**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**FAO No.2119 of 2001**
**Date of decision : 18.09.2020**

Darshni Devi and another …. Appellants

Versus

Kuldeep Singh and another ….Respondents

**CORAM : HON'BLE MR.JUSTICE ARUN KUMAR TYAGI**

Present : Mr. Ashit Malik, Advocate
for the appellants.

Presence of respondents No.1 and 2
dispensed with.

Mr. Suvir Dewan, Advocate for
respondent No.3-Insurance Company.

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**ARUN KUMAR TYAGI, J.**

(The case has been taken up for hearing through video conferencing.)

1. The claimants-widow, sons and mother of deceased-Hari Singh have filed the present appeal seeking enhancement of the compensation awarded by the Motor Accidents Claims Tribunal, Karnal (for short 'the Tribunal') vide award dated 09.10.2000 passed in **MACT Case No.19 of 2000 titled as 'Darshni Devi and others Vs. Kuldeep Singh and others'** on account of death of Hari Singh due to injuries suffered in a motor vehicle accident which took place on 14.02.2000.

2. The claimants filed the above-said claim petition under Sections 163-A, 166 and 140 of the Motor Vehicles Act, 1988 (for short 'the M.V. Act') on the averments that on 14.02.2000 Hari Singh

was travelling in bus bearing registration No.HR-45-0628. The abovesaid bus was being driven by respondent No.1 in a rash, negligent and zig zag manner. The passengers objected to the same but respondent No.1did not care and continued to drive the bus in the same manner. When the bus reached ahead to drain of village Jarheri towards Pai, the driver lost control over the bus which struck against a tree and turned turtle. Many passengers including deceased-Hari Singh received serious and multiple injuries. Hari Singh was taken to Pundri Hospital where he died on the same day. FIR No.23 dated 14.02.2000 was registered under Sections 279, 337, 338 and 304-A of the Indian Penal Code, 1980 in Police Station Pundri, District Kaithal regarding the accident.

3. While pleading that the deceased-Hari Singh was aged about 50 years and was earning Rs.6,000/- per month by working as Security Guard in Punjab National bank, Fatehpur Pundri and claiming themselves to be the dependents and legal representatives of the deceased, the claimants prayed for award of compensation of Rs.10 lacs with costs and interest against respondent No.1-driver, respondent No.2-owner and respondent No.3-insurer of the bus jointly and severally.

4. The petition was contested by respondents. In their written statement respondents No.1 and 2 took preliminary objections as to non-maintainability and want of locus standi and cause of action. In their written statement reply on merits they pleaded that the alleged accident took place to save the bullock cart which suddenly came on the road and in the meantime tie-rod of the bus was broken and the bus turned turtle due to mechanical defect and denied their liability. In its

written statement respondent No.3 took objections as to want of cause of action, respondent No.1 not having valid and effecting driving licence and liability of respondent No.3 being limited as per the insurance policy. In its written statement reply on merits respondent No.3 controverted material averments made in the petition and denied its liability.

5. The Tribunal framed the issues and recorded the evidence produced by the parties. On perusal of the material on record and consideration of the submissions made by learned Counsel for the parties, the Tribunal held that Hari Singh died due to injuries suffered in accident caused by rash and negligent driving of bus bearing registration No.HR-45-0628 by respondent No.1 who had valid and effective driving licence, assessed income of the deceased as Rs.5876.49/- per month, deducted 1/3$^{rd}$ towards personal expenses, applied the split multiplier of 10 (6 to income assessed + 4 to half of the income assessed) and by adding Rs.10,000/- towards transportation and last rites of the deceased awarded total compensation of Rs.3,87,952/- to the claimants with costs and interest at the rate of 12% per annum and directed respondents No.1 to 3 to pay the compensation amount jointly and severally.

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

7.I have heard arguments addressed by learned Counsel for the appellants and learned Counsel for respondent No.3-Insurance Company and have gone through the record.

8. It may be observed at the very outset that in the present

case the findings of the Tribunal as to deceased-Hari Singh having died due to injuries suffered in accident caused by rash and negligent driving of the bus in question by respondent No.1, respondent No.1 having valid and effective driving licence, the claimants being dependents and legal representatives of the deceased and being entitled to payment of compensation for his death and the respondents being jointly and severally liable to pay the compensation have not been challenged by the respondents by filing any appeal or cross-objections. Even otherwise the same being based on proper appreciation of the evidence on record deserve to be affirmed and do not call for any interference in exercise of the appellate jurisdiction.

