IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4664 of 2013
Date of Decision: 29.01.2019

Lalita Devi and others

...Appellants

versus

Mukesh Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Gaurav Gogna, Advocate,
for the appellants.
None for the respondents.

Amol Rattan Singh, J

By this appeal, the appellant- claimants seek enhancement of the compensation awarded by the learned Motor Accident Claims Tribunal, Chandigarh, vide its Award dated 03.05.2013, on account of the death of Lal Singh, in a motor vehicle accident that is stated to have taken place on 24.06.2010.

As per the claimants, on 24.06.2010 (at about 10:30 PM), Lal Singh (deceased) was going from Daddu Majra Colony to Sector-23, Chandigarh, via Sector-25, Bhaskar Colony, in his Maruti car bearing registration no.HR-03-D-9676, alongwith his brother-in-law Ram Bhawan and one Ram Jagat, to attend the marriage reception.

When the car, driven by Lal Singh, had crossed the small crossing (*chowk*) at Sector-25/38 junction, going towards Bhaskar *chowk*, a truck driven negligently came from in front of the car and hit it.

The front side of the car was damaged, with Lal Singh “”clutched” (*sic*) under the steering wheel of the car.

Ram Bhawan is stated to have called the police, with the deceased taken to the Government Hospital, Sector-16, Chandigarh, where he unfortunately died on 12.07.2010, i.e. about 18 days later.

FIR no.253 dated 25.06.2010 was registered at Police Station Sector-39, Chandigarh, qua the accident, at that stage making out offences punishable under Sections 279/337 of the Indian Penal Code.

2. As per the appellant-claimants, Lal Singh was 32 years of age and was a medical practitioner running his clinic from house no.1962, Mauli Jagran colony, Chandigarh, and was also carrying on the “business of iron”, thereby earning Rs.30,000/- per month. The claimants, i.e. his wife, two children and mother, were stated to be solely dependent on that income, which was lost to them on account of his untimely death.

They consequently filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking a compensation of Rs.30,00,000/- alongwith interest @ 24% per annum thereupon.

3. Upon notice issued, the respondents, i.e. the driver and the owner of the truck bearing registration no.HR-01-A-9193, filed a written statement claiming that a 'false claim petition' had been filed and actually the accident had taken place due to negligent driving by Lal Singh himself.

Respondent no.1 on the other hand was contended to be a skilled driver employed by respondent no.2, after duly testing his driving skills.

The FIR registered against respondent no.1 was also stated to be a 'false one'.

4. On the aforesaid pleadings of the parties, the following issues

were framed by the learned Tribunal:-

> "1. Whether the accident dated 24.06.2010 causing the death of Lal Singh has occurred on account of rash and negligent driving of vehicle bearing registration No.HR-01-A-9193 being driven by respondent No.1? OPP
>
> 2. If issue No.1 is proved in favour of the claimants, whether the claimants are entitled for compensation, if so, how much and from whom? OPP
>
> 3. Relief."

5. By way of evidence, the claimants mainly relied upon the FIR as Ex.C1/12, as also the testimony of the aforesaid Ram Bhawan and Ram Jagat, as PWs4 and 2 respectively.

The respondents on the other hand examined respondent no.2 as RW1 and respondent no.1, i.e. Mukesh Kumar (the driver of the truck), as RW2. Both of them testified in terms of their written statements.

6. Upon appraising the evidence, the learned Tribunal found that PW4 had testified in terms of the pleadings in the claim petition, further stating that he was sitting beside the driver, with Ram Jagat sitting on the rear seat, when the accident took place at the aforementioned inter-section, on account of the negligent driving of respondent no.1, whose truck came from the front side and struck against the car.

He further testified that Lal Singh was taken out from the car after great effort, upon which Ram Jagat made a call to the police at the emergency number, with the truck driver also having disclosed his name to be Mukesh Kumar.

He further testified that the police van came to the spot upon which the injured was shifted to the General Hospital, but before the police came there, the driver had run away.

