

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

FAO-2418-2017 (O&M)

Jyuna Ram and another Appellants

Versus

Chander Veer and others Respondents

FAO-2464-2017 (O&M)

Ramphal and another Appellants

Versus

Chander Veer and others Respondents

Date of Decision: 17.02.2023

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Harish Nain, Advocate,
for the appellants.

Mr. Rajneesh Malhotra, Advocate,
for respondent No.3-Insurance Company.

RAJBIR SEHRAWAT, J. (ORAL)

This shall dispose of two appeals, i.e. FAO-2418-2017 and FAO-2464-2017, because both of them are arising out of the same award dated 30.08.2016 passed by the Motor Accident Claims Tribunal, Jind (in short, 'the Tribunal'), in the claim petitions arising from the same accident. However, for the sake of brevity, the main facts are being taken from FAO-2418-2017.

For the purpose of the present appeal, the parties would be referred to as they were described in the original claim petitions filed before

the Tribunal.

The brief facts involved in the matter are that on 03.08.2014, Vipin Kumar, along with Parveen Kumar, was going from Narwana to Jind on Pulsor Motor cycle bearing registration No.HR-32-F-7300. At about 11:30 PM, when they reached in the area of Shivpuri Colony, Narwana Road, Jind, a canter bearing registration No.UP-85AT-1941; being driven by respondent No.1 at a very high speed and in a rash and negligent manner; came from the front side and directly struck against the motorcycle. Due to the accident, Vipin Kumar and Parveen Kumar suffered multiple and grievous injuries. Vipin Kumar was brought to the General Hospital, Jind, but he was referred to the PGIMS, Rohtak. Lateron, Vipin Kumar succumbed to the injuries. Similarly, the other person Parveen Kumar also died of the injuries suffered by him in the accident. An FIR No.640 dated 04.08.2014 under Sections 279 and 304-A of the Indian Penal Code was also registered at Police Station City Jind, regarding the accident. As a result, two separate claim petitions were filed by the parents of the deceased.

It was asserted in the claim petition filed by the parents of Vipin Kumar that he was of the age of 28 years. He was serving as an Accountant with the private company and was receiving an amount of Rs.20,000/- per month. Accordingly, on account of death of Vipin Kumar, the claimants raised a claim of Rs.5,00,00,000/- as compensation.

Similarly, in case of the claim petition filed by the parents of Parveen Kumar, it was asserted that he was of the age of 28 years and he was a Shopkeeper. It was asserted that the deceased was earning an amount

of about Rs.2,00,000/- annually from his business. Accordingly, an amount of Rs.3,00,00,000/- was claimed as compensation.

On being put to notice, respondents No.1 and 2 appeared and filed their written statement taking routine objections. On merits, it was pleaded that no accident, as such, had taken place as alleged in the petition. The claim petition has been filed falsely only to extract the compensation money from the respondents. Respondent No.3-Insurance Company also contested the claim petition; by filing a separate written statement. It was asserted in the written statement filed by respondent No.3-Insurance Company that the deceased himself was not having a valid and effective driving licence and the claim petition has been filed in collusion with respondents No.1 and 2. On merits, it was asserted that no such accident had ever taken place with the vehicle insured by the respondent-Insurance Company, and it has falsely been impleaded in the matter.

The claimants led their respective evidence. After assessing the evidence on file, the Tribunal has awarded an amount of Rs.21,70,000/- to the claimants in case of death of Vipin Kumar. While awarding this compensation, the Tribunal has taken the age of the deceased to be 28 years. The deduction of half of the assessed income has been made. The income of the deceased is assessed at the rate of Rs.20,000/- per month; as per the salary record brought on record. However, no benefit on account of future prospects of the deceased is granted. Under the conventional heads, the claimants are awarded an amount of Rs.5,000/- for loss of estate, Rs.25,000/- for funeral expenses and Rs.1,00,000/- for love and affection.

Likewise, in the claim petition filed on account of the death of Parveen Kumar, the Tribunal has taken the age of the deceased to be 28 years. The income of the deceased is taken at Rs.8,250/- at the rate of minimum wages, supposedly prevalent at that time. Under the conventional heads, the claimants have been awarded Rs.5,000/- for loss of estate, Rs.25,000/- for funeral expenses and Rs.1,00,000/- for love and affection. However, in this case also, no benefit of future prospects of the deceased has been granted.

