IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3437 of 2011
Date of decision: 26.04.2019

Manoj Kumar Gupta and another

…. Appellants

Versus

Sarwan Singh and others

….Respondents

CORAM : HON'BLE MR.JUSTICE ARUN KUMAR TYAGI

Argued by: Mr.Ashwani Arora, Advocate
for the appellants.

None for respondent No.1.

Mr. H.S. Grewal, Addl. A.G. Punjab
for respondents No.2 and 3.

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ARUN KUMAR TYAGI, J.

1. The claimants-husband and minor daughter of deceased-Anuradha Gupta have filed present appeal seeking enhancement of compensation awarded by learned Motor Accidents Claims Tribunal, Chandigarh (for short 'the Tribunal') in **MACT Petition No.279 of 18.07.2008** titled as **Manoj Kumar Gupta and another Vs. Sarwan Singh and others** on account of death of Anuradha Gupta due to injuries suffered in motor vehicle accident which took place on 15.05.2008.

2. Briefly stated, the facts giving rise to the present appeal are that the claimants filed petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the M.V. Act') on the averments that on 15.05.2008 at about 12:15 p.m. deceased-Anuradha Gupta was going

from Yadvindra Public School, S.A.S. Nagar (Mohali) to Punchkula, as pillion rider on scooter bearing registration No.CH03R-6587 driven by Ms.Sharda. When they crossed the slip road of Sector 47-C, Chandigarh near Sampark Centre, Sector 47, Chandigarh, bus bearing registration No.PB-07-Q-0649, owned by respondent No.2, driven by respondent No.1 at very high speed came from behind without blowing any horn and while overtaking struck against the scooter due to which Mrs. Anuradha Gupta and Ms. Sharda fell down on the road and suffered injuries. The injured were taken to Govt. Medical College and Hospital, Sector 32, Chandigarh where Mrs. Anuradha Gupta was declared brought dead. FIR No.99 dated 15.05.2008 was registered under Sections 279 and 337 of the Indian Penal Code, 1860 in Police Station Sector-31, Chandigarh**.** The deceased was aged about 36½ years and was qualified engineer. The deceased was earning ₹19,116/- per month by her employment as teacher in Yadvindra Public School, S.A.S. Nagar (Mohali) and ₹50,000/- per month by doing business in the name of M/s Ferric Formers. Claiming themselves to be the legal representatives of the deceased the claimants sought award of compensation of ₹2 Crore with cost and interest against the respondents.

3. The petition was contested by respondents. In his written statement respondent No.1 admitted the accident but stated that the accident took place due to negligence of the scooter driver. In their written statement respondents No.2 and 3 denied the accident and stated that false case was registered by the police against respondent No.1.

4. On the basis of the pleadings of the parties, issues were framed and evidence produced by the parties was recorded by the Tribunal. On perusal of the material on record and consideration of the submissions made by the learned Counsel for the parties, the Tribunal held that Mrs. Anuradha Gupta died due to injuries suffered in accident caused by rash and negligent driving of bus bearing registration No.PB-07-Q-0649 owned by respondent No.2 and driven by respondent No.1 and the claimants being husband and minor daughter of the deceased are entitled for award of compensation on account of her death. Respondent No.1 being the driver and respondents No.2 and 3 being the owner of the offending bus are liable for payment of compensation. The Tribunal took the income of the deceased as ₹19,116/- from the school, added 50% towards future prospects and by deducting 30% towards income tax, assessed monthly income of the deceased as ₹20,072/-. The Tribunal deducted 1/3rd towards personal expenses and by applying multiplier of 14 assessed loss of dependency as ₹22,48,064/-. The Tribunal awarded total amount of ₹22,55,000/- including funeral expenses and loss of consortium and directed respondents No.2 and 3 to jointly and severally pay the compensation amount to the claimants in 1/3rd and 2/3rd shares respectively with costs and interest at the rate of 9% per annum.

