IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO NO. 7918 OF 2017 and
Cross Objection No. 103-CII of 2018
DATE OF DECISION : 17.03.2021

Reliance General Insurance Company Limited.

…Appellant

Versus

Charanjit Kaur and others

…Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Sanjeev Kodan, Advocate,
for the appellants.

Mr. Sanjeev Patiyal, Advocate
For the respondents.

(Presence marked through video conferencing).

ARUN MONGA, J.

1. The Insurance Company is in appeal impugning the award dated 03.10.2017 rendered by the Motor Accident Claims Tribunal, Mohali (for brevity, the Tribunal) by virtue of which the appellant(being the insurer) and respondent No.5(driver) of the offending vehicle bearing registration No. PB7AS-4593 have been fastened with liability to pay compensation of Rs.25,82,000/- along with interest @ 6% per annum from the date of filing of the claim petition till realization on account of death of Jaswinder Singh in a motor vehicular accident caused on 11.08.2016 due to rash negligent driving of the offending vehicle.

2. The insurance company has challenged the award on the ground that it has unnecessarily been burdened with the liability to indemnify the claimants that

too with an exaggerated amount, while the claimants have filed cross objections No.103-CII of 2018 aggrieved with the compensation amount being on lower side.

3. During the course of arguments, it has been pointed out by learned counsel for parties that FAO No. 7228 of 2017 arising out of the same accident in respect of accidental death of Kulbir Singh has been decided by this Court vide judgment dated 21.12.2020 and the findings returned by the Tribunal that the accident in question had taken place due to rash and negligent driving of offending vehicle by respondent No.5, has been upheld. Hence, counsel for the parties are *ad idem* that now the only issue to be adjudicated is with respect to quantum of compensation, so awarded by the Tribunal.

4. I have heard learned counsel for the appellant as well as cross-objector on the point of quantum of compensation.

5. The first plank of argument raised by learned counsel for the appellant is that the Tribunal has wrongly relied upon the salary certificate(Ex.PW3/C) which is not a genuine document and has been procured by the claimants just to derive undue benefit. According to learned counsel, PW3 Gurpal Singh in whose firm the deceased was allegedly working, failed to substantiate the factum of having paid Rs.15,000/- as salary to the deceased as in the income tax returns produced on record as Ex.PW3/F, Ex.PW3/I and Ex.PW3/J for the years 2014-15, 2015-16 and 2016-17 respectively do not reflect any tax liability on the firm and in this view of the matter it cannot be believed that the firm engaged the services of deceased for Rs.15,000/- per month.

6. Apart therefrom, learned counsel for the appellant submitted that the Tribunal had wrongly added 30% for future prospects. Concededly, the deceased was 40 years of age at the time of death. In view of the law laid down by the Constitutional Bench of the Hon'ble Apex Court in case titled as **National**

Insurance Company Limited Versus Pranay Sethi and others[1], 25% should have been added for future prospects, where the deceased was between the age group of 40-50 years. Hence, future prospects awarded by the Tribunal are on higher side.

7. He further argued that Tribunal had wrongly awarded consortium of Rs.1,00,000/- to the wife and Rs.25,000/- for funeral expenses, whereas per the dictum of the Constitution Bench of the Hon'ble Apex Court in National Insurance Co. Ltd. Vs. Pranay Sethi[2], the total compensation under conventional heads has been restricted to Rs.70,000/-.

8. Learned counsel for the appellant has also questioned the imposition of penal interest despite at the rate of interest of 9% per annum while relying upon the ratio laid down in **UPSRTC versus Islamuddin**[3], **United India Insurance Company Versus Bindu**[4], **Fakirappa Versus Karnataka Cement Pipe Factory**[5], **Sarla Verma Vs. Haryana Roadways**[6] and **Radha Krishna and another Vs. Gokul & others**[7]**,** wherein interest at the rate of 6% per annum was awarded. Thus, according to learned counsel for the appellant, the rate of interest as awarded in the present case should be 6% rather than 9 % per annum.

9. On the other hand, it was argued by the learned counsel for cross-objectors/ claimants that income of the deceased has wrongly been taken as Rs.15,000/- instead of Rs.20,000/- per month and an increase towards future prospects @ 25% (i.e. Rs.5,000/-) has to be made thereto and after making deductions of $1/4^{th}$ to it, the multiplier of 14 has to be applied, taking the total to Rs.31,50,000/- instead of Rs.24,57,000/-, as awarded by the Tribunal.

