IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.6193 of 2015
Date of Decision:10.04.2019

Vikas Sharma and another

................APPELLANTS

Vs.

Ramesh Chand and another

.................RESPONDENTS

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

Present: Mr.Sagar Aggarwal, Advocate for the appellant.

Mr.Ashwani Talwar, Advocate with
Mr. Jagjit Singh Chatrath, Advocate for respondent
No.2-Reliance General Insurance Company Ltd.

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DR. RAVI RANJAN, J.(Oral)

The claimants-appellants have preferred this appeal for enhancement of compensation amount awarded vide Judgement and Award dated 18.05.2015 passed in MACT Case No.185 of 2013 by the Motor Accident Claims Tribunal, Sonepat (hereinafter referred to as 'The Tribunal').

The claim petition was filed before the Tribunal under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') by the claimants-appellants for grant of compensation to the tune of Rs.25 lacs on account of death of Jagdish Chander son of Murari Lal in a motor vehicular accident which took placed on 19.05.2013 within the area of Police Station, Gannaur, District Sonepat.

I have heard learned counsel for the parties and perused the materials on record. Short facts necessary for consideration of the *lis* stand enumerated as under:-

Mahender Singh son of Harbans Singh was doing the job of the driver for the last 15 years and he was having a Tata 909 bearing Registration

No.HR58-9120. The vehicle was owned by him and he used to run it from Delhi to Jagadhri. The deceased Jagdish son of Murari Sharma was working with the above said Mahender Singh as a conductor. On 19.05.2013, at about 01.00/01.30 A.M., Mahender Singh had started for Jagadhri from Delhi after loading fruit. His conductor Jagdish was along with him. At about 03.00 A.M., when they reached near Divine City, Gannaur at G.T. Road, as Mahender Singh was driving his truck on left side of road at moderate speed, he saw a truck bearing Registration No.RJ32-GA-2275 was parked on the road which became visible to him when he reached very near the truck only because the unknown driver of the truck had neither switched on the back lights and indicators nor were there any reflectors on the back side of the truck. Mahender Singh applied breaks at once but still his vehicle struck against the parked truck and the truck over turned. Both of them sustained several injuries. The passersby took out Mahender Singh from his truck and got admitted to Line in General Hospital, Sonipat for treatment. After giving first aid, the doctors referred him to PGIMS, Rohtak and there he came to know that his conductor Jagdish had succumbed to the injuries. Thereafter, FIR No.83 dated 19.05.2013 under Sections 279, 283, 337 and 304-A IPC at Police Station, Gannaur was registered.

Respondent No.1 (in the claim petition) is the driver-cum-owner and respondent No.2 is the Insurer of the alleged offending vehicle.

Respondent No.1, i.e., the driver-cum-owner filed written statement before the Tribunal and took preliminary objections, *inter-alia,* locus standi, lack of cause of action, suppression of material facts and maintainability etc.

The Tribunal has already held that the accident was a result of rash and negligent act of the driver of the alleged offending vehicle and, as such, since the offending vehicle was insured with respondent No.2-Reliance General

Insurance Company Ltd., the Insurance Company would now be required to pay the compensation amount to the tune of Rs.10,24,660/- to the claimants-appellants.

At the time of hearing of the case, learned counsel for the appellants raises only one issue that nothing has been paid towards the head of future prospects as would be required in terms of Paragraph No.61(iv) of the decision rendered by Constitution Bench of Hon'ble Supreme Court in ***'National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) R.C.R. (Civil)'***.

Learned counsel appearing for respondent No.2-Reliance General Insurance Company Ltd., on the other hand, has submitted that if the ratio laid down in ***Pranay Sethi's case (supra)*** is applied then it has to be applied in totality and not only for granting benefit under future prospects to the claimants-appellants. It is pointed out that an amount of Rs.1 lac has been paid towards loss of consortium which should be only Rs.40,000/- whereas an amount of Rs.1,00,000/- has been awarded towards loss of care and guidance for the minor child which is not a head under which anything is to be paid to the claimants-appellants as per the aforesaid decision.

It is also submitted that an amount of Rs.25,000/- has been awarded towards funeral expenses but the maximum limit given under this head as per ***Pranay Sethi's case (supra)*** is Rs.15,000/- only. Further, an amount of Rs.25,000/- has been awarded by the Tribunal towards pain, loss and sufferings and Rs.3,000/- granted towards transportation expenses would also not be admissible as per the ratio laid down in the aforesaid decision.

Though, no cross-objection or appeal has been preferred by the Insurance Company, however, once the ratio laid down by the Hon'ble Apex

Court in ***Pranay Sethi's case (supra)*** is applied, then this Court is in full agreement with learned counsel for respondent No.2-Insurance Company that the same has to be applied in its totality and not in fraction.

Learned counsel for the appellants is also agreeable to the aforesaid submission raised on behalf of respondent No.2-Insurance Company.

However, the Hon'ble Apex Court in ***Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram and others, 2018(4) R.C.R. (Civil) 333,*** after considering, following and explaining ***Pranay Sethi's case (supra),*** has held that the loss of consortium of Rs.40,000/- would be available to the children, parents and spouse separately under the head loss of spousal consortium, loss of parental consortium and loss of filial consortium.

Accordingly, this Court would modify the Award of the learned Tribunal by making following calculation:-

	Head	**Compensation Awarded**
1.	Income	Rs.6,430/- per month
2.	Future prospects	Rs.1607/-(i.e. 25% of the income) (Rs.6430+Rs.1607)=Rs.8037
3.	Deduction towards personal expenditure	[1/3rd of (Rs.6430+Rs.1607)]
4.	Total Income	Rs.5358/- [i.e.2/3rd of (Rs.6430+Rs.1607)]
5.	Multiplier	15
6.	Loss of future income	Rs. 9,64, 440/-(Rs.5358X12x15)
7.	Funeral expenses	Rs.15,000/-
8.	Loss of estate	Rs.15,000/-
9.	Loss of parental and spousal consortium	Rs.80,000/-(Rs.40,000/- each payable to claimants-appellants No. 1 and 2 respectively).
	Total Compensation	Rs.10,74,440/-
	Enhanced amount of compensation	Rs.10,74,440/- (minus) Rs.10,24,660/- =Rs.49,780/-

Interest rate, in my view, should also be increased @ 9% per annum on the enhanced awarded amount to be calculated from the date of filing of the claim petition till the payment of the amount.

Obviously, the awarded amount has to be given after deduction of the amount which has already been paid by the Insurance Company

Other findings and mode and manner of payment of the amount awarded to the claimants-appellants mentioned in the impugned Award by Tribunal are upheld.

Accordingly, the impugned Judgment and Award stands modified and enhanced to the aforesaid extent.

In the result, this appeal stands allowed to the extent as indicated above. However, parties shall bear their own costs.

(DR. RAVI RANJAN)
JUDGE

10.04.2019
Anjal

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No