5. Feeling aggrieved, the claimants have filed present appeal seeking enhancement of the compensation.

6. I have heard arguments addressed by learned Counsel for the appellants and learned Counsel for respondents No.2 and 3 and have gone through the record.

7. Mr. Ashwani Kumar Arora, learned Counsel for the appellants has argued that the deceased was a qualified B.E. Computer Engineer of 1992 batch. She was regularly employed as a teacher in Yadvindra Public School, S.A.S. Nagar (Mohali) since 1998 and would have retired on attaining the age of 60 years. She was getting monthly salary of ₹19,116/- from the above-said school which was taken into consideration by the Tribunal. However, she was also proprietor of M/s Pam Enterprises and doing job work for M/s Ferric Formers and earning approximately ₹20,000/- per month. She was an income tax payee and had shown her income from the abovesaid firm in her income tax return. Her business associate M/s Ferric Formers was also deducting income tax at source from her payments. The Tribunal erred in not considering the income of the deceased from her business on the ground that the evidence as to the deceased being proprietor of M/s Pam Enterprises was beyond pleading as the claimants had pleaded in the petition that the deceased was proprietor of M/s Ferric Formers. The strict rules of procedure are not applicable for adjudication of motor accident claims under the M.V. Act. By the Income tax return and bank account statement of the deceased, the deceased was proved to be proprietor of M/s Pam Enterprises and to be having additional income by doing job work for M/s Ferric Formers who had also deducted income tax at source while making payment to her. By the testimony of PW-1 Manoj Kumar Gupta and PW-3-Amrik Singh, it was also proved that the firm M/s Pam Enterprises was closed after the death of Mrs. Anuradha Gupta. The income tax return could not be ignored by the Tribunal while assessing the income of the

deceased. In view of the age of the deceased, the Tribunal was required to apply the multiplier of 16 instead of 14. The Tribunal has awarded very less amount of ₹6,936/- towards funeral expenses and loss of consortium and did not award any amount under the head of loss of love and affection to the minor daughter of the deceased. The interest had been awarded at the rate of 9% per annum instead of 12% per annum. Therefore, the award may be modified and compensation awarded may be enhanced. In support of his arguments, learned Counsel for the appellants has relied upon the decision of Hon'ble Supreme Court in **United India Insurance Co. Ltd. Vs. Indiro Devi and others : 2018(3) RCR (Civil) 455** where it was held by Hon'ble Supreme Court that compensation could not be assessed only on the basis of Salary Certificate of the deceased by ignoring income mentioned in the income tax return as the deceased could have income from other sources also.

8. On the other hand Mr.H.S. Grewal, Addl. A.G., Punjab for respondents No.2 and 3 has argued that the deceased was a regular whole time employee of Yadvindra Public School, S.A.S. Nagar (Mohali) and could hardly have any time for doing business as claimed. The business was being run by the husband or some other member of the family in the name of the deceased for avoiding the payment of income tax. This fact is also substantiated by her bank account statement according to which the deceased had received amount of ₹3 lacs from M/s Ferric Formers which was withdrawn on 02.05.2007 by her husband claimant No.1-Manoj Kumar Gupta. The Tribunal has rightly assessed the income of the deceased and

awarded just and adequate compensation and the claimants are not entitled for enhancement of the compensation awarded by the Tribunal. Therefore, the appeal may be dismissed.