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[1] 2017(4) RCR (Civil) 1009
[2] 2017 ACJ 2700
[3] 2009(3) SCC-473
[4] 2009(3) SCC-705
[5] 2004(2) PLR-210
[6] Civil Appeal No. 5256 of 2008 decided on 29.01.2014
[7] Civil Appeal No. 9858 of 2013 arising out of SLP(C) No.1056 of 2008 decided on 31.10.2013

10. According to him, the claimants are entitled to Rs.20,000/- for loss of estate, Rs.25,000/- as funeral expenses, Rs.40,000/- to claimant No.1 for loss of spousal consortium, while Rs.40,000/- each to claimants No.2 to 4 for loss of parental consortium, taking the total amount to be awarded under conventional heads to Rs.2,05,000/-, in view of law laid down in **Magma General Insurance Company Versus Nanu Ram @ Churu Ram**[8], instead of Rs.1,25,000/- as awarded by the Tribunal.

11. As mentioned above, vide judgment dated 21.12.2020 in FAO No. 7228/2017 (&M) title Reliance General Insurance Company Limited v. Rajinder Kaur and others, arising out of the same accident, this Court upheld the finding of the learned Tribunal that the accident took place due to rash and negligent driving of the offending vehicle by Sandeep Kumar respondent No. 5 and learned counsel for the parties are ad idem that now the only issue to be adjudicated upon is with regard to the quantum of compensation.

12. Learned Tribunal held that at the time of death, the age of Jaswinder Singh was about 41 years, his monthly income was Rs. 15,000/-, it added 30% of the then income for future prospects, deducted $1/4^{th}$ of the income for his personal expenses, applied multiplier of 14, awarded consolidated amount of Rs. 1 lakh for loss of consortium and Rs. 25,000/- for funeral expenses and thus awarded total compensation amount being Rs. 25,82,000/-.

13. Learned counsel for the objector/respondents submits that as per the categorical testimony of PW Charnjeet Kaur, her husband was earning Rs. 20,000/- per month, the learned Tribunal wrongly ignored the same while determining his monthly income as Rs. 15,000/-; it erred in not allowing any compensation for loss of estate and that the compensation awarded for loss of consortium is inadequate.

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8 SC2018(4) R.C.R.(Civil) 333 : 2018(9) JT 195

14. On the other hand, learned counsel for the appellant/insurance company contends that the monthly income of the deceased determined by the learned Tribunal at Rs. 15,000/- is much too higher than his actual income; the learned Tribunal also awarded excess compensation for loss of consortium and for funeral expenses.

15. It was submitted that the salary certificate and the income tax returns of the employer of Jaswinder Singh deceased are unreliable , but the learned Tribunal erred by relying upon them while determining his monthly income as Rs. 15,000/- . He pointed out that in the salary certificate Ex PW3/C issued by the proprietor of the employer firm, nothing has been mentioned regarding the heads under which the income of Jaswinder Singh deceased had been fixed; that the income tax returns for 2014-15, 2015-16 and 016-17 Ex PW3/F, Ex PW3/I and Ex PW3/J of Rattan Singh proprietor of the employer firm, shows that the net income was Rs. 5,00,485/- , 4,39,867/- and Rs. 6,76,071/- respectively and no income tax was paid owing to which it can be safely presumed that he could not have employed Jaswinder Singh on a monthly salary of Rs. 15,000/-; that the salary certificate shows that Jaswinder Singh was a Welding Foreman, but the computation sheet attached with the income tax returns, show that the business of the firm was 'trading and retailers', for which there could not be any need to employ a welding foreman; that PW-3 Gurpal Singh who issued the certificate, admitted that his firm was not affiliated to ESI; no labour tax was deposited with the MC and that the salary certificate Ex PW-3/C does not bear any date of its issue. For all these reasons, he contended, the document is totally unreliable and should not have been made the basis for determining the income of Jaswinder Sigh as Rs. 15,000/- per month.

16. I am of the opinion, that the learned Tribunal rightly determined the income of Jaswinder Sigh deceased as Rs. 15,000/- per month.

17. To my mind, the self-serving oral statement of Charanajeet Kaur claiming her husband's monthly income as Rs. 20,000/- stood ought-weighed and displaced by the aforesaid documents submitted by the claimants themselves, according to which the monthly income of Jaswinder Singh was Rs. 15,000/-.

18. I am also unable to accept the contention of the learned counsel for the appellant that the salary certificate and supporting income tax returns produced by the claimants are unreliable and that the learned Tribunal wrongly made them the basis for holding that monthly income of Jaswinder Singh deceased was Rs. 15,000/-.

19. Affidavit Ex PW-3A of PW Gurpal Singh shows that he is the business head of M/s Regency Hadraulic Engineers, Mohali of which his father Rattan Singh is the proprietor. Salary certificate Ex PW-3/C has been issued on the letter pad of the said firm. There seems no requirement for specifying the various heads of salary on suchlike salary certificates. The name of the firm itself is indicative of the nature of its work/ business. Obviously, there would be need for employment of a welding foreman for the work/business of the employer firm. That reality would not be negatived merely because, as contended by the leaned counsel for the appellant, the computation sheet attached with the income tax returns, show that the business of the firm was 'trading and retailers'. The need for employment of workers depends upon the nature and quantum of working, turn-over, etc. of the employer. Merely because the net income of the employer, after accounting for the expenditure for the relevant period, remained within the exemption limit of income tax liability, that does not mean that the employer did not employ or could not have employed Jaswinder Singh as welding foreman on a monthly salary of Rs. 15,000/-. Just because the employer firm was not affiliated to ESI and no labour tax was deposited with the MC and omission of date of issue on the salary certificate do not justify an inference that the salary

certificate is not genuine or that the same should be discarded, in the absence of any evidence to the contrary.