Arguing the case, learned counsel for the appellants/claimants has submitted that in case of Parveen Kumar, the Tribunal has wrongly taken the income of the deceased to be Rs.8,250/- per month. The Income Tax Return of the deceased, filed well before his death, was duly brought on record before the Tribunal. However, the same has not been taken into consideration on the ground that the supporting account books were not produced on record; nor any verification from the Income Tax Department was brought on record. However, none of these reasons are sustainable. The claimants had placed on record the computer generated print out of the Income Tax Return of the deceased before the Tribunal. The same shows the income of the deceased to be Rs.1,96,104/- per annum. Therefore, the said income should have been taken into consideration. Learned counsel has further submitted that in both the claim petitions, the Tribunal has gone wrong in law in not granting compensation on account of loss of the future prospects of the deceased. Learned counsel has submitted that, in both the cases, the Tribunal should have awarded the benefit on account of loss of

future prospects of the deceased, at least, at the rate of 40%. Learned counsel has relied upon the judgment rendered by Hon'ble the Supreme Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and others, (2017) 16 SCC 680**. It is further submitted by the learned counsel that besides the above benefits, the claimants should have been granted the benefit of loss of estate at the rate of Rs.1,00,000/- each of the claimants.

On the other hand, learned counsel for respondent No.3- Insurance Company has submitted that the compensation has rightly been awarded by the Tribunal. No enhancement is called for. Since, the income of the deceased in case of Parveen Kumar was not proved as per the law, therefore, the income of the deceased has rightly been assessed by the Tribunal. Moreover, the Tribunal has already awarded the compensation more than legally permissible on account of conventional heads. The same deserves to be decreased; as well. However, learned counsel has not been able to dispute the legal proposition as pronounced in the case of **Pranay Sethi's** case (supra).

Having heard learned counsel for the parties and having perused the case file, this Court finds substance in the argument raised by the learned counsel for the appellants that in both the claim petitions, the claimants should have been awarded compensation on account of loss of future prospects of the deceased at the rate of, at least, 50% of the assessed income of the deceased. The claimants are, accordingly, held entitled to the said benefit. This Court also finds that in case of Parveen Kumar, the claimants

have duly placed on record the Income Tax Return filed before the death of the deceased. The said Income Tax Return shows the personal income of the deceased to be Rs.1,96,104/-. Hence, his annual income has to be assessed at the rate of Rs.1,96,104/-. Although, the Tribunal has observed that the Income Tax Return has not been supported by the production of the books of accounts or verification report, however, since the document is a computer print out, therefore, this may not be, strictly speaking, the requirement for proof of the same. Moreover, in the present case, a perusal of the said Income Tax Return shows that the same is bearing the bar code generated by the Income Tax Department, as well as, mentions the I.P address of the site from the same has been taken. It is not even in dispute that the site mentioned in the Income Tax Return pertains to the Income Tax Department and that even the other details, as required under the statute, are duly present in the Income Tax Return. Hence, the same has to be taken into consideration and it cannot be discarded. The respondent-Insurance Company has not been able to rebut the said aspect in any manner to any degree. However, the income so assessed is subject to deduction at the rate of 50% as per the number of dependants of the deceased.

So far as the conventional heads are concerned, even the same have to be brought in consonance with the judgment rendered by Hon'ble the Supreme Court in **Pranay Sethi's** case (supra), even if the same results in reduction of some of the amounts, despite the insurance company having not filed appeal. Accordingly, following the judgment rendered by Hon'ble the Supreme Court in **Pranay Sethi's** case (supra), the claimants are held

entitled to consortium at the rate of 44,000/- each. The compensation on account of funeral expenses is awarded at the rate of Rs.16,500/- and loss of estate is awarded at the rate of Rs.16,500/-.

Ordered accordingly.

In view of the above, the present appeals are allowed. The appellants/claimants are held entitled to compensation as given below:-

Sr. No.	Heads	Amount assessed in the case of deceased Vipin Kumar	Amount assessed in the case of deceased Parveen Kumar
1.	Income	Rs.20,000 per month	Rs.1,96,104 per annum
2.	Future prospects @ 40%	Rs.20,000 X 40% =Rs.8,000	Rs.1,96,104 X 40% =Rs.78,441.60
3.	Annual Income	Rs.28,000 X 12 =Rs.3,36,000	Rs.1,96,104 + Rs.78,441.60 =Rs.2,74,545.60
4.	Deduction @ 50%	Rs.3,36,000 / 2 =Rs.1,68,000	Rs.2,74,545.60 / 2 =Rs.1,37,272.80
5.	Multiplier @ 17	Rs.1,68,000 X 17 =Rs.28,56,000	Rs.1,37,272.80 X 17 =Rs.23,33,637.60
6.	Loss of Consortium @ Rs.44,000 each	Rs.88,000	Rs.88,000
7.	Funeral Expenses	Rs.16,500	Rs.16,500
8.	Loss of Estate	Rs.16,500	Rs.16,500
9.	Total Compensation	Rs.29,77,000	Rs.24,54,637.60
10.	Compensation Awarded by MACT	Rs.21,70,000	Rs.9,71,000
11.	Enhanced Compensation	Rs.8,07,000	Rs.14,83,637.60

The interest is retained at the rate as was awarded by the Tribunal.

All pending miscellaneous application(s), