IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.6163 of 2014 (O&M)
Date of Decision: 29.08.2019

Narain Singh and another ....Appellants

Vs.

Gurminder Singh and others ....Respondents

CORAM: HON'BLE MR.JUSTICE DR. RAVI RANJAN

Present:- Mr.Yogesh Saini, Advocate, for
Mr.Suveer Sheokand, Advocate, for the appellants.

Mr.Gaurav Sharma, Advocate, with
Mr.N.K.Manchanda, Advocate, for respondent No.1.

Ms.Kulvinder Pal Kaur, Advocate, for
Mr.Surinder Gandhi, Advocate, for respondent No.2.

Mr.Gopal Mittal, Advocate, for respondent-Insurance Company.

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DR. RAVI RANJAN, J.

I have heard learned counsel for the appellants and respondents and perused the record of this case.

This appeal has been preferred by the claimants/appellants for enhancement of the amount awarded by the Motor Accident Claims Tribunal, Ludhiana, vide Judgment and Award dated 24.03.2014 passed in MACT Case No.63 of 2010.

Brief facts of the case are that the deceased Gurdeep Singh aged about 16 years, who used to help his father in his work, was going on his bicycle at about 8:30 a.m., to deliver milk. He was being followed by claimant No.1 Narain Singh (father of the deceased) and Chand Singh on their respective bicycles. At about 9:00 a.m. when Gurdeep Singh reached near the turning point of village Jalaldiwal, one bus which was being driven in rash and negligent manner by respondent No.1, came from the side of

Barnala and rammed into the bicycles of Gurdeep Singh and Chand Singh and ran over them resulting in immediate death of both Gurdeep Singh and Chand Singh. According to the claimants, the accident was witnessed by one Jasbir Singh. FIR was registered in Police Station Raikot against the driver of the offending bus on the basis of statement made by the father of the deceased (claimant No.1). The offending bus was owned by respondent No.2 and was insured by United India Insurance Company-respondent No.3. The claimants filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 on account of the death of the aforesaid Gurdeep Singh in motor vehicular accident.

The claim was contested by respondent Nos.1 and 2 who filed their joint written statement taking diverse objections including the issue of maintainability. According to them, the bus was not involved in the accident as alleged by the claimants and a false FIR was registered by the police at the behest of the claimant No.1. Other averments made in the claim petition were also denied.

Respondent No.3(Insurance Company) also filed a written statement taking diverse objections including the issue of maintainability and other preliminary issues. However, it also claimed that the driver of the offending bus was not holding a valid and effective driving licence and there was no valid route permit for the offending bus. The involvement of the offending bus in the concerned accident was also denied.

The Tribunal has answered the issues framed by it holding the driver of the offending bus to be rash and negligent in driving which had caused the concerned motor vehicular accident resulting in death of Gurdeep Singh S/o claimant No.1-Narain Singh and has further held that the claimants would be entitled for a compensation amount of Rs.2,56,000/- along with interest @ 6% per annum to be calculated from the date of filing of the claim petition till the date of realization of the amount.

It has been informed by learned counsel for the Insurance Company that it has not preferred any appeal assailing the impugned judgment and award. The appellant has filed this appeal only for the purpose of enhancement of the awarded amount on the certain grounds, as such, the finding recorded by the Tribunal with respect to the involvement of the offending vehicle in the concerned motor vehicular accident resulting in death of Gurdeep Singh is not required to be dealt with in the present appeal as there is no challenge to such finding by any of the parties.

