consortium and deducting amount of ₹55,000/- paid by the department and costs of ₹50,000/- imposed due to deliberate with holding of evidence as to age of the deceased awarded total compensation of ₹8,70,960/- to the claimants with costs and interest at the rate of 9% per annum and

directed respondents No.1 to 4 to pay the compensation amount jointly and severally. In the other connected cases, the Tribunal awarded compensation of ₹4,63,600/- to the legal representatives of deceased-Rinku and ₹99,900/- to injured-claimant Shiv Kumar with costs and interest at the rate of 9% per annum from the date of filing of the claim petition till realization.

7. Feeling aggrieved, the claimants Jiwani Devi and others have filed present appeal for enhancement of compensation.

8. I have heard arguments addressed by learned Counsel for the appellants and learned Counsel for respondent No.4-Insurance Company and have gone through the record.

9. It may be observed at the very outset that in the present case, the findings of the Tribunal as to Kapoor Singh and Rinku having died and Shiv Kumar having suffered injuries due to accident caused by rash and negligent driving of respondent No.1 and joint and several liability of respondents No.1 to 4 to pay the compensation awarded have not been challenged by the respondents by filing any appeal or cross-objections and being based on proper appreciation of the evidence on record, the same are not liable to be interfered with. It may be added here that even though in its written statement respondent No.4 had taken objection as to triple riding on the motor cycle but in the absence of any cross-objections or appeal, adjudication of the question as to whether the same constituted contributory negligence on the part of pillion riders deceased-Kapoor Singh and Rinku or injured-driver Shiv Kumar by recourse to Order 41

Rule 33 of the Code of Civil Procedure, 1908 is neither warranted nor required.

10. Learned Counsel for the appellants has argued that the Tribunal did not properly assess income of the deceased, did not make any addition towards future prospects and applied wrong multiplier of 10 instead of applying multiplier of 11 as per age of the deceased. The Tribunal wrongly deducted amount of family pension, amount of ₹55,000/- paid by the department and amount of ₹50,000/- towards costs for deliberate with holding of evidence as to age of the deceased. The Tribunal awarded meager amount towards loss of consortium and did not award any amount towards loss of estate and funeral expenses. Therefore, the impugned award may be modified and the compensation awarded by the Tribunal may be enhanced.

11. On the other hand learned Counsel for respondent No.4-Insurance Company has argued that the Tribunal awarded just and adequate compensation and the claimants are not entitled to enhancement of the amount awarded. Therefore, the appeal may be dismissed.

12. Learned Counsel for respondent No.4 has alternatively argued that major sons of deceased-Kapoor Singh could not be considered to be dependent on him and only claimants No.1 and 5 could be said to be dependent on him. Further, deceased-Kapoor Singh would have retired on attaining the age of superannuation and his income would have reduced to 50% payable as pension and the multiplier applicable may be split and compensation may be determined accordingly.

13. In the present case, Jiwani Devi widow, Shiv Charan, Amit Kumar and Shiv Kumar (all major) and Somjit (minor) sons of deceased-Kapoor Singh filed the claim petition for award of compensation. In her cross-examination PW-4 Jiwani Devi admitted that her son Shiv Kumar (claimant No.4) is married in Hansi and serving in Delhi and getting ₹10,000/- per month and that both her daughters Sharmila and Paramjit are also married. In view of this admission claimant No.4-Shiv Kumar major married son having independent source of income and married daughters Sharmila and Paramjit not being dependents of the deceased could not be considered to be his legal representatives and are not entitled for payment of compensation for his death. However, PW-4 Jiwani Devi averred in her cross-examination that her other sons are unmarried and students and this evidence has gone unrebutted and unchallenged. Claimant No.1 Jiwani Devi being widow, claimants No.2, 3 and 5 Shiv Charan, Amit Kumar and Somjit sons of deceased-Kapoor Singh being class-I legal heirs dependent on the deceased must be held to be his legal representatives and are therefore, entitled to payment of compensation for his death.