9. In the petition the claimants pleaded that the deceased was employed as teacher in Yadvindra Public School, S.A.S. Nagar (Mohali) and she was getting salary of ₹19,116/- per month. She was qualified B.E. Computer Engineer and was also doing business in the name of M/s Ferric Formers and earning ₹50,000/- per month. To prove employment of the deceased as teacher in Yadvindra Public School, S.A.S. Nagar (Mohali) and quantum of her salary, the claimants examined PW-2 Dilber Singh, Office Assistant, Yadvindra Public School, S.A.S. Nagar (Mohali) who proved certificate Ex.P-12 showing her date of birth, date of appointment, educational qualification, date of death and salary details as on 15.05.2008. As per salary certificate PW-2, the deceased, who was born on 13.08.1971 and having educational qualification of B.E. Computers, was appointed on the post of Teacher on 07.07.1998. The deceased was getting gross salary of ₹19,116/- made up by basic pay of ₹14,300/- per month besides other perks IR ₹1,716/-, CCA ₹100/-, HRA ₹2,500/-, Long Hrs duty allowance ₹500/- and was after deductions of PF ₹1,922/-, GSLI ₹75/-, Staff Club ₹100/- getting net salary of ₹17,019/- per month. By the cogent and reliable oral and documentary evidence on record deceased was proved to be employee of Yadvindra Public School, S.A.S. Nagar (Mohali) and her salary was proved to be ₹19,116/- inclusive of perks as mentioned above. No deduction except income tax was required to be made from gross salary of ₹19,116/- of

the deceased. Reference in this regard may be made to the observations in **Vimal Kanwar and others Vs. Kishore Dan and others, 2013 (2) RCR (Civil) 945, Sunil Sharma and others Vs. Bachitar Singh and others, 2011 (2) RCR (Civil) 708** and **Shyamwati Sharma and others Vs. Karam Singh and others, 2010 (3) RCR (Civil) 741**. As per income tax rates for the financial year 2007-08, income tax of ₹11,934/- was payable on net taxable income of ₹2,05,428/- after deduction of savings of ₹23,964/- out of gross salary of ₹2,29,392/- of the deceased. After deduction of income tax net salary of the deceased comes to ₹2,17,458/- per annum/₹18,122/- per month.

10. To prove carrying on of business by the deceased, claimant No.1-Manoj Kumar Gupta husband of the deceased appeared in the witness box as PW-1 and examined Amrik Singh, Proprietor of M/s Ferric Formers as PW-3 and produced copies of income tax returns Ex.P-8 to Ex.P-10 and statement of Bank account Ex.P-11 and Tax Deduction Certificate Ex.PW-3/1 and Ex.PW-3/2. PW-1 Manoj Kumar Gupta testified that the deceased was a qualified B.E. Computer Engineer and, besides being employed as Teacher in Yadvindra Public School, S.A.S. Nagar (Mohali), was also proprietor of M/s Pam Enterprises and doing job work for M/s Ferric Formers and earning ₹20,000/- per month. PW-1 Manoj Kumar Gupta further testified that the deceased was income tax payee and M/s Ferric Formers had deducted income tax at source from her payment. PW-3 Amrik Singh has testified that the deceased being proprietor of M/s Pam Enterprises was doing job work for his firm M/s Ferric Formers