19. Learned Tribunal held that the age of Jaswinder Singh at the time of death was about 41 years. It applied the multiplier of 14, relying upon **Sarla Verma v. Delhi Transport Corporation 2009(3)RCR (Civil)77.** Correctness of these findings is not disputed by either side. I am inclined to uphold the same.

20. Considering that the age of Jaswinder Singh at the time of death was about 41 years, I am of the opinion that as per the norms laid down by the Constitution Bench in **Pranay Sethi and others** supra, 25% addition of income for future prospects should be made, instead of 30% made by the learned Tribunal.

21. Learned Tribunal deducted 1/4th of the income for personal expenses of the deceased. This has not been questioned by the learned counsel for the parties. Considering the size of the family and age of the children of the deceased and other circumstances, I am inclined to agree to the view taken by the learned Tribunal.

22. In **National Insurance Company Limited v. Pranay Sethi and others supra,a Constitution Bench of the Hon'ble Supreme Court held as under:**

> "xxx xxxxx
> 61 (viii) 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."

23. Relying upon the same, another bench of the Hon'ble Apex Court in **Magma General Insurance Company v. Nanu Ram @ Churu Ram** supra, awarded compensation of Rs. 50,000/- each, (total Rs. 1,00,000/-) to two claimants- the father and sister of the deceased victim of the accident- for loss of filial consortium.

24. On same analogy and with 10% enhancement over Rs. 40,000/- after 3 years for loss of consortium provided for in **Pranay Sethi and others** supra, I am of the opinion that each of the four claimant/objectors namely Charanjit Kaur widow, Ramanpreet Kaur, Prabhjot Kaur minor daughters and Dharminder Singh minor son of Jaswinder Singh deceased should get Rs. 44,000/- total Rs. 1,76,000/- for loss of consortium. To my mind, the Learned Tribunal erred in awarding consolidated amount of Rs. 1,00,000/- for loss of consortium to the four claimants.

25. I am also of the opinion, that the learned Tribunal erred in not allowing any compensation at all for loss of estate and that it also erred in awarding a compensation of Rs. 25,000/- for funeral expenses instead of allowing the same as per formula laid down by the Constitution Bench in **Pranay Sethi and others supra.** As per that norm, Rs. 16500/- instead of Rs. 25,000/- for funeral expenses and Rs. 16500/- for loss of estate ought to be awarded.

26. In view of the undisputed facts and findings and the discussion as above, the amount of compensation is worked out and the award of the learned Tribunal is modified as under:

Sl. No.	Head	Calculations
(i)	Earning of the deceased	Rs. 15,000/- per month
(ii)	Earnings with 25% increase for future prospects	Rs. 15,000/-+3,750/-=18,750/-
(iii)	Deduct 1/4th for personal expenses	1/4th of 18,750/-= 4688 say Rs.4690/- =14,060/-
(iv)	Compensation with multiplier of 14	14,060x12x14=23,62,080/-
(v)	Loss of consortium @ Rs. 44,000/- each to four claimants	Rs.1,76,000/-
(vi)	Funeral expenses	Rs. 16,500/-
(vii)	Loss of estate	Rs. 16,500/-
(viii)	Total compensation [(iv)+ (v)+ (vi)+ (vii)]	23,62,080/-+ Rs.1,76,000/-+ Rs. 16,500/-+ Rs. 16,500/- = Rs. 25,71,080/-.

27. In **Erudhaya v. State Express Transport Corporation Ltd., Civil Appeal No. 2811-2812 of 2020** decided on 27.07.2020, the Hon'ble Supreme Court upheld the claim for interest @ 9% of the compensation amount. The learned Tribunal held the claimants entitled to interest @ 6% per annum on the amount of compensation from the date of filing the claim petition and directed that in case the amount was not paid within three months, from the date of the award, the claimants shall be entitled to interest @ 9% per annum from the date of award till realization. In view of this, the reliance of the learned counsel for the appellant on the aforesaid other cases for restricting the rate of interest on the compensation amount to 6% per annum till payment, is misplaced.

28. As a result, except for the modification that the claimants are entitled to total compensation of Rs. 25,71,080/- instead of Rs. 25,82,000/-, the award of the learned Tribunal is upheld. The appeal and the cross objection petition are disposed of accordingly.

29. Pending applications, if any, also stand disposed of.

March 17, 2021 **(ARUN MONGA)**
Jiten **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No