IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM No.20037-CII of 2014 in/and
FAO No.7464 of 2014 (O&M)
Date of Decision: 26.02.2019

Reena Chaudhary and others ...Appellants

Versus

Ram Karan and others ....Respondents

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

Present: Mr. Sunil Dixit, Advocate for
Mr. Vikram Bali, Advocate for the appellants.

Mr. R.K. Bashamboo, Advocate for respondent No.3.

None for respondent Nos.1 and 2.

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<u>B.S.WALIA, J (Oral)</u>.

CM No.20037 of 2014

For the reasons as are mentioned in the application, the same is allowed. Delay of 24 days in late filing of the appeal is condoned subject to all just exceptions.

CM No.2695-CII of 2016

Despite publication of notices, none has put in appearance on behalf of respondent Nos.1 and 2. Accordingly, they are proceeded ex parte.

FAO No.7464 of 2014

1. Appeal has been filed by the widow and two children of Rajeev Chaudhary, who died in a motor vehicular accident on 03.06.2010,

seeking enhancement of compensation of ₹35,34,400/- awarded by the learned Motor Accidents Claims Tribunal, Panchkula (hereinafter referred to as 'the Tribunal').

2. Learned counsel for the appellants contendeds that the appeal is liable to be allowed, award modified and compensation payable enhanced by taking into account 40% of the established income of the deceased minus tax component for the purpose of future prospects while computing the compensation payable instead of 30% taken into account by the Tribunal, secondly by awarding appropriate compensation under conventional heads and lastly by holding the Insurance Company liable to first pay compensation to the appellants with liberty to recover the same from the driver and owner of the offending vehicle in view of the decision of Hon'ble the Supreme Court in National Insurance Company Ltd. vs. Swaran Singh and others 2004 (2) RCR (Civil) 114.

3. Per contra, learned counsel for respondent No.3/Insurance Company though has not disputed addition of 40% of the established income of the deceased towards future prospects while computing compensation besides appropriate compensation under conventional heads, contends that the findings returned by the learned Tribunal regarding liability of the driver and owner of the offending vehicle to pay compensation is liable to be maintained.

4. I have heard the submissions of learned counsel for the parties.

5. As per paragraph No.61 (iv) of the decision in National Insurance Company Ltd. versus Pranay Sethi and others, 2017(4) RCR (Civil) 1009, it was held that where the deceased is below 40 years of age,

40% of the established income of the deceased less tax component is to be added on account of future prospects while computing compensation.

Since in the instant case deceased was self employed and was less than 40 years of age, therefore, 40% of the established income of the deceased minus tax component is liable to be added on account of future prospects while computing compensation and not 30% as ordered by the Tribunal.

6. As regards the plea for appropriate compensation under conventional heads, it needs noticing that as per paragraph No.61 (viii) of the decision in Pranay Sethi's case (supra), compensation of ₹15,000/- and like amount is payable on account of funeral expenses and loss of estate as also ₹40,000/- on account of loss of spousal consortium, while as per paragraph No.8.7 of the decision of Hon'ble the Supreme Court in Magma General Insurance Co. Ltd vs. Nanu Ram Alias Chuhru Ram 2018 (4) RCR (Civil) 333, each of the children of the deceased are entitled to ₹40,000/- on account of loss of parental consortium.

7. However, as per latest judgment of Hon'ble the Supreme Court in Vimla Devi and others vs. National Insurance Company Ltd. and others 2019 (1) RCR (Civil) 80, compensation on account of loss of spousal/ parental consortium involving a widow and two minor children was restricted to ₹1 Lakh.

8. In the light of position as noted above, the appellants are held entitled to award of ₹15,000/- on account of funeral expenses, ₹15,000/- on account of loss of estate besides ₹1,20,000/- i.e. ₹40,000/- to the wife and two children of the deceased on account of loss of spousal/parental

consortium. However, compensation on account of loss of consortium is restricted to ₹1 Lakh in view of the decision of Hon'ble the Supreme Court in Vimla Devi's case (supra).

9. Although the Tribunal recorded that in view of the driver and owner of the offending vehicle having been proceeded ex parte, consequently driving license of the driver not having come on record, the Insurance Company was not liable and it was only the owner and driver of the offending vehicle who were liable to pay compensation, yet, in view of the decision of Hon'ble the Supreme Court in Swaran Singh's case (supra), it is the Insurance Company, which is liable to first make payment of compensation with liberty to recover the compensation paid by it from the driver and owner of the offending vehicle. The aforementioned judgment of Hon'ble the Supreme Court in Swaran Singh's case (supra) was followed by a Coordinate Bench of this Court in FAO No.10473 of 2014, in case titled 'Parminder Singh vs. Jagtar Singh @ Kaka and others' decided on 20.09.2017. Accordingly, in view of the decision of Hon'ble the Supreme Court in Swaran Singh's case (supra), the finding of the Tribunal to the above effect is modified, consequently the compensation would be paid by the Insurance Company i.e. respondent No.3 with liberty to recover the same from the driver and owner of the offending vehicle i.e. respondent Nos.1 and 2.

10. In the circumstances, the appellants are held entitled to the following compensation:-

Sr. No.	**Head**	**Amount assessed by the Tribunal**	**Amount assessed by this Court**
1	Income	₹21000/-	₹21000/-

Sr. No.	Head	Amount assessed by the Tribunal	Amount assessed by this Court
2	Future Prospects	₹6300/- i.e. 30% of ₹21000/-	₹8400/- i.e. 40% of ₹21000/-
3.	Total Income	₹27,300/-	₹29,400/-
4.	Multiplier applied	16	16
5.	Deduction	1/3rd of ₹27,300/- i.e. ₹9100/-	1/3rd of ₹29400/- i.e. ₹9800/-
6.	Dependency	₹18200x12x16=₹34,94,400/-	₹19600x12x16=₹37,63,200/-
7.	Funeral Expenses	₹25,000/-	₹15,000/-
8.	Loss of Estate	₹5,000/-	₹15,000/-
9.	Loss of consortium to widow	₹10,000/-	₹40,000/- on account of loss of spousal consortium to appellant No.1, ₹80,000/- i.e. ₹40,000/- each on account of loss of parental consortium to appellant Nos.2 and 3. Total ₹1,00,000/- in view of the decision in Vimla Devi's case (supra).
	Total	₹35,34,400/-	₹38,93,200/-

11. Accordingly, as against the compensation of ₹35,34,400/- awarded by the Tribunal, the appellants are held entitled to award of compensation of ₹38,93,200/- along with interest @ 7.5% per annum w.e.f. the date of filing of the claim petition till date of payment, less payment if any already made.

12. Needless to mention, the appellants would be entitled to the award of compensation in proportion to their shares determined by the Tribunal. The Insurance Company shall make payment to the appellants after making deduction of tax liability, qua future prospects, in accordance with the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra).

13. Accordingly, appeal is allowed and award dated 22.11.2013, passed by the learned Tribunal, Panchkula is modified to the extent as noted above.

(B.S.WALIA)
JUDGE

26.02.2019
rajesh.k.khurana

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