IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.115 of 2012
Date of decision:08.02.2019

Mindero Devi and others

…. Appellants

Versus

Raju Lal and others

….Respondents

CORAM : HON'BLE MR.JUSTICE ARUN KUMAR TYAGI

Present : Mr. Munish Mittal, Advocate for the appellants.

Ms. Seema Pasricha, Advocate for respondent No.3.

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ARUN KUMAR TYAGI, J.

1. The claimants (widow, minor children and mother of the deceased-Rajbir) have filed present appeal seeking enhancement of compensation awarded by the learned Motor Accidents Claims Tribunal, Yamuna Nagar at Jagadhri (for short 'the Tribunal') vide award dated 02.09.2011 passed in MACT Case No.138 of 2010 titled as Mindero Devi and others Vs. Raju Lal and others on account of death of Rajbir due to injuries suffered in a motor vehicular accident which took place on 30.09.2010.

2. The above said claimants filed claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the M.V. Act') on the averments that on 30.09.2010 deceased-Rajbir was going on

motorcycle bearing registration No.HR-02-U-5548. At about 2 p.m. when he reached near the office of Block Development and Panchayat Officer, Radaur (Yamuna Nagar), truck tralla bearing registration No.HR-14-E-0316, owned by respondent No.2 and insured with respondent No.3, came from the side of Yamuna Nagar driven by respondent No.1 at high speed, rashly and negligently and struck against his motorcycle due to which Rajbir suffered multiple injuries and died on the spot. FIR No.124 dated 30.09.2010 was registered under Sections 279 and 304-A of the Indian Penal Code, 1860 in Police Station City, Radaur in this regard. While claiming themselves to be dependents and legal representatives of the deceased, the claimants prayed for award of compensation of ₹30,000,00/- with costs and interest.

3. On notice, respondents No.1 and 2 and respondent No.3 contested the petition in terms of written statements respectively filed by them denying their liability.

4. Issues were framed and the parties were given opportunity to produce their evidence.

5. On perusal of the material on record and consideration of the submissions made by the learned Counsel for the parties the Tribunal held that Rajbir died due to injuries suffered in accident caused by rash and negligent driving of truck tralla bearing registration No.HR-14-E-0316 by respondent No.1 and that the claimants being dependents and legal representatives of the deceased were entitled to recover compensation for his death from respondents No.1 and 2 (driver and owner) and respondent No.3 (insurer) jointly and severally.

The Tribunal assessed the income of the deceased as ₹4,000/- per month, deducted 1/3rd towards personal expenses, applied the multiplier of 16 and by adding ₹5,000/- towards loss of spousal consortium (payable to claimant No.1-widow) and ₹5,000/- towards funeral expenses awarded total compensation of ₹5,22,000/- to the claimants with costs and interest at the rate of 7.5% and directed respondents No.1 to 3 to pay the compensation amount jointly and severally.

6. Feeling aggrieved, the claimants have filed present appeal for enhancement of compensation.

7. I have heard arguments addressed by learned Counsel for the parties and have gone through the record.

8. Mr. Munish Mittal, learned Counsel for the appellants has argued that the deceased was aged about 33 years at the time of accident and employed with Neelkanth Hatchery, Village Baan, District Kurukshetra and was getting ₹8,500/- per month as salary. The Tribunal did not properly assess income of the deceased. The Tribunal also did not make any addition towards future prospects. The Tribunal deduced 1/3rd towards personal expenses of the deceased whereas in view of the number of dependents on the deceased being six, the Tribunal was required to deduct 1/4th towards personal expenses of the deceased in view of the judgment of Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another 2009 (3) R.C.R. (Civil) 77**.

9. Learned Counsel for the appellants has further argued that the Tribunal awarded meagre amount towards funeral expenses and

loss of spousal consortium and did not award any amount towards loss of estate. Compensation for loss of filial and parental consortium may also be awarded to the mother and the children of the deceased at the rate of ₹40,000/- each. The Tribunal also awarded lesser rate of interest. Therefore, the impugned award may be modified and the compensation awarded by the Tribunal may be enhanced. In support of his arguments learned Counsel for the appellants has placed reliance on the judgments of Hon'ble Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) R.C.R. (Civil) 1009 and Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram and others, 2018 (4) R.C.R. (Civil) 333.**

10. On the other hand Ms. Seema Pasricha, learned Counsel for respondent No.3-Insurance Company has argued that the Tribunal has awarded just compensation. In view of the conflict with principles laid down in **Pranay Sethi case (Supra)**, the observations in **Magma General Insurance Co. Ltd. Case (Supra)** regarding award of compensation for loss of filial and parental consortium to the parents and the children of the deceased at the rate of ₹40,000/- each would not be applicable as binding precedent. The claimants are not entitled to enhancement of the amount awarded. Therefore, the appeal may be dismissed.

