IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4496 of 2018(O&M)
Decided on:01.11.2019

Charnjit Singh and another .....Appellants

versus

Amrit Pal Singh and others ....Respondents

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

Present: Mr.Ruhani Chadha, Advocate,
for the appellants.

Mr.Ashish Yadav, Advocate,
for respondent No.5-Insurance Company.

DR.RAVI RANJAN, J. (Oral Judgment)

I have heard learned counsel for the appellants as well as for the Insurance Company and have perused the records of this case.

1. This appeal has been preferred by the appellants for enhancement of the awarded amount that has been allowed by the Motor Accident Claims Tribunal, Sahibzada Ajit Singh Nagar.

The claimants/ appellants are husband (widower) and son of the deceased Baljit Kaur. According to the claimants, she died in a motor-vehicular accident on 02.05.2016. The manner in which the accident took place and under what circumstances the driver of the offending vehicle was held to be negligent in driving and circumstances under which the respondent No.5-Insurance Company has been held liable to pay compensation with respect to the petition filed under Section 166 of the Motor Vehicle Act, 1988, are not required to be dealt with in the present case for the reason that the same has not been put to challenge by filing any cross objection or cross-appeal. The admitted facts are that the deceased was working as Principal in Government Senior Secondary School, Wazidpur, District SBS Nagar and she was getting Rs.79,949/- per month as gross salary out of which she was paying Rs.2,000/- per month as income tax and, as such, she was getting Rs.77,949/- per month as take home salary as also that her date of birth was 1960 and, as such, she had been held to be of 56 years of age at the time of accident which took place at the time of her death in the motor vehicular accident which took place on 02.05.2016.

2. Learned counsel for the appellants assails the Judgment and Award for the purpose of enhancement chiefly on three counts. First and the foremost is that the Tribunal for the purpose of calculation of annual dependency, has adopted multiple multiplier method which has not been approved by the Apex Court. In fact, it has been held that since the deceased Baljit Kaur was of 57 years of her age and was to retire on completing 58 years of her age, she was likely to earn the aforesaid income till her age of superannuation. Accordingly, multiplier 2 has to be adopted. It has further been held that since the claimant No.1, i.e., the husband of the deceased, is already receiving family pension, which the deceased was to receive after her retirement, there was no monitory loss to the claimants, as such, selection of multiplier was of a much lower number. According to the appellants, as per the law laid down by the Hon'ble Apex Court in **"Sarla Verma and others vs. Delhi Transport Corporation and another"2009 AIR (SC) 3104**, and approved by a Constitution Bench of Hon'ble Supreme Court in "**National Insurance Company Limited vs. Pranay Sethi and others" 2017(4) RCR (Civil) 1009,** a multiplier of 9 should have been

selected.

Secondly, it is urged that only 10% of the income has been added under the head of future prospects completely ignoring the law declared by the Constitution Bench of the Apex Court in **Pranay Sethi (supra)** as the same should have been 15% as the deceased admittedly being a Government employee.

Lastly, it is contended that as per the decision of the Apex Court in "**Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and others," 2018(4)RCR(Civil)333**, both the claimants were entitled for Rs.40,000 each as against the head "Loss of Consortium" as the claimant No.1, i.e, the husband, would be entitled for spousal consortium whereas claimant No.2, the son of the deceased, would be entitled for parental consortium.

3. *Per contra*, learned counsel for respondent No.5-Insurance Company has supported the impugned Award placing reliance upon two decisions rendered by two learned Single Judges of this Court in **"Balbir Kaur vs. Manjinder Singh and others" (FAO No.5250 of 2013 decided on 11.12.2014)"** and **"Oriental Insurance Company Limited vs. Subhash Chander Palta and others" (FAO No.5100 of 2013 decided on 09.01.2017).** It is contended that in view of the admitted position that the deceased was going to retire after 2 or 3 years and, admittedly, claimant No.1 was getting family pension, the multiplier chosen was correct as there was no loss at all in view of the fact that as the claimant No.1 was already receiving family pension which the deceased would have received had she been alive and retired from service.