On the point of enhancement of Award, it has been submitted on behalf of appellant that the Tribunal has erroneously assessed the income of the deceased to be Rs.3000/- as even if the minimum wages fixed by the competent authority of the State Government is taken into account for that purpose, that would be definitely about Rs.3500/-. However, on this issue it is contended by the learned counsel for the Insurance Company that such amount cannot exceed Rs.3398/- which was the monthly minimum wages fixed in the State of Punjab w.e.f. 01.09.2009, the date of accident being 29.11.2009. The second issue raised on behalf of appellant is that nothing towards the future prospects has been added while calculating the dependency which, according to the decision of a Constitution Bench of the Hon'ble Apex Court rendered in **National Insurance Co Ltd., Vs. Pranay Sethi and others, 2013 ACJ 1423,** should be 40% of the established income if the deceased was below the age of 40 years in the cases of being self employed or on a fixed salary. The third point which has been raised on behalf of appellant is with respect to selection of multiplier. It is stated that the Tribunal has erroneously considered the age of the claimants, who are parents of the deceased, for selection of multiplier and thus, has wrongly chosen the multiplier of 14 whereas in accordance with the decision of the Hon'ble Apex Court rendered in **Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77**, it should be calculated keeping the age of the deceased in view and, thus, it should be 18. It is next contended that only Rs.4,000/- has been awarded under the conventional heads whereas according to the **Pranay Sethi (supra)**, the amount should be Rs.70,000/-.

Learned counsel appearing for the respondents are not in a position to controvert the aforesaid submissions raised on behalf of the appellant. In my view, though the minimum wages available to a unskilled person on the date of accident was Rs.3398/- per month, it can be taken to be Rs.3500/- after rounding off.

So far the future prospects is concerned, 50% of the aforesaid amount would have to be deducted towards personal expenditure of the deceased but 40% of the established income would have to be added under the head of future prospects. Similarly, as per the law laid down by the Apex Court in **Sarla Verma (supra),** a multiplier of 18 should have been selected by the Tribunal. That apart, under the conventional heads, the claimants-appellants would be entitled for Rs.15,000/- under the sub-head of Funeral expenses and again Rs.15,000/- as against the sub head of loss of estate. So far the consortium part is concerned, the Apex Court in its another judgment rendered in **Magma General Insurance Company Vs. Nanu Ram alias Chuhru Ram and Ors. 2018 (4) R.C.R. (Civil) 333,** after considering the

Constitution Bench judgment of the Apex Court in **Pranay Sethi (supra),** has made a classification of the consortium part. The Hon'ble Supreme Court has come to a conclusion that there would be three types of consortium which would be available to the claimants. First is the spousal consortium which would be for the loss of one of the spouse and would be available to the living spouse. Second would be parental consortium which would be available to the children if they lose both or one of their parents in a motor vehicular accidents. The last one would be filial consortium which would be available to the parents for the loss of child or children.

In the case in hand both the parents are the claimant of the deceased Gurdeep Singh, thus, they would be entitled for filial compensation of Rs.40,000/- each as per the decision rendered by Apex Court in **Magma General Insurance (supra).**

Accordingly, the awarded amount is recalculated as under:

Head	**Compensation awarded**
i. Income	Rs.3500/-
ii. Future prospects	Rs.3500/- + Rs.1400/-(i.e. 40% of the income)=Rs.4900/-
iii. Deduction towards personal expenditure	Rs.2450/- (i.e. 50% of the Rs.4900/-)
iv.Total income	Rs.2450/-
v. Multiplier	18
vi. Loss of future income	Rs.2450/- X 12 X 18= Rs.5,29,200/-
vii. Funeral expenses	Rs.15,000/-
viii. Loss of estate	Rs.15,000/-
ix. Loss of Filial Consortium	Rs.80,000/- (Rs.40,000/- each payable to respondent Nos.1 and 2)
Total compensation awarded	Rs.6,39,200/-
Enhanced amount of compensation	Rs.6,39,200/- -- Rs.2,56,000/-= Rs.3,83,200/-

In my considered view, interest part is also required to be increased from 6% to 9% per annum to be calculated from the date of filing of application under Section 166 of the Act, till the date of realization.

In the result, this appeal is allowed to the extent as indicated above. However, there would be no order as to costs.

(DR. RAVI RANJAN)
JUDGE

29.08.2019
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No

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