14. So far as the question of income of the deceased at the time of his death is concerned, PW-4 Jiwani Devi testified that deceased was employed as Cleaner in Northern Railway at Delhi and was getting salary of ₹25,460/- per month. Testimony of PW-4 Jiwani Devi is supported by copies of Salary Slips for the month of December, 2010 and January, 2011 Ex.P-8 and Ex.P-9 according to which the deceased was getting total salary of ₹19,138/- including basic pay,

dearness allowance and HRA. The Tribunal deducted out of gross salary of ₹19,138/- of the deceased HRA of ₹2,883/- in view of observations in **Sarita and another Vs. General manger, Haryana Roadways and others, 2003 ACJ (Punjab & Haryana High Court) 1937** and family pension of ₹4,805/- payable to claimant No.1-widow in view of observations in **Bhakra Beas Management Board Vs. Kanta Aggarwal and others 2008(3) RCR (Civil) (Supreme Court) 733** and treated income of the deceased as ₹11,450/- per month. However, it is now well settled that perks and allowances payable to the deceased employee benefiting him/his family members have to be included in computation of his monthly income and amounts deducted on account of HRA, CCA, Medical Allowance, EPF, GIS, LIC, re-payment of loan etc. are not liable to be excluded in such computation of his monthly income. Reference in this regard may be made to **National Insurance Company Ltd. Vs. Indira Srivastava and others, 2008 (1) RCR (Civil) 359; Shyamwati Sharma and others Vs. Karam Singh and others, 2010 (3) RCR (Civil) 741(SC)** and **Ranjana Prakash Vs. Divisional Manager and another, 2011 (4) RCR (Civil) 218.** It is also now well settled that pension payable to widow of the deceased is not liable to be deducted from the amount of compensation payable to the legal representatives of the deceased for loss of dependency. Reference in this regard may be made to **Vimal Kanwar and others Vs. Kishore Dan and others, 2013 (2) RCR (Civil) 945** and **Sebastiani Lakra and others Vs. National Insurance Company Ltd. and another : 2018(4) RCR (Civil) 837.** In view of these judicial precedents the Tribunal erred in making deductions of amount of HRA of ₹2,883/- and amount of ₹4,805/- of pension payable to widow of the deceased in assessment of his monthly income as ₹11,450/- instead of ₹19,138/-.

15. Even though in the claim petition the claimants pleaded that deceased-Kapoor Singh was aged about 45 years at the time of his death and in Post Mortem Report age of deceased-Kapoor Singh was mentioned as 50 years but as per copy of School Leaving Certificate Ex.P-13 produced by the claimants date of birth of deceased-Kapoor Singh was 06.01.1958 and deceased-Kapoor Singh is thereby proved to be aged 53 years at the time of his death.

16. Since, deceased-Kapoor Singh aged 53 years was permanent Government employee, addition of 15% was required to be made in view of the observations made by Hon'ble Supreme Court in para No.61(iii) of its judgment in **National Insurance Company Limited Vs. Pranay Sethi and others : 2017 (4) R.C.R. (Civil) 1009** and the Tribunal erred in not making any addition in income of the deceased towards future prospects. On addition of 15% towards future prospects income of the deceased at the time of his death comes to ₹19,138/- + ₹2,870/- = ₹22,008/-.

17. The Tribunal was required to make statutory deduction of income tax from gross salary of the deceased for assessment of his income. Reference in this regard may be made to the observations in **National Insurance Company Ltd. Vs. Indira Srivastava and others, 2008 (1) RCR (Civil) 359; Shyamwati Sharma and others Vs. Karam Singh and others, 2010 (3) RCR (Civil) 741(SC)** and **Ranjana Prakash Vs. Divisional Manager and another, 2011 (4)**

RCR (Civil) 218. As per income tax rates for the assessment year 2011-12 income tax of ₹10,722/- was deductible on gross salary of ₹2,64,096/- of the deceased. On deduction of income tax, income of the deceased comes to ₹2,53,374/- per annum/₹21,115/- per month.