In my view, the aforesaid submission raised on behalf of the

Insurance Company is noted only to be rejected for the reason that in fact, the whole scheme of multiplier method, as has been conceptualized by Hon'ble Apex Court in **Sarla Verma (supra)** and **Pranay Sethi (supra),** has taken care of the age and capacity to earn of the deceased. This is the reason why multiplier starts from 18 for the age group of 15 to 25 years and it stands reduced to 5 for the age of 66 to 70 years. The reason for this reduction of number of multiplier in accordance with the increasing age is obvious, i.e., considering the reduction in capacity of earning with the increasing age. It must have been in the mind of the Hon'ble Supreme Court that a person of 56 years of age was going to retire. If he was Government servant he would be retiring at the age of 58 or 60 years but still no concept of split multiplier method has been introduced either in **Sarla Verma (supra)** or in **Pranay Sehti (supra).** In fact such adoption of method has been criticised by Hon'ble Supreme Court in "**Saraladevi and others vs. Divisional Manager, M/s Royal Sundaram Alliance Ins.Co.Ltd. and another" SCC 2014 (15) 450** in particular in paragraph 10 of the Judgment. Their Lordships have held the reduction of compensation by the High Court by adopting the lower multiplier to be erroneous. Surprisingly, though the Tribunal has considered the Judgment of the Apex Court rendered in **Pranay Sethi (supra)** and **Sarla verma (supra)** still it has selected a multiplier of 2. There is no provision laid down under the aforesaid Judgment of choosing a multiplier of 2. The multiplier in facts lasts on No.5 for the age group of 66 to 70 years. For this reason, in my considered view, the selection of multiplier suffers from serious error and it is against the spirit of the law declared by the Hon'ble Apex Court in **Sarla Verma (supra)** and **Pranay Sethi (supra)**. Accordingly, in my considered view, the multiplier of 9 should have been chosen as per the aforesaid decisions of the Hon'ble Supreme Court.

4. So far the second issue of addition of future prospect is concerned learned counsel for the Insurance Company is not in a position to controvert the submissions of the appellants that the same should have been 50% of the income.

So far the family pension is concerned by now it is well settled that the same cannot be considered as future income as it is the amount which had already been earned by the employee while in service. Therefore, for the purpose of calculation of dependency that cannot be taken in account to oust the claimant. A reference in this regard is made to a decision of **Saraladevi (supra).**

5. Lastly, since the Hon'ble Supreme Court in **Magma General Insurance Company(supra),** after considering the decision of the Apex Court rendered in **Pranay Sethi (supra),** has come to the conclusion that the children would be entitled for parental consortium, the parents would be entitled for filial consortium and the surviving spouse will be entitled for spousal consortium, in my view, the appellant/claimant No.1, being the husband of the deceased, would be entitled for Rs.40,000/- whereas appellant/claimant No.2, son of the deceased, would be entitled for parental consortium, which would be Rs.40,000/- again.

Accordingly, in view of the discussions made above, the Award of the Tribunal is modified as under:

Sr. No.	**Heads**	**Compensation**
1.	Income	**77,949/-**
2.	Future Prospects	**15%** (77,949 +11,692)= 89,641
3.	Deduction	**1/3** (89641–29,880 = 59,761)

4.	Multiplier	**2**
5.	Loss of income	64,54,188 (59,761x12x9)
6.	Loss of consortium	**80,000/-**
7.	Loss of love and affection including loss of estate	**15,000/-**
8.	Funeral expenses	**15,000/-**
	Total	**65,64,188/-**

Interest granted at the rate of 7.5% per annum also stands increased to 9% per annum, to be calculated from the date of filing of the claim petition till the date of realisation of the Awarded amount.

The remaining part of the impugned Award is kept intact.

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

(DR. RAVI RANJAN)
JUDGE

November 01, 2019
dharamvir

Whether speaking/reasoned: Yes
Whether Reportable : Yes