9. Learned Counsel for the appellants has argued that the Tribunal did not properly assess income of the deceased, did not make any addition towards future prospects and applied wrong split multiplier of 10 instead of applying multiplier of 11 as per age of the deceased. The Tribunal awarded lesser amount towards last rites and did not award any amount towards loss of consortium and loss of estate. Therefore, the impugned award may be modified and the compensation awarded by the Tribunal may be enhanced.

10. On the other hand, learned Counsel for respondent No.3-Insurance Company has argued that the Tribunal has awarded just and adequate compensation and the claimants are not entitled to enhancement of the amount awarded. Therefore, the appeal may be dismissed.

11. By testimony of PW-2 Darshni Devi supported by testimony of PW-1 C.P. Arora, Clerk-cum-Cashier of Punjab National

Bank and Salary Certificate Ex.P-1 it is proved that deceased-Hari Singh was employed in the Punjab National Bank as Security Guard and was getting salary of Rs.5876.49ps per month and the Tribunal has rightly assessed the income of deceased-Hari Singh as Rs.5876.49ps per month. By a catena of judicial precedents it is now well settled that perks and allowances payable to the deceased employee benefiting him/his family members have to be included in computation of his monthly income and amounts deducted on account of HRA, CCA, Medical Allowance, EPF, GIS, LIC, re-payment of loan etc. are not liable to be excluded in such computation of his monthly income. Reference in this regard may be made to ***Mrs. Helen C. Rebello Vs. Maharashtra State Road Transport Corporation, 1998(4) R.C.R. (Civil) 177; United India Insurance Co. Vs. Patricia Jean Mahajan, 2002(3) R.C.R.(Civil) 534 : 2002 (6) SCC 281; National Insurance Company Ltd. Vs. Indira Srivastava and others, 2008 (1) RCR (Civil) 359; Shyamwati Sharma and others Vs. Karam Singh and others, 2010 (3) RCR (Civil) 741(SC)*** and ***Ranjana Prakash Vs. Divisional Manager and another, 2011 (4) RCR (Civil) 218***. The Tribunal was required to make statutory deduction of income tax from gross salary of the deceased for assessment of his income. Reference in this regard may be made to the observations in ***National Insurance Company Ltd. Vs. Indira Srivastava and others, 2008 (1) RCR (Civil) 359; Shyamwati Sharma and others Vs. Karam Singh and others, 2010 (3) RCR (Civil) 741(SC)*** and ***Ranjana Prakash Vs. Divisional Manager and another, 2011 (4) RCR (Civil) 218***. The deceased had total income of Rs.70,517/- during the assessment year 2000-2001. As per rates of personal income tax for the assessment year 2000-2001, no income tax was payable on income upto Rs.50,000/- and after standard deduction of 1/3rd i.e. Rs.23,505/- from his total income of Rs.70,517/-, no income tax was payable on taxable income of the deceased amount to Rs.47,012/-. Therefore, the Tribunal did not commit any error in not making any deduction from income of the deceased towards income tax.

12. By testimony of PW-1 C.P. Arora which has gone unrebutted and unchallenged it is proved that the date of birth of deceased-Hari Singh was 22.01.1946 and at the time of his death he was aged 54 years. In view of the age of the deceased and observations of Hon'ble Supreme Court in para No.61(iv) of its judgment in ***National Insurance Company Limited Vs. Pranay Sethi and Others, 2017 (4) R.C.R. (Civil) 1009**,* addition of 15% of the established income was required to be made towards future prospects. When so added, income of the deceased comes to (Rs.5876/- + Rs.881/- =) Rs.6,757/-

13. Since number of dependents on the deceased was four, the Tribunal was required to deduct 1/4th of the income towards personal expenses instead of 1/3rd as per observations made by Hon'ble Supreme Court in para 14 of its judgment in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another 2009 (3) R.C.R. (Civil) 77**. On such deduction annual dependency of the claimants on the deceased comes to Rs.6,757/- minus Rs.1,689/- (1/4th) = Rs.5,068/- X 12 = Rs.60,816/-

14. As per observations made by Hon'ble Supreme Court in its judgment in ***Pranay Sethi's case (Supra)*** and age of the deceased the Tribunal was required to apply the multiplier of 11 and the Tribunal erred in applying the multiplier of 10. Even though, the deceased being aged 54 years would have retired after six years on attaining the age of 60 years but in view of the observations made by Hon'ble Supreme Court in ***Puttamma and others Vs. K.L. Narayana Reddy and another : 2014(1) RCR (Civil) 443*** there cannot be any application of split multiplier of 6 and 5 to split income of deceased as assessed for 6 years and half of the same for 5 years and multiplier of 11 has to be applied to income of the deceased at the time of his death as assessed. When multiplier of 11 is applied to annual dependency of the claimants on the deceased, compensation payable for loss of dependency comes to (Rs.60816/- X 11 =) Rs.6,68,976/-