18. In view of the number of claimants-widow and three sons dependent on the deceased being four and observations made by Hon'ble Supreme Court in para No.14 of its judgment in **Smt. Sarla Verma Vs. Delhi Transport Corporation 2009 (3) R.C.R. (Civil) 77**, 1/4th of the income of the deceased was required to be deducted and the Tribunal wrongly deducted 1/3rd towards his personal expenses. On deduction of 1/4th of the income of the deceased towards his personal expenses annual dependency of the claimants on the deceased comes to ₹21,115/- – ₹5,279/- (1/4th) = ₹15,836/- x 12 = ₹1,90,032/-

19. Hon'ble Supreme Court observed in para No.61(vii) of its judgment in **National Insurance Company Limited Vs. Pranay Sethi and others : 2017 (4) R.C.R. (Civil) 1009** that the age of the deceased should be the basis for applying the multiplier. In view of observations made by Hon'ble Supreme Court in para No.21 of its judgment in **Smt. Sarla Verma Vs. Delhi Transport Corporation 2009 (3) R.C.R. (Civil) 77** and age of the deceased being 53 years, multiplier of 11 was required to be made and the Tribunal wrongly applied multiplier of 10.

20. However, the deceased would have retired after 7 years on attaining the age of superannuation of 60 years and his income would have reduced to 50% payable to him as pension and annual

dependency of claimants No.1 to 3 and 5 would have also reduced to 50%. Therefore, splitting of multiplier of 11 into 7+4 was required to be made and compensation payable to the claimants was required to be arrived at by applying multiplier of 7 to annual dependency of ₹1,90,032/- of the claimants No.1 to 3 and 5 on the deceased which comes to ₹13,30,224/- and multiplier of 4 to annual dependency of ₹95,016/- of the claimants No.1 to 3 and 5 on the deceased which comes to ₹3,80,064/-. Accordingly, compensation for loss of dependency of the claimants No.1 to 3 and 5 on the deceased comes to ₹17,10,288/-

21. It is now well settled that ex gratia amount paid by the employer to widow of the deceased is not deductible out of the compensation payable to his legal representatives. Reference in this regard may be made to **Municipal Corporation and another Vs. Smt. Ajit Kaur and others : 2008 (3) RCR (Civil) (Punjab & Haryana High Court) 29**. Therefore, the Tribunal erred in deducting amount of ₹55,000/- paid to widow of the deceased by the department out of the compensation awarded by it.

22. The Tribunal deducted amount of ₹50,000/- towards costs on the ground of mis-representation and deliberate attempt to withhold evidence as to age of the deceased with intent to seek higher compensation amount. However, in view of the facts and circumstances of the case and also keeping in view the beneficial nature of the social legislation I am of the considered view that imposition of the costs of ₹50,000/- and deduction thereof out of the amount of compensation awarded was not proper.

23. In the present case, the Tribunal merely awarded amount of ₹5,000/- towards loss of consortium and did not award any amount towards funeral expenses and towards loss of estate. In **National Insurance Company Limited Vs. Pranay Sethi and others : 2017 (4) R.C.R. (Civil) 1009,** 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 the said 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 the present case the accident took place on **11.03.2011** and therefore, the amounts under conventional heads will be liable to be reduced by **20%**. 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 **National Insurance Company Limited Vs. Pranay Sethi and others : 2017 (4) R.C.R. (Civil) 1009**. In view of the above judicial precedents, the claimants 1 to 3 and 5 are entitled to award of compensation of ₹32,000/- towards loss of spousal and parental consortium respectively and ₹12,000/- towards funeral expenses and ₹12,000/- towards loss of estate in equal shares.

24. It follows from the above discussion that the claimants No.1 to 3 and 5 are entitled to payment of compensation of ₹17,66,288/- with costs and interest at the rate of 9% per annum from the date of filing of the petition till realization. The amount of ₹8,70,960/- awarded to the claimants No.1 to 3 and 5 by the Tribunal shall be liable to be deducted from the amount calculated as above. Out of the enhanced amount of ₹8,95,328/-, amount of ₹4,45,328/- shall be payable to claimant No.1-widow and remaining amount of ₹1,50,000/- each shall be payable to claimants No.2, 3 and 5. 50% of the amount of their shares shall be paid to them in cash and remaining 50% shall be deposited in FDRs in their names in some nationalized Bank for three years

25. The appeal is, accordingly, allowed with costs in terms of the above said modifications of the award dated 08.08.2012.

30.05.2019
Kothiyal

(ARUN KUMAR TYAGI)
JUDGE

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