IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.5953 of 2015
Date of decision: 18.12.2020

Rani Devi and others .... Appellants

Versus

Sanjay Kumar and another
..... Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Narender Kaajla, Advocate
for the appellants.

Mr. Ram Avtar Yadav, Advocate
for respondent No.2.

****

KARAMJIT SINGH, J.

The appellants/claimants have filed this appeal against the award dated 26.05.2015 passed by Motor Accident Claims Tribunal, Hisar (in short 'Tribunal'), on the ground that award of Rs.15,43,916/- passed by the said Tribunal is inadequate and requires to be modified.

2. The appellants being widow, minor children and parents of deceased Kuldeep, filed claim petition under Section 166 of Motor Vehicle Act), on account of his death in a motor vehicle accident, which was caused by respondent No.1 while driving car No. DL-3CY-8523 in rash and negligent manner on 05.06.2014. At that time, the deceased was going from Adampur to village Kirori on his

motor cycle Bajaj Platina bearing No.HR-80-9594. On account of the said accident, the deceased suffered multiple injuries and he was taken to MAMC, Hospital, Agroha where the doctors declared him brought dead. FIR No.195 dated 05.06.2014 was registered in Police Station, Agroha under Sections 279/304-A/427 IPC against the driver of the offending car. The offending car was owned by respondent No.1 and was insured with respondent No.2. It was also the case of the appellants that the deceased was 29 years of age and was doing the work of electric fittings and motor winding and his monthly income was Rs.30,000/- per month and all of them were dependent on his income. The appellants claimed Rs.1 crore as compensation, alongwith interest.

3. The claim petition was contested by the respondents, who filed separate written statements. Both the respondents denied the factum of the aforesaid accident. It was pleaded that false FIR was registered against the driver of car No. DL-3CY-8523, which was insured with respondent No.2. The insurer also took the plea that at the time of alleged accident, the driver of car No. DL-3CY-8523 was not holding a valid and effective driving licence and the said car was driven in violation of the terms and conditions of the insurance policy. It was prayed that the claim petition be dismissed.

4. On the pleadings of the parties, the following issues were framed by the Tribunal:-

(i) Whether accident in question took place on account of rash and negligent driving of respondent No.1 while driving vehicle bearing registration No. DL-3CY-8523 resulting in death of Kuldeep? OPP

(ii) If issue no.1 is proved, whether the petitioners are entitled to compensation. If so how much and from whom? OPP

(iii) Whether insured/owner of the offending vehicle has violated the terms and conditions of the insurance policy. If so, to what effect? OPR

(iv) Relief.

5. Both the parties adduced evidence in support of their respective claims. Appellant No.1-Rani Devi being widow of the deceased appeared in the witness box as PW-1 and she deposed that her husband was diploma holder from Government Polytechnic, Mandi Adampur, District Hisar and he used to earn Rs.30,000/- per month and that all the claimants were dependent on his income. Sandeep son of Jaiveer appeard in the witness box as PW-2, he being the eye witness to the accident in question, which was caused by respondent No.1 while driving car No. DL-3CY-8523 in rash and negligent manner, which resulted in death of Kuldeep. He also reported the matter to the police. PW-3 Krishan Kumar being the official of the Court of JMIC, Hisar proved the FIR Ex. P-1, relating to the accident in question, which was registered on the basis of the statement of PW-2 Sandeep. The Court official also proved report submitted by the police under Section 173 Cr.P.C., Ex. P-2 and copy

of chargesheet Ex.P-3. The claimants also produced copy of post mortem report of Kuldeep Ex.P-4, copy of his driving licence Ex.P-5 and copies of his educational certificates Ex.P-6 to Ex.P-11.

6. Learned counsel for respondent No.1 tendered into evidence, copy of insurance policy Ex.R-1, copy of registration certificate of offending car Ex.R-2 and copy of driving licence of respondent No.1 Ex.R-3. Learned counsel for insurance company placed on record insurance policy Ex.R-4.

7. The Tribunal after going through the aforesaid evidence, held that the aforesaid accident was caused by respondent No.1 while driving the offending car in rash and negligent manner on 05.06.2014. While deciding issue No.2, the Tribunal observed that the driver-cum-owner of the offending car was having valid driving licence Ex.R-3 and the said vehicle was insured with respondent No.2 through insurance policy Ex.R-4. The Tribunal considered the monthly income of the deceased as Rs.9372/-, he being electrician and consequently, passed award of Rs.15,43,916/- alongwith interest @ 7.5% per annum in favour of the appellants and against the respondents, jointly and severally.