PW2 Ram Jagat also testified essentially to the same effect, with the learned Tribunal having found that nothing adverse could be elicited from their cross-examinations.

7. As regards the testimonies of the respondents, respondent no.2, i.e. the owner of the vehicle, not having been present at the spot, his testimony with regard to the manner of the accident was not considered relevant by the Tribunal. In the cross-examination of RW2, i.e. the driver of the truck, it was found that he was facing a criminal trial, with no complaint made by him to any higher authority that he had been falsely implicated.

8. Consequently, on the basis of the testimonies of the two eye witnesses appearing for the claimants, respondent no.1 was held guilty of being negligent in driving, leading to the accident, due to which Lal Singh unfortunately died, with the post mortem report, Ex.C1/114 also showing that his death had occurred due to the injuries sustained in a motor vehicle accident.

9. As regards the income of the deceased, it was found that from the testimony of PW3, Paramjeet Kaur, who was an employee of the Income Tax Department, the deceased had been assessed to income tax as per the returns filed by him for the assessment years 2005-06 till 2008-09, with the said returns proved as Exs.PW3/A to PW3/D.

The said witness not having been cross-examined, her testimony, seen with the income tax returns, was accepted; with the Tribunal recording a finding that the annual income of the deceased, for the said years, was as follows:-

i)	Assessment year 2005-06 (Ex.PW3/A)	Rs.86,875/-
ii)	Assessment year 2006-07 (Ex.PW3/B)	Rs.97,705/-

iii) Assessment year 2007-08 (Ex.PW3/C) Rs.1,05,736/-

iv) Assessment year 2008-09 (Ex.PW3/D) Rs.1,08,000/-

10. On the basis of the aforesaid income shown in the returns, the Tribunal, observing that sometimes the income was less than Rs.1,00,000/- and eventually was Rs.1,08,000/-, held that the average thereof should be taken to be the actual income of the deceased, which amount was worked out to Rs.99,579/-.

11. The income of the deceased as a medical practitioner was found to be further acceptable, as a certificate (Ex.PB) was proved, allowing Lal Singh to practice in the Ayurvedic and Unani systems of medicine, with another certificate, Ex.PC, also authorising him to practice in the Electrohomoeopathic system of medicine.

Similarly, Ex.PD was found to be his registration certificate, with Ex.PE being a Diploma in Community Medical Services and Essential Drugs.

12. The age of the deceased was taken to be 33 years on the basis of the aforesaid documents, with the contention that he was 32 years of age rejected by the Tribunal.

13. After discussing judgments on the issue (prior to the judgment in **National Insurance Company Limited v. Pranay Sethi** (2017) 16 SCC 680), the Tribunal came to the conclusion that no compensation for loss of an increased income in the future could be granted, and also deducting 1/4th from the annual income of Rs.99,579/- towards the personal expenses of the deceased, as per the ratio of the judgment cited in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another** (2009) 6 SCC 121, a conclusion was drawn that the loss of annual dependent income came to Rs.74,684/-.

To that, a multiplier of 15 was applied, thereby coming to a total loss of income of Rs.11,20,260/-

14. Medical bills Ex.C-1/15 to Ex.C-1/115 were also found to have been duly proved, for the period that Lal Singh remained in hospital from 24.06.2010 to 12.07.2010, and consequently that sum was also included in the compensation to be paid.

15. Other than that, Rs.10,000/- was awarded towards transportation and last rites expenses and another Rs.10,000/- for loss of consortium, thereby brining the total compensation awarded to be Rs.12,36,965/-.

16. Thus, vide this appeal, the appellants seek enhancement of compensation so awarded vide the impugned Award.

Despite learned counsel for the respondents having been informed of the dates of hearing twice, i.e. pursuant to orders dated May 31, 2017 and January 15, 2019, he has chosen not to appear (after May 27, 2016) and consequently, the respondents are proceeded against *ex parte.*

17. On January 15, 2019, learned counsel for the appellants had pointed out that even in terms of the ratio of the judgment of the Constitution Bench in *Pranay Sethis'* case (supra), the compensation payable would be much higher, with him still further contending that thereafter in **Magma General Insurance Co. Ltd. v. Nanu Ram @ Chuhru Ram and others** 2018 (4) Rcr (Civil) 333, the Supreme Court had granted even higher compensation under the head of loss of consortium.