15. In the present case, the Tribunal merely awarded amount of Rs.10,000/- to the claimants towards last rites of the deceased and did not award any amount towards loss of consortium and loss of estate. In **Pranay Sethi's Case (Supra)**, while answering the reference on **31.10.2017** Hon'ble Supreme Court 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 Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. In the said 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 the present case the accident took place on **14.02.2000** and therefore, the amounts under conventional heads will be liable to be reduced by **50%**. 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 Rs.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 above referred judicial precedents, the claimants will be entitled to award of compensation of Rs.20,000/- towards loss of spousal, parental and filial consortium, Rs.7,500/- towards funeral expenses and Rs.7,500/- towards loss of estate in equal shares.

16. Accordingly, compensation payable to the claimants on account of death of Hari Singh is tabulated as under:-

| Sr. No. | Head | Compensation |
|---|---|---|
| 1 | Monthly income of the deceased | Rs.5,876/- |
| 2 | Income after addition of future prospects at the rate of 15% | Rs.5876/- + Rs.881/- = Rs.6,757/- |

| | | |
|---|---|---|
| 4 | Deduction of $1/4^{th}$ on account of personal expenses | Rs.6757/- minus Rs.1689/- ($1/4^{th}$) = Rs.5,068/- |
| 5 | Annual Dependency | Rs.5068/- x 12 = Rs.60,816/- |
| 6 | Loss of Dependency | Rs.60816/- x 11 = Rs.6,68,976/- |
| 7 | Funeral Expenses | Rs.7,500/- |
| 8 | Compensation payable for loss of spousal, parental and filial consortium | Rs.20,000/- |
| 9 | Loss of Estate | Rs.7,500/- |
| | **Total Compensation** | Rs.7,03,976/- |

17. It follows from the above discussion that the compensation of Rs.3,87,952/- awarded by the Tribunal to the claimants deserves to be enhanced to Rs.7,03,976/- payable by the respondents with costs and interest jointly and severally.

18. So far as the question of award of interest is concerned in In ***Abati Bezbaruah Vs. Deputy Director General, Geological Survey of India and another : (2003) 3 SCC 148*** Hon'ble Supreme Court noticed that varying rate of interest is being awarded by the Tribunals, High Courts and Hon'ble Supreme Court and 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. The above said judgment was followed in ***Puttamma's Case (Supra)***. In the present case, the Tribunal awarded interest at the rate of 12% per annum and in the absence of any cross-objections or appeal by the respondents I do not consider it appropriate to interfere with the same so far as payment

of interest on the amount awarded by the Tribunal is concerned. However, in view of the observations in above referred judicial precedents, rate of inflation, change in economy, R.B.I.'s lending rate of interest, rate of interest allowed by Nationalized Banks on fixed deposit receipts and other relevant factors, I am of the considered view that it will be just and reasonable to award interest to the appellants on the enhanced amount of Rs.3,16,024/- at the rate of 7.5% per annum from the date of filing of the petition till realization.

19. It follows from the above discussion that claimants are entitled to payment of compensation of Rs.7,03,976/- with costs and interest from the date of filing of the petition till realization. The amount of Rs.3,87,952/- awarded to the claimants by the Tribunal shall be liable to be deducted from the above-said amount of Rs.7,03,976/-. The enhanced amount of Rs.3,16,024/- with interest at the rate of 7.5% from the date of filing of the claim petition till date of payment/realization shall be payable to the appellants/claimants in equal shares. Respondent No.3-Insurance Company is directed to pay the above said amounts by crediting the same into the accounts of the appellants/claimants, particulars of which shall be furnished by learned counsel for the appellants/claimants to learned counsel for respondent No.2-Insurance Company within ten days from receipt of copy of this order, through RTGS or any other digital mode within one month from the date of receipt of particulars of the accounts of the appellants/claimants. On such credit, appellants/claimants shall be entitled to withdraw the amounts credited to their respective accounts without requirement of any further order from the Tribunal or this

Court.

20. The appeal is, accordingly, allowed with costs in terms of the above said modifications of the award dated 09.10.2000.

**18.09.2020** **(ARUN KUMAR TYAGI)**
kothiyal **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No