IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.915 of 2013
Date of decision : 15.11.2019

Neelam and others

…. Appellants

Versus

Amit Kumar and others

….Respondents

CORAM : HON'BLE MR.JUSTICE ARUN KUMAR TYAGI

Present : Mr. Surinder Dagar, Advocate for the appellants.

Mr. Vinod Chaudhri, Advocate for respondent No.3.

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ARUN KUMAR TYAGI, J.

1. The claimants Neelam-widow, Uday @ Omkar Parsad-minor son, Chhaya-minor daughter, Jawahar Lal-father and Omwati @ Hariom Devi-mother of deceased-Shashi Kant have filed the present appeal seeking enhancement of the compensation awarded by learned Motor Accident Claims Tribunal, Gurgaon (for short 'the Tribunal') vide award dated 06.11.2012 passed in **MACT Petition No.48 of 2012 titled as Neelam and others Vs. Amit Kumar and others** on account of death of Shashi Kant due to injuries suffered in a motor vehicle accident which took place on 23.04.2012.

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 23.04.2012 at about 8:00 p.m. deceased-Shashi Kant along with Rajesh Rana was standing at 17/18 red light old Delhi road for waiting of passengers. When the deceased was

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crossing the road for drinking water, motor cycle bearing registration No.KA-05-HJ-5587, owned by respondent No.2 and insured with respondent No.3, came from old Delhi road Sector 17/18 divider road to IFFCO Chowk driven by respondent No.1 in a rash and negligent manner and hit the deceased due to which he fell down and suffered multiple injuries. The deceased was admitted in Artemis Hospital, Gurgaon where he died on the next day. FIR No.52 dated 24.04.2012 was registered under Sections 279 and 304-A of the Indian Penal Code, 1860 at Police Station Section 17/18, Gurgaon.

3. While pleading that the deceased-Shashi Kant was aged about 36 years and earning ₹15,000/- per month by driving a three wheeler and claiming themselves to be dependents and legal representatives of the deceased, the claimants prayed for award of compensation of ₹20 lacs with costs and interest at the rate of 18% per annum against respondents No.1 to 3 jointly and severally.

4. The petition was contested by respondents. In their joint written statement respondents No.1 and 2 denied their liability pleading that in the eventuality of the Tribunal holding that the accident took place, respondent No.3 is liable to pay the compensation. In its written statement respondent No.3 took preliminary objections qua locus standi, respondent No.1 not having valid and effecting driving licence, breach of the terms and conditions of the insurance policy, mis-joinder and non-joinder of necessary parties, controverted material averments made in the petition and denied its liability.

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5. 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 learned Counsel for the parties the Tribunal held that Shahi Kant died due to injuries suffered in accident caused by rash and negligent driving of motor cycle bearing registration No.KA-05-HJ-5587 by respondent No.1. The Tribunal assessed income of the deceased-Shashi Kant as ₹4,847/- per month, deducted 1/4th as contribution of deceased towards his family, applied the multiplier of 15 and by adding ₹10,000/- towards loss of consortium ₹39,435/- towards medical treatment of the deceased and ₹10,000/- towards funeral expenses awarded total compensation of ₹7,13,780/- to the claimants with costs and interest at the rate of 7.5% per annum and directed respondents No.1 to 3 to pay the compensation amount jointly and severally.

6. Feeling aggrieved, the claimants have filed present appeal for enhancement of compensation.

7. 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.

8. In the present case, the findings of the Tribunal as to death of Shashi Kant due to injuries suffered in the accident caused by rash and negligent driving of motor cycle bearing registration No.KA-05-HJ-5587 by respondent No.1 having valid and effective driving license and the claimants No.1, 2, 3 and 5 being entitled to recover compensation for death of Shahi Kant from respondents No.1 to 3 jointly and severally have not been challenged by the respondents by filing

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appeal, cross-objections or even during arguments and the same being based on proper appreciation of evidence are not liable to be interfered with.

