IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2975-2013 (O&M)

Decided on:- 09.09.2022

Mangra Devi and others …..Appellants

vs.

Suresh Kumar and others ....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. R.K. Bamal, Advocate for the appellants.
Mr. G.S. Bal, Sr. Advocate with
Mr. Dilshad S. Gill, Advocate for respondent No.2.

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HARKESH MANUJA J. (Oral)

Present appeal has been filed at the instance of appellants/claimants against award dated 21.12.2012 passed by Motor Accident Claims Tribunal, Chandigarh (for short 'Tribunal') seeking enhancement of compensation as well as on the issue of liability as regards respondent No. 2.

In the present case, accident took place on 20.01.2007 near back side car parking local bus stop, Sector 17, Chandigarh wherein deceased Honsla Kumar lost his life being hit by the offending vehicle i.e. a Scooter bearing registration No. CHN-655. The appellants being parents of deceased filed claim petition before learned Tribunal praying for grant of compensation to the tune of Rs. 15 lakh along with interest on the ground that their son lost his life on account of rash and negligent driving of Respondent No. 1-driver. The appellants based their claim on the plea that the deceased at the time of accident was 18 years of age and doing a private job at petrol pump, getting salary of Rs. 3000/- per month plus Rs.

100/- per day.

Learned Tribunal vide its award dated 21.12.2012 granted a sum of Rs. 3,22,000 /- along with interest at the rate of 7% per annum as compensation in favour of appellants by holding Respondent No. 1 to be rash and negligent in driving the offending vehicle. While determining the amount of compensation, learned Tribunal assessed monthly income of the deceased to be Rs. 3,000 per month and dependency was calculated at Rs. 2000 per month. Considering the age of appellants/claimants to be 46 and 48 years respectively, multiplier of 13 was applied besides granting a sum of Rs. 5000/- as funeral expenses and Rs. 5000/- on account of loss of estate.

The present appeal was preferred by the appellants, claiming further enhancement of compensation and for seeking fastening of liability upon respondent No.2 as well. It may be relevant to note here that no challenge was made to the award impugned herein at the instance of respondents.

Learned counsel for the appellants has primarily challenged the multiplier applied by the learned Tribunal based on the age of the claimants. It has been contended that the assessment of compensation was required to be made by applying the multiplier on consideration of the age of deceased. He also submits that the learned Tribunal committed an error by not granting the benefit of future prospects towards income of the deceased and even assails the grant of interest @ 7% per annum being on the lower side.

On the point of liability, learned counsel for the appellants submits that once the father of respondent No.2 was recorded to be the registered owner of the offending vehicle, he could not have been discharged of his liability despite having sold the same by way of affidavit, without their being any change carried out in the records of registration.

On the other hand, learned Senior counsel representing respondent No.2 submits that once it has come on record by way of evidence that the offending vehicle stood sold in favour of Col. Manmohan Singh Khurana, who in turn, sold it to respondent No.1, no liability could have been fastened upon respondent No.2, particularly under the circumstances when respondent No.1 even admitted in his cross-examination while appearing as RW2 regarding the purchase of the offending vehicle.

Having heard learned counsel for the parties and gone through the paper-book as well as records as well as in view of the fact that neither there has been any separate appeal filed on behalf of respondents; nor any cross-objections have been preferred on their behalf. I find merit in the contentions raised on behalf of the appellants, same being worth consideration.

The learned Tribunal committed an error while determining compensation by applying multiplier of 13 based on consideration of the age of claimants. It has been held in catena of judgments passed by the Hon'ble Supreme Court that the age of the deceased should be the basis for applying the multiplier.

I also find merit in the contention raised on behalf of the appellants that while determining income an addition of 40% of the salary towards future prospects should have been awarded.

Reference in this regard can be made to the judgment rendered by the Hon'ble Supreme Court of India in case titled as **National Insurance Company Limited Vs. Pranay Sethi, 2017 (4) RCR (Civil) 1009.**

Applying the principle as laid down in **Pranay Sethi's** case (supra), the claimants are also entitled for Rs.16,500/- as compensation under the head of funeral expenses as against Rs.5000/- awarded by learned Tribunal and another sum of Rs.16,500/- on account of loss of estate as against Rs.5000/- awarded by learned Tribunal. In addition, the appellants - claimants are also entitled for another sum of Rs.88,000/- (Rs.44,000 + Rs.44,000/-) being filial consortium by applying 10% increase under the conventional heads as fixed in the case of **Pranay Sethi** (supra).

