IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-2538-2006
Decided on : 07.07.2023

Sangtari Muleem and others

. . . Appellant(s)

Versus

Karnail Singh and others

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Shoaib Khan, Advocate
for the appellant(s).

Mrs. Shamsher Kaur, Advocate
for respondent No.3 – Insurance Co.

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SANJAY VASHISTH, J. (Oral)

1. Counsel appearing for the appellants, after getting no objection from the previous counsel, files his *Vakalatnama* in Court today, which is taken on record, subject to all just exceptions. Office to tag the same at appropriate place.

2. Present appeal has been filed by the appellants, being the petitioners-claimants in MACT case No.133 of 2004 dated 29.09.2004 (computerized case No. 52901C0006752005) for modification of the award/judgment dated 27.03.2006, passed by the Ld. Motor Accidents Claims Tribunal, Panchkula (hereinafter referred to as 'Ld. Tribunal')by way of seeking enhancement of amount of compensation, on account of death of one Surjeet Muleen.

3. Briefly stated facts of the case are that, on 28.07.2004 at about 09:00 A.M., deceased – Surjeet Muleen was going to his office situated at Sector 26, Chandigarh, from his residence at Sector 2, Panchkula, on his

scooter bearing registration No. HR03-A-3782, which was being driven by him. When he reached near Railway Lights point, Mani Majra, suddenly a bus, bearing registration No.CH01-G-5864, struck him from back, which was being driven by respondent No.1 – Karnail Singh (driver) in a rash and negligent manner. Deceased – Surjeet Muleen fell down on the road along with scooter and rear wheel of the bus passed over his body, resulting in his death on the spot.

Regarding the said accident, FIR No. 161, dated 28.07.2004, under Sections 279, 337, 304A of IPC, was registered against respondent No.1 with the Police Station Mani Majra (UT), Chandigarh.

4. For claiming damages, appellants (petitioners/claimants), who are related as widow and three children of the deceased, filed a claim petition before the Ld. Tribunal at Panchkula.

After completion of pleadings, Ld. Tribunal framed the following issues:-

I. Whether the accident, causing the death of Surjeet Muleen took place on 28.7.2004 due to rash and negligent driving of bus No.CH-01/G-5864 driven by respondent No.1 as alleged ? OPA

II. If issue no.1 is proved, whether claimants are entitled to compensation, if so, to what amount and from whom? OPA

III. Whether respondent no.1 was not having valid and effective driving licence at the time of accident as alleged? OPR-3

IV. Relief.

5. After proving of the happening of accident because of the rash and negligent driving of respondent No.1, issue No.1 was decided against him and in favour of the appellants/petitioners-claimants. Thereafter, on the basis of record available before the Ld. Tribunal, total compensation amount of ₹7,85,000/- along with interest @ 7.5% per annum from the date of institution of the claim petition till its realization, was awarded as payable in favour of the claimants, by assessing monthly income of the deceased – Surjeet Muleen as ₹19,377/- per month, and multiplier was applied of 5.

Hence, the appellants are in appeal before this Court for seeking enhancement of awarded amount of compensation.

6. While addressing arguments, counsel for the appellants has relied upon the judgment of the Constitution Bench passed by the Hon'ble Apex Court in ***National Insurance Company Limited vs. Pranay Sethi and Ors., 2017(4) R.C.R.(Civil) 1009**, (Law Finder Doc Id #918174).* Counsel also relies upon the judgment subsequently passed by the Hon'ble Apex Court in ***Smt. Anjali & Ors. vs. Lokendra Rathod & Ors., 2023(1) R.C.R. (Civil) 229**, (Law Finder Doc ID #2081014).*

7. While relying upon the aforesaid judgments, counsel for the appellants submits that the multiplier should have been applied of 11 instead of 5, and funeral expenses should have been awarded as ₹50,000/- instead of meager amount of ₹5,000/-, and loss of estate should also be ₹20,000/-. Counsel also submits that on account of loss of parental consortium to each of the three appellants (i.e. appellants No.2 to 4), compensation of ₹44,000/- each, should have been awarded, whereas, Ld. Tribunal did not award any amount. Thus, he prays for enhancement of compensation along with interest @ 9% per annum, instead of 7.5% per annum.