9. Learned Counsel for the appellants has argued that the Tribunal did not properly assess income of the deceased and applied wrong multiplier. The Tribunal awarded lesser amount towards medical treatment, loss of consortium and funeral expenses and did not award any amount towards loss of estate. The Tribunal went wrong in holding that Jawahar Lal-father of the deceased was not dependent on him. The Tribunal also awarded lesser rate of interest. Therefore, the impugned award may be modified and the compensation awarded by the Tribunal may be enhanced.

10. On the other hand learned Counsel for respondent No.3-Insurance Company has argued that the Tribunal has awarded just and adequate compensation and the claimants are not entitled to enhancement of the amount awarded. Therefore, the appeal may be dismissed.

11. In the claim petition the claimants pleaded that deceased-Shashi Kant was earning ₹15,000/- per month by driving a three wheeler. PW-4 Neelam widow of deceased-Shahi Kant and PW-5 Rajesh Rana have testified that the deceased was earning ₹15,000/- per month by driving three wheeler of Vijay Yadav on rent. Their testimony as to the deceased being three wheeler driver is corroborated by copy of driving licence of the deceased Mark-A valid for driving of LTV but their testimony as to quantum of his income is not supported by any other oral or documentary evidence. The

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claimants have not examined Vijay Yadav and have not produced copy of his bank account statement or accounts maintained by him regarding fare earned, rent paid and other expenses incurred. Therefore, their testimony as to quantum of his income cannot be relied upon. However the deceased cannot be said to be unskilled labourer and assessment of his income by the Tribunal as unskilled labourer cannot be said to be proper. In view of the rates of minimum wages payable to skilled labourer in Haryana as ₹5497.17/- during the relevant period, income of the deceased was required to be assessed by the Tribunal and is accordingly assessed as ₹5,500/- per month. Further, the Tribunal did not make any addition 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** and age of the deceased being 37 years addition of 40% was required to be made towards future prospects. When so added, income of the deceased comes to (₹5,500/- + ₹2,200/-=) ₹7,700/- respectively.

12. So far as the question of dependency of claimant No.4-father of deceased-Shashi Kant is concerned, Smt. Neelam-widow of the deceased while appearing as PW-4 testified that her father-in-law is retired person and it is thereby proved that claimant No.4-father of the deceased being a retired person would be getting pension. Therefore, claimant No.4-father of the deceased cannot be considered to be dependent on the deceased. In view of the observations made by Hon'ble Supreme Court in para No.14 of its judgment in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**

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2009 (3) R.C.R. (Civil) 77 and the number of claimants dependent on the deceased being four, deduction of 1/4th is required made towards his personal expenses. On such deduction annual dependency of the claimants on the deceased comes to ₹7700 – ₹1925 (1/4) = ₹5775 X 12 = ₹69,300/-.

13. 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. In the present case deceased-Shashi Kant was proved to be aged 37 years at the time of his death as per his date of birth i.e. 12.03.1975 mentioned in his driving licence Mark-A. In view of the age of the deceased being 37 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 15 is required to be applied. When multiplier of 15 is applied to annual dependency of the claimants on the deceased, compensation payable for loss of dependency comes to (₹69,300 X 15 =) ₹10,39,500/-

14. So far as the claim of the appellant for expenses relating to treatment, hospitalization and medicines is concerned, Smt. Neelam-widow of the deceased while appearing as PW-4 testified that she has spent more than ₹60,000/- on treatment, transportation and last rites of the deceased. The testimony of PW-4 Smt. Neelam is corroborated by the testimony of PW-1 Sarita, Associate Medical Record Department, Artemis Hospital, Gurgaon who testified that deceased-Shashi Kant was admitted in the hospital from 23.04.2012 to 24.04.2012 and proved bill Ex.P3 for ₹39,435/-. The appellants have not produced any

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other bill or receipt to show that they have incurred any further amount on the medical treatment of deceased-Shashi Kant. In the facts and circumstances of the case, amount of ₹39,435/- awarded to the appellants by the Tribunal towards expenses incurred on the medical treatment of deceased-Shashi Kant cannot be said to be unjust and inadequate.

15. In the present case, the Tribunal merely awarded amount of ₹10,000/- towards loss of consortium and ₹10,000/- towards funeral expenses and did not award any amount towards loss of estate. 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 **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)**.

16. It may also be observed here that in **Pranay Sethi's Case (Supra) decided on 31.10.2017** Hon'ble Supreme Court directed that

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the amounts on conventional heads should be enhanced at the rate of 10% in every three years. As a corollary to above observations of Hon'ble Supreme Court regarding enhancement of the amounts under conventional heads at the rate of 10% in every three years for assessment of compensation in cases arising in future, the figures on conventional head 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 **23.04.2012** and therefore, the amounts under conventional heads will be liable to be reduced by **10%**.

17. Accordingly, the claimants-widow, minor children and mother of the deceased will be entitled to award of compensation of ₹36,000/- towards loss of spousal, filial and parental consortium, respectively, ₹13,500/- towards funeral expenses including transportation of the dead body and ₹13,500/- towards loss of estate in equal shares.

18. Accordingly, compensation payable to claimants No.1, 2, 3 and 5 on account of death of Sashi Kant is tabulated as under:-

Sr. No.	**Head**	**Compensation**
1.	Monthly income of the deceased	₹5,500/- per month
2.	Income after addition of future prospects at the rate of 40%	₹5500 + ₹2200 = ₹7,700/-
3.	Deduction of 1/4th on account of personal expenses	₹7700 – ₹1925(1/4) = ₹5,775/-
4.	Annual Dependency	₹5775 x 12 = ₹69,300/-
5.	Loss of Dependency	₹69300 x 15 = ₹10,39,500/-
6.	Medical Expenses	₹39,435/-
7.	Funeral Expenses	₹13,500/-

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8.	Compensation payable for loss of spousal, parental and filial consortium	₹36,000/-
9.	Loss of Estate	₹13,500/-
	Total Compensation	₹11,41,935 **/-**

19. In the present case, the Tribunal directed the payment of compensation amount with interest at the rate of 7.5% 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.

20. 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. 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."

21. In **Supe Dei and others Vs. National Insurance Company Ltd. and another 2009 (4) SCC 513**, Hon'ble Apex Court

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held that 9% per annum would be the appropriate rate of interest to be awarded in Motor Accidents Claims compensation cases.

22. 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.

23. In view of the observations in above referred judicial precedents, RBI's lending rate of interest, mercantile rate of interest prevalent, rate of interest allowed by Nationalized Banks on fixed deposit receipts, rate of interest payable on personal loan taken from Nationalized Banks and other relevant factors, it will be appropriate to modify the rate of interest of 7.5% per annum awarded by the Tribunal to 9% per annum.

24. It follows from the above discussion that claimants No.1, 2, 3 and 5 are entitled to payment of compensation of ₹11,41,935/- with costs and interest at the rate of 9% per annum from the date of filing of the petition till realization. The amount of ₹7,13,780/- awarded to the claimants by the Tribunal shall be liable to be deducted from the amount calculated as above. Out of the enhanced amount of ₹4,28,155/- amount of ₹2,03,155/- shall be payable to claimant No.1-widow and amount of ₹75,000/- each shall be payable to claimants No.2, 3 and 5. On realization 50% of the enhanced compensation as per shares of claimants No.1 and 5 shall be payable to them in cash and remaining 50% shall be deposited in FDRs in their names in some nationalized Bank for three years. The amount of the shares of minor claimants No.2 and 3 shall be deposited in FDRs fetching maximum

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rate of interest in some nationalized bank till attaining of majority by them and on attaining of majority they shall be entitled to payment of the same with accrued interest without the requirement of passing of any further order in this regard by this Court or the Tribunal

25. The appeal is, accordingly, allowed with costs in terms of the above said modifications of the award dated 06.11.2012.

15.11.2019 **(ARUN KUMAR TYAGI)**
kothiyal **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

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