8. I have heard learned counsel for the parties and gone through the record of the Tribunal.

9. Learned counsel for the appellants submitted that the impugned award was deficient, as addition to income, on account of future prospects of the deceased, was not made, while calculating the

total amount of compensation, by the Tribunal. Learned counsel for the appellants further submitted that the deceased was just 29 years of age and was having fixed income and as such addition of 50% of his actual income is to be added towards future prospectus as per the law laid down by the Hon'ble Apex Court in **National Insurance Company Ltd. vs. Pranay Sethi 2017(4) RCR (Civil) 1009**. Learned counsel for the appellants further contended that accordingly award passed by the Tribunal deserves to be modified.

10. On the other hand, learned counsel for respondent No.2 submitted that at the most, addition of 30% of the established income of the deceased is to be added in this case, as he was self employed. It was further submitted that the Tribunal wrongly awarded a sum of Rs.1,00,000/- as loss of consortium to appellant No.1-Rani Devi, which is not sustainable as per the law laid down in **National Insurance Company Ltd. vs. Pranay Sethi's case (supra)**. In fact, she was entitled to get loss of consortium to the extent of Rs.40,000/- only.

11. I have considered the submissions made by the learned counsel for the parties.

12. The findings of the Tribunal with regard to negligence of respondent No.1, which resulted in accident in question, were not assailed in any manner by respondent No.2.

13. The Tribunal considered the monthly income of the deceased as Rs.9372/-, in the light of the wages of electrician, as per

the Haryana Government notification of 2013-14. The Tribunal also held that 1/4th of the monthly income was to be deducted towards personal expenses of the deceased in view of the law laid down in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009(3) RCR Civil 77 (SC)**. The Tribunal also came to the conclusion that as the deceased was 29 years of age, multiplier of 17 is to be applied in this case. The said findings of the Tribunal were not challenged by respondent No.2 by filing any cross appeal or in the present appeal, during the arguments.

14. The deceased being qualified electrician, was to be considered as self employed. So as per the law laid down in **National Insurance Company Ltd. vs. Pranay Sethi's case (supra)**, an addition of 40% of the established income of the deceased is to be added, towards future prospectus. The said additional amount comes out to be [9372x12x3/4x40/100 = Rs.33,739/- per annum]. By applying multiplier of 17, the total additional income on account of future prospects comes out to be Rs.5,73,563/-. The appellants are entitled to get the said amount in addition to the compensation awarded by the Tribunal.

15. As per the law laid in **National Insurance Company Ltd. vs. Pranay Sethi's case (supra),** appellant No.1 was to get loss of consortium worth Rs.40,000/- only. However, the Tribunal awarded her an amount of Rs.1,00,000/- under the said head. In these circumstances, the counsel for respondent No.2 contended that the

aforesaid extra amount of Rs.60,000/- should be deducted from the total award passed by the Tribunal. The argument raised by the counsel for respondent No.2 is totally misplaced. In Civil Appeal No.2705 of 2020 **“United India Insurance Company Ltd. vs. Satinder Kaur @ Satwinder Kaur and others”** decided on 30.06.2020, the Hon'ble Apex Court observed that 'parental consortium' is granted to the child upon the premature death of a parent, for loss of parental aid, protection, affection, society, discipline, guidance and training. In the said case, the deceased left behind his widow and three minor children and parental consortium : 40,000x3 = Rs.1,20,000/- granted to the three minor children was upheld. In the case in hand, the deceased left behind two minor children, who are entitled to get parental consortium at the optimum rate of Rs.40,000/- each. However, the Tribunal had not awarded any compensation to the minor children under the head of 'parental consortium'. So it is held that the consortium of Rs.1,00,000/- awarded to appellant No.1-widow is to be disbursed in the following manner:-

> “(a) spousal consortium : Rs. 40,000/- to appellant No.1
>
> (b) parental consortium : Rs.30,000/- x 2 = Rs.60,000/- to both the minor children in equal shares.”

16. In the light of the aforesaid discussion, it is held that the appellants are entitled to get additional amount of Rs.5,73,566/- in equal shares, on account of future prospects, which is over and above

the awarded amount of Rs.15,43,916/-. The appellants are also entitled to get interest @ 7.5 % per annum on the aforesaid additional amount from the date of filing of the petition till its realization.

17. The amount of Rs.1,00,000/- awarded to appellant No.1 under the head of loss of consortium by the Tribunal, is directed to be disbursed (if not already paid) to appellants No.1 to 3 in the manner detailed in para No.15 of this judgment. If already paid, then extra amount of Rs.60,000/- paid to appellant No.1, is to be adjusted in favour of the minor children, while disbursing additional amount of Rs.5,73,566/- to the appellants.

18. The share of the minor children is to be deposited in some nationalized bank which they will be entitled to receive on attaining the age of majority.

19. Accordingly, this appeal is hereby disposed of in the aforesaid terms.

(KARAMJIT SINGH)
JUDGE

18.12.2020
Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No