wherein various steel and other metal components were made and she was making certain parts for his end product. PW-3 Amrik Singh has produced T.D.S. Certificates in relation to the payments made to M/s Pam Enterprises by his firm for the years 2007-08 and 2006-07 Ex.PW-3/1 and Ex.PW-3/2. As per certificate Ex.PW-3/1 firm M/s Ferric Formers had paid amount of ₹2,58,080/- to the deceased during the period from April, 2007 to September, 2007 out of which amount of ₹5,847/- had been deducted as T.D.S. As per certificate Ex.PW-3/2 firm M/s Ferric Formers had paid amount of ₹4,66,400/- to the deceased during the period from October, 2006 to March, 2007 out of which amount of ₹10,447/- had been deducted as T.D.S. As per income tax return form Ex.P-8 for the assessment year 2006-07 the deceased had shown income of ₹2,23,110/- from business out of gross total income of ₹3,96,745/-. This evidence ex-facie supports the case of the claimants but on closer scrutiny falls to the ground. As per appointment order copy Ex.P-4, the deceased was appointed as teacher in Yadvindra Public School, S.A.S. Nagar (Mohali) and she could not directly or indirectly engage even in tuition work without prior sanction of the Principal. A perusal of her salary certificate Ex.P-12 also shows that she was being paid long hour duty allowance. The deceased, who was full time employee of Yadvindra Public School, S.A.S. Nagar (Mohali) with long hours of duty, could hardly have any time to independently run any business. There is no evidence as to the place where, the premises in which and the employees through whom the deceased was carrying on the business. Cases are not unknown where business is run under the name of wife by the husband or under the name of a female by other members of the family to avoid the payment of higher income tax. In the present case, PW-1 Manoj Kumar Gupta has stated that he was un-employed and was not doing anything at the relevant time. It seems highly improbable that after acquiring higher educational qualifications PW-1 Manoj Kumar Gupta would be sitting idle without taking up any job or carrying on any business and the facts and circumstances of the case legitimately give rise to the inference that PW-1 Manoj Kumar Gupta was running the business under the firm name of M/s Pam Enterprises in the name of his wife. This inference is also substantiated by the fact that as per bank account statement Ex.P-11 of M/s Pam Enterprises (Proprietor-Anuradha Gupta) amount of ₹3,00,000/- received by the deceased from M/s Ferric Formers on 02.05.2007 was withdrawn on the same day by PW-1 Manoj Kumar Gupta. Further, in her Income tax return Ex.P-8 for the assessment year 2006-07 the deceased had shown income of ₹1,73,566/- from salary and 2,23,110/- from business or profession but subsequent income tax documents show that there was sharp decline in her income from other sources. In acknowledgment for filing of income tax return for the assessment year 2007-08 Ex.P-9 the deceased had shown gross total income of ₹2,41,348/- without mentioning income from business separately. In income tax return verification form for the assessment year 2008-09 Ex.P-10 gross total income of the deceased was shown as ₹2,20,176/- without mentioning income from business separately. It may also be added here that income tax return for the assessment year 2008-09 was filed after her death and was not, therefore, of much evidentiary value for assessment of her income from other sources at the time of her death in the absence of other supporting documentary evidence. In these facts and circumstances of the case, the claimants must be held to have failed to prove that the deceased was having income of ₹50,000/- per month (as pleaded by the claimants in the petition) or ₹20,000/- per month (as deposed to at the time of evidence of the claimants) by carrying on business at the time of her death.

11. Since, the deceased is not proved to be having income from any other source at the time of her death, the observations in **United India Insurance Co. Ltd. Vs. Indiro Devi and others : 2018(3) RCR (Civil) 455** relied upon by learned Counsel for the claimants are not applicable to the facts of the present case.

12. Even though the claimant No.1-husband of the deceased testified that he was dependent on the deceased and was not earning at the time of her death but his testimony being intrinsically untrustworthy could not be relied upon and he could not be said to be financially dependent on the deceased and only minor daughter-claimant No.2 could be considered to be financially dependent on the deceased. However, claimant No.1-husband must be held to be dependent on and beneficiary of her household services and is, therefore, entitled to payment of compensation for her death.

13. The deceased is proved by the evidence on record to be aged 36 years at the time of her death. In view of the observations made by Hon'ble Supreme Court in para No.61(iii) of its judgment in **National Insurance Company Limited Vs. Pranay Sethi and Others, 2017 (4) R.C.R. (Civil) 1009** addition of 50% is required to be

made to the income of the deceased towards future prospects. On such addition, income of the deceased at the time of her death comes to ₹18,122 + ₹9,061/- = ₹27,183/-.