8. On the other hand, learned counsel for respondent No.3 – Insurance Company, without disputing the law laid down by the Hon'ble Apex Court in **Pranay Sethi's case** (supra), submits that amount of compensation has been rightly awarded by Ld. Tribunal, and there is no need of causing any interference in the well reasoned award passed by the Ld. Tribunal.

9. I have gone through the impugned award and the calculations mentioned therein, apart from hearing learned counsel for the parties.

10. There is no doubt that in a situation where the different Courts at different times were at diversions in their opinion and in the absence of any clarification by the law makers despite recommendations by the Hon'ble Apex Court, all the major issues were referred to the larger Bench, and accordingly, Constitution Bench was constituted in **Pranay Sethi's case** (supra). Thus, for the purpose of reaching out to appropriate amount of compensation for adjudging the rights of the claimants, guidelines laid down in the judgment of the Constitution Bench in **Pranay Sethi's case** (supra), would help the Courts.

<u>ASSESSMENT OF MONTHLY SALARY</u>:

11. First of all, monthly income of the deceased – Surjeet Muleen, is required to be fixed. Ld. Tribunal has held that after deducting taxes from the income, monthly salary of ₹19,377/- was received by the deceased. Learned counsel for the appellants/claimants while accepting the said fixation of salary by Ld. Tribunal, argues that as per guidelines of **Pranay Sethi's case** (supra), 15% of the income towards future prospects is to be added to the receiving amount of salary. Thus, counsel submits that by adding 15% in the monthly salary as future prospects, then same would be

₹22,284/- (₹19,377 + ₹2907). It is not a matter of dispute that the future prospects of 15% would be applicable, because deceased was admittedly in the Government services and was of the age of more than 55 years.

On hearing counsel for the parties and after going through the parameters laid down by the Hon'ble Apex Court in **Pranay Sethi's case** (supra), this Court is in agreement with the counsel for the appellants to say that the monthly salary as received by the deceased, requires to be assessed as ₹22,284/- per month.

DEDUCTION TOWARDS PERSONAL EXPENSES:

12. In the judgment of the Constitution Bench in **Pranay Sethi's case** (supra), Hon'ble Apex Court has affirmed the formula laid down in ***Smt. Sarla Verma and others vs. Delhi Transport Corporation and another*, *2009(3) R.C.R. (Civil) 77*,** *(Law Finder Doc ID #188882)* for the purpose of calculation of deduction towards personal expenses. The relevant para No.14 of the said judgment says as under:-

> *"14. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this court, 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 (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six."*

As pointed out by counsel for the appellants (petitioners/claimants) and admitted by counsel for respondent No.3 – Insurance Co., there are total four claimants in the present case. Therefore, deduction of salary of the deceased would of $1/4^{th}$ instead of $1/3^{rd}$, as held by

Ld. Tribunal. In other words, appellants (petitioners/claimants) would be entitled to receive 3/4th of the remnant amount of salary of the deceased, which comes out to ₹16,713/-, and by multiplying the same with 12 months i.e. one year period, the total entitlement of compensation of appellants (petitioners/claimants) would be of ₹2,00,556/- per annum.

Accordingly decided.

MULTIPLIER:

13. Counsel for the appellants (petitioners/claimants) submits that multiplier of 5 has been applied by the Ld. Tribunal, whereas, multiplier of 11 should be used.

To counter the said submissions, learned counsel for respondent No.3 – Insurance Co. proposes that as per the schedule/guidelines laid down in **Sarla Verma's Case** (supra), multiplier of 9 would be applicable.

14. I have gone through the submissions and the findings recorded by the Hon'ble Apex Court in **Pranay Sethi's case** (supra) as well as in **Sarla Verma's Case** (supra). Undoubtedly, as per the schedule given in **Sarla Verma's case** (supra), for the age group of 51 to 55 years, applicable multiplier is 11, whereas, for the age group of 56 to 60 years, the applicable multiplier is 9. Although, proposed formula of multiplier talks about the age of 55 years, but, it is silent about the age period between 55 years and before reaching to the age of 56 years. Thus, considering the aspect that the Hon'ble Apex Court was well conscious of the fact that the Statute is beneficial and benevolent in nature for the victims and absence of clarification about such technicalities cannot come in the way of making a liberal interpretation of the provisions of the Statute for extending its benefits to the victims, therefore, this Court is constrained to assume that

Hon'ble Apex Court while laying down the formula was conscious of this aspect, and thus, it is to be interpreted that upto the age period of 55 years 11 months and 29 days, applicable multiplier would be the same as mentioned for the age group of 51 to 55 years. Thus, this Court is of the view that multiplier of 11 should have been applied in the present case, instead of multiplier of 5, as applied by Ld. Tribunal.