However, the contention with regard to higher compensation payable by citing the judgment in *Magma General Insurances'* case was rejected by this court on that date itself, with the following order passed:-

> "As regards the contention on compensation to be paid in terms of the

> judgment of the Supreme Court passed in **Magmas'** case (supra), whereas the basic premise is correct because even in **Magmas'** case it is held that compensation under the 'conventional heads' is to be paid as per the ratio of the judgment in **Pranay Sethis'** case (supra), however, his contention that higher compensation than what has been held to be payable in **Pranay Sethis**, is payable, is a contention to be rejected, the Rs.10,000/- awarded in **Magmas'** case to the claimants in that case, over and above Rs. 70,000/-, was by exercise of jurisdiction by the Supreme Court under Article 142 of the Constitution, in the specific circumstances of the case, where it was the father and sister of the deceased who were to be given that compensation."

18. Thereafter, it had been however held by this court that even as per the ratio of the judgment in *Pranay Sethis'* case, the appellants would be entitled to a compensation of Rs.18,84,400/-, even after restricting compensation to be paid under the heads of loss of consortium, loss of estate and towards funeral expenses to Rs.70,000/- in all.

This was held to be so for the reason that as per the last income tax returns filed by Lal Singh, for the assessment year 2008-09 (more than one year prior to his death), his income was shown to be Rs.1,08,000/- annual.

Hence, this court was of the opinion that his income having been shown to be steadily increasing since 2005-06, as per the income tax returns duly exhibited, the Tribunal had erred in arriving at the annual income by taking the average income between the years 2005-06 to 2008-09; consequently, taking the income of the deceased to be as per his last return filed, i.e. Rs.1,08,000/- per annum, it was computed to be Rs.18,84,400/-, with the details of such compensation now being given, (with it to be stated here that in terms of the ratio of the judgment in *Pranay Sethi's* case (supra), as regards the loss of prospects of an increased income in the future, deceased Lal Singh having been a self-employed person below 40 years of age, 40% of his annual income is to be added under that head).

Hence, the breakup of, and total compensation, is awarded as under:-

	Enhanced by this Court
Annual income as per ITR	Rs.1,08,000/-
Dependents	5
Deduction towards personal expenses of deceased	@ ¼ Rs.27,000/-
After deduction	Rs.81,000/-
Loss of future prospects @ 40%	Rs.32,400/-
Loss of annual Income	Rs.1,13,400/-
Multiplier (as per Sarla Vermas' case)	16
Loss of total income to the appellants	Rs.18,14,400/-
Funeral expenses	Rs.15,000/-
Loss of consortium	Rs.40,000/-
Loss of estate	Rs.15,000/-
Total amount	Rs.18,84,400/-
Medical bills	Rs.96,705/-
Total	19,81,105/-
Enhancement over and above compensation given by the Tribunal.	Rs.7,44,136/-

19. It is to be noticed here that this court has accepted the amount of Rs.96,705/- awarded by way of medical expenses to the claimants, firstly in view of the fact that no appeal having been filed challenging the findings of the Tribunal has been brought to my notice, and in any case, such compensation being on the basis of bills duly exhibited before the Tribunal, I see no reason to interfere with them, learned counsel for the respondents having chosen not to appear, despite specific information having been given to him to appear, after May 2016.

20. The appeal is therefore allowed to the aforesaid extent of enhancement of compensation by Rs.7,44,136/- over and above what was awarded by the Tribunal, with the enhanced compensation to carry interest @

6% per annum, running from the date of the filing of the claim petition till the date of its realization.

No order is being passed with regard to the costs of this appeal.

January 29, 2019 **(AMOL RATTAN SINGH)**
vcgarg/dinesh **JUDGE**

1.Whether speaking/reasoned? Yes

2. Whether reportable? Yes