14. In view of the observations made by Hon'ble Supreme Court of India in para No.14 of its judgment in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another 2009 (3) R.C.R. (Civil) 77** and the number of claimants dependent on the deceased being two, the Tribunal was required to deduct and rightly deducted 1/3rd of the income of the deceased towards her personal expenses. On such deduction annual dependency of the claimants on the deceased comes to ₹27,183/- – ₹9,061 (1/3) = ₹18,122/- X 12 = ₹2,17,464/-

15. 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 view of observations made by Hon'ble Supreme Court in para No.21 of its judgment in **Sarla Verma's Case (Supra)** and age of the deceased being 36 years, multiplier of 15 was applicable and the Tribunal has wrongly applied the multiplier of 14. When multiplier of 15 is applied to annual dependency of the claimants on the deceased, compensation payable for loss of dependency comes to ₹2,17,464 X 15 = ₹32,61,960/-

16. In the present case, the Tribunal merely awarded amount of ₹6,936/- towards loss of consortium and funeral expenses. In **Pranay Sethi's case (Supra)** Hon'ble Supreme Court, while answering the reference on **31.10.2017**, 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 that case Hon'ble Supreme Court further observed that the aforesaid amounts should be enhanced at the rate of 10% in every three years. As a corollary to above observations of Hon'ble Supreme Court for enhancement of the figures on 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 **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)**. In view of the principles of awarding compensation under conventional heads as laid down by Hon'ble Supreme Court in **Pranay Sethi's case (Supra)** and proportionate reduction by 30% due to accident having occurred in the year 2008, the claimant No.1-husband and claimant No.2-minor daughter are entitled to award of compensation of ₹28,000/- towards loss of spousal and parental consortium respectively, ₹10,500/- towards funeral expenses and ₹10,500/- towards loss of estate.

17. As per the above discussion, compensation payable to the claimants on account of death of Mrs. Anuradha Gupta is tabulated as under:-

Sr. No.	Head	Compensation
1.	Monthly income of the deceased (after deduction of income tax)	₹18,122/- per month
2.	Income after addition of future prospects at the rate of 50%	₹18122 + ₹9061 = ₹27,183/-
3.	Deduction of 1/3rd on account of personal expenses	₹27183–₹9061 (1/3) = ₹18,122/-
4.	Annual Dependency	₹18,122x 12 = ₹2,17,464/-
5.	Loss of Dependency	₹2,17,458/- x 15 =₹32,61,960/-
6.	Funeral Expenses	₹10,500/-
7.	Compensation payable for loss of spousal, parental and filial consortium	₹28,000/-
8.	Loss of Estate	₹10,500/-
	Total Compensation	₹33,10,960**/-**

18. In the present case, the Tribunal directed the payment of compensation amount with interest at the rate of 9% per annum from the date of filing of the petition till the date of award and in case of non-payment within 30 days directed payment of interest till realization which is challenged to be inadequate and the question which arises is as to what would be the appropriate rate of interest.

19. 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."

20. In **Supe Dei and others Vs. National Insurance Company Ltd. and another 2009 (4) SCC 513**, Hon'ble Apex Court held that 9% per annum would be the appropriate rate of interest to be awarded in Motor Accidents Claims compensation cases.

21. 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.

22. In view of the observations in above referred judicial precedents, R.B.I.'s lending rate of interest, mercantile rate of interest prevalent, rate of interest allowed by Nationalized Banks on fixed deposit receipts and other relevant factors, award of interest by the Tribunal at the rate of 9% per annum was just and proper and cannot be said to be inadequate so as to call for modification of the award in this regard.

23. Accordingly, the claimants are entitled to payment of compensation of ₹33,10,960/- with costs and interest at the rate of 9% per annum from the date of filing of the petition till realization. The amount of ₹22,55,000/- 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 ₹10,55,960/-, amount of ₹3,55,960/- shall be

payable to claimant No.1-husband and reaming amount of ₹7,00,000/- shall be payable to claimant No.2-daughter. 50% of the enhanced compensation as per their shares shall be payable to the claimants in cash and remaining 50% shall be deposited in FDRs in their names in some nationalized Bank for three years.

19. The appeal is, accordingly, allowed with costs in terms of the above said modifications of the award dated 05.08.2010.

(ARUN KUMAR TYAGI)
JUDGE

26.04.2019
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No