In view of the discussions made hereinabove, the appellants are entitled for following enhanced compensation, as detailed in the table given hereunder:-

Sr.No.	*Particulars*	*Amount (Rs.)*
1.	*Annual Income of deceased Rs.3000/-x 12)*	*Rs.36,000/-*
2.	*Add 40% of Future prospects*	*Rs.14,400 /-*
3.	*Total Income (Rs.36,000/- + Rs.14,400/-)*	*Rs.50,400/-*
4.	*Deduction (1/3rd)*	*Rs.16,800/-*
5.	*Multiplier of 18 as per age of deceased to be of 18 years (Rs.33,600 x 18)*	*Rs.6,04,800/-*
6.	*Funeral Expenses*	*Rs.16,500/-*
7.	*Loss of Consortium*	*Rs.88,000/-*
8.	*Loss of Estate*	*Rs.16,500/-*
	Total Compensation	*Rs.7,25,800/-*
	Amount Awarded by the Tribunal	*Rs.3,22,000/-*
	Enhanced Amount	*Rs.4,03,800/-*

As regards the issue of liability qua respondent No.2 is concerned, I find substance in the submissions made by learned counsel for the appellants. Though, it has been admitted by respondent No.1 while appearing as RW2 that the offending vehicle (scooter) was purchased by him from Col.M.S. Khurana on 13.10.2006, who in turn, purchased the same from father of respondent No.2 on 19.04.2003, yet as per the records maintained by the Registering and Licencing Authority, Chandigarh, the offending vehicle continued to remain in the name of father of respondent No.2 (Sh.O.P.Malik). This fact has been duly proved on record by the appellants by referring to the statement of PW2-Rajesh Pal, the Data Entry Operator, Registration and Licencing Authority, Chandigarh, who has produced the summoned records showing the offending vehicle to be registered in the name of O.P.Malik i.e. the father of respondent No.2 whereas nothing to the contrary has been brought to my notice from ther records by learned Senior counsel representing respondent No.2. In order to support this reasoning, reference can be made to the judgment of Hon'ble Supreme Court in **Naveen Kumar Vs. Vijay Kumar**, 2018 (2) RCR (Civil) 74; wherein it has been held that even in case of registered owner having transferred the vehicle by way of sale; but continuous to be reflected in the records of the Registering Authority as the owner, would not stand absolved of its liability. Relevant portion of para 12 of the aforesaid judgment is reproduced hereunder:-

> *"12 The consistent thread of reasoning which emerges from the above decisions is that in view of the definition of the expression 'owner' in Section 2(30), it is the person in whose name the motor vehicle stands registered who, for the purposes of the Act, would be treated as the 'owner'. However, where a person is a minor, the guardian of the minor would be treated as the owner. Where a motor vehicle is subject to an agreement of hire purchase, lease or hypothecation, the person in possession of the vehicle under that agreement is treated as the owner. In a situation such as the present where the registered owner has purported to transfer the vehicle but continues to be reflected in the records of the registering authority as the owner of the vehicle,*

he would not stand absolved of liability.....”

Thus, in view of the above, the liability to pay compensation to the appellants has to be fastened upon respondents No.1 & 2 jointly and severally. Therefore, the findings recorded in this regard by the learned Tribunal are hereby modified in the aforesaid terms.

I further find that the grant of interest @ 7% per annum is not just in view of the facts and circumstances of the present case and also as per the observations made by Hon’ble Supreme Court in **Smt.Supe Dei and others Vs. National Insurance Company Limited and others**, (2009) 4 SCC 513 which have even been approved in a subsequent judgment titled as **Puttamma and others Vs. K.L. Narayanana Reddy and another**, 2014 (1) RCR (Civil) 443. Accordingly, the interest is enhanced to 9% per annum on the amount of compensation awarded to the claimants from the date of institution of claim petition till its realization. Needless to mention here that the amount of compensation already paid to the claimants shall be deducted from the enhanced compensation.

In view of the above, the appeal filed by the claimants is partly allowed.

Pending misc. application (s), if any, shall also stand disposed off.

September 09, 2022 **(HARKESH MANUJA)**
sanjay **JUDGE**

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*