11. As per Voter I.D. Card, relied upon by the Tribunal, the deceased was aged about 33 years. Even though the claimants pleaded that the deceased was employed with Neelkanth Hatchery, Village Baan, District Kurukshetra and was getting ₹8,500/- per month

as salary and produced salary certificate-Ex.P7 in support of their claim but the claimants did not examine the employer and did not produce any appointment letter or other document to prove his employment and account statement or other document to prove payment of salary at the claimed rate to the deceased. Therefore, the Tribunal rightly rejected their claim as to employment and income of the deceased and assessed the income of the deceased as ₹4,000/- per month on the basis of minimum wages notified to be payable to unskilled labourer during the relevant period.

12. In the present case the Tribunal did not make any addition in the income of the deceased towards future prospects. In para No.61(iv) of its judgment in **Pranay Sethi's case (Supra)** Hon'ble Supreme Court observed as under:-

> "In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

In view of these observations and age of the deceased, addition of 40% was required to be made to the income of the deceased for computation of compensation payable for his death.

13. 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 **Sarla Verma's case (Supra)** Hon'ble Supreme Court of India observed in para No.21 of its judgment as under:-

> "We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

In view of the age of the deceased, multiplier of 16 was applicable and the Tribunal rightly applied the same.

14. In the present case the number of claimants-widow, minor children and mother dependent on the deceased was 6. Hon'ble Supreme Court of India in para No.14 of its judgment in **Sarla Verma's case (Supra)** observed as under:-

> "xx xx xx we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third ($1/3^{rd}$) where the number of dependent family members is 2 to 3, one-fourth ($1/4^{th}$) where the number of dependent family members is 4 to 6, and one-fifth ($1/5^{th}$) where the number of dependent family members exceed six.

In view of the number of claimants dependent on the deceased being six, the Tribunal was required to deduct $1/4^{th}$ instead of $1/3^{rd}$ towards his personal expenses.

15. In the present case, the Tribunal merely awarded amount of ₹5,000/- to claimant No.1-widow towards loss of spousal consortium and ₹5,000/- towards funeral expenses and the Tribunal did not award any amount under the head loss of estate. Hon'ble Supreme Court in para No.61(viii) of its judgment in **Pranay Sethi's case (Supra)** observed as under:-

> "Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

In **Magma General Insurance Company' case (Supra)** (relied upon by learned Counsel for the appellants) 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)** referred to above, the claimants widow, children and mother of the deceased will be entitled to award of compensation of ₹40,000/- only in equal shares towards loss of spousal, parental and filial consortium and ₹15,000/- towards funeral expenses and ₹15,000/- towards loss of estate.

16. Accordingly, compensation payable to the claimants on account of death of Rajbir is re-worked out as under:-

Sr. No.	**Head**	**Compensation**
1.	Monthly income of the deceased	₹4,000/- per month
2.	Income after addition of future prospects at the rate of 40%	₹4,000 + ₹1,600 = ₹5,600/-
3.	Deduction of 1/4th on account of personal expenses	₹5,600 – ₹1,400 (5,600/4) = ₹4,200/-

4.	Annual Dependency	₹4,200 x 12 = ₹50,400/-
5.	Loss of Dependency	₹50,400 x 16 = ₹8,06,400/-
6.	Funeral Expenses	₹15,000/-
7.	Compensation payable for loss of spousal, parental and filial consortium	₹40,000/-
8.	Loss of Estate	₹15,000/-
	Total Compensation	**₹8,76,400/-**

17. In the present case, the Tribunal directed the payment of compensation amount with interest at the rate of 7.5% per annum from the date of filing of the claim petition till realization of the whole amount which is challenged to be inadequate and the question which arises is as to what would be the appropriate rate of interest.

18. In claim petitions under Section 163-A or 166 of the M.V. Act, the Motor Accidents Claims Tribunal is empowered by Section 171 of the M.V.Act to award interest from the date of making the claim at such rate as may be specified by it. In awarding interest, the Motor Accident Claims Tribunal is not bound by the provisions of Section 34 of the Code of Civil Procedure, 1908 to restrict the award of interest to 6% per annum. 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."

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. 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.

19. In view of the observations in above referred judicial precedents, mercantile rate of interest prevalent, rate of interest allowed by Nationalized Banks on fixed deposit receipts and other relevant factors, it will be appropriate to modify the rate of interest of 7.5% per annum awarded by the Tribunal to 9% per annum.

20. It follows from the above discussion that the claimants will be entitled to payment of compensation of ₹8,76,400/- with costs and interest at the rate of 9% per annum from the date of filing of the petition till realization. The amount of ₹5,22,000/- 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 ₹3,54,400/-, amount of ₹1,54,000/- shall be payable to claimant No.1-widow and reaming amount of ₹2,00,000/- shall be payable to claimants No.2 to 6 in equal shares. The directions of the Tribunal as to manner of disbursement of compensation amount to the claimants shall also apply to disbursement of enhanced compensation.

21. The appeal is, accordingly, allowed with costs in terms of the above said modifications of the award dated 02.09.2011.

(ARUN KUMAR TYAGI)
JUDGE

08.02.2019
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No