LOSS OF FUTURE INCOME:

15. This way, total amount of compensation, by applying the multiplier of 11, would be of ₹ 22,06,116/- (₹16,713 x 12 x 11).

Accordingly decided.

ASSESSMENT QUA COMPENSATION OF LOSS OF ESTATE, FUNERAL EXPENSES, AND LOSS OF CONSORTIUM:

16. Out of all the aforesaid three heads, Ld. Tribunal has awarded only ₹5000/- *qua* funeral expenses. No amount of compensation was even assessed towards loss of estate, and loss of consortium. Keeping in view the amount awarded in another judgment by the Hon'ble Apex Court i.e. **Smt. Anjali's case** (supra), lump-sum amount towards of ₹20,000/- can be considered towards loss of estate. The amount of ₹5000/- awarded by the Ld. Tribunal seems to be very nominal, thus, considering the date of accident i.e. 28.07.2004, an appropriate amount of ₹25,000/- for funeral expenses is justified. For the accident, which took place in the year 2010, the Hon'ble Apex Court in **Smt. Anjalli's case** (supra) awarded ₹50,000/- towards funeral expenses.

As far as, awarding of amount of compensation towards the head of 'loss of consortium' is concerned, in **Pranay Sethi's case** (supra), Hon'ble Apex Court decided it as ₹40,000/- without clarifying the different relations of the claimants with the deceased. However, subsequently, in **Smt. Anjali's case** (supra), the Hon'ble Apex Court, awarded amount of compensation in the form of 'spousal consortium' and 'parental consortium', separately ₹40,000/- to each of the claimants, along with 10% increase after every three years. In the present case also, if the same principle is applied, in that situation, all the four appellants (petitioners/claimants) would be entitled for ₹44,000/- each, towards the heads of 'loss of spousal consortium' and 'loss of parental consortium'. Therefore, it is held that appellants (petitioners/claimants) are entitled for an amount of ₹44,000/- each under the heads of 'loss of spousal consortium' and 'loss of parental consortium'.

17. Thus, in the light of above-said discussion, the total amount of compensation under all the heads is calculated as under:-

Sr. No.	Head	Compensation Awarded
1.	Income	₹ 19,377/- p.m.
2.	Future Prospects	₹2907/- (i.e. 15% of the income)
3.	Deduction towards personal expenses	₹5571/- (i.e. 1/4th of [₹19,377 + ₹2907])
4.	Total Annual Income	₹2,00,556 (i.e. 3/4th of [₹19,377 + ₹2907] x 12)
5.	Multiplier	11
6.	Loss of Dependency	₹22,06,116 (i.e. ₹2,00,556 x 11)
7.	Funeral Expenses	₹25,000/-
8.	Loss of Estate	₹20,000/-
9.	Loss of Spousal Consortium	₹44,000/-
10.	Loss of Parental Consortium to each of the three children	₹1,32,000/- (₹44,000 x 3)
11.	Total Compensation to be Paid:	₹24,27,116/-

<u>CALCULATION OF INTEREST</u>:

17. Counsel for the appellants insist for fixing the rate of interest at

9% per annum from the date of filing of the claim petition till its realization, however, learned counsel appearing on behalf of respondent No.3 – Insurance Co., submits that the rate of interest should not be over the awarded amount, and therefore, it should not be more than 6% per annum.

18. I have gone through the judgments cited by counsel for the appellants (petitioners/claimants) and thus, I deem it appropriate to grant the rate of interest at 7.5% per annum, as has already been granted by the Ld. Tribunal over the total awarded amount of compensation.

Thus, total compensation compensation payable to the appellants (petitioners/claimants) is **₹ 24,27,116/-** along with interest at **7.5%** per annum from the date of filing of claim petition till the date of payment of compensation to the appellants (petitioners/claimants).

Needless to mention that out of the total payable compensation amount, already paid amount (if any) in compliance to the impugned award would be adjusted.

19. Therefore, by partly modifying the award, **appeal is allowed** with the terms indicated here-above.

(SANJAY VASHISTH)
JUDGE

July 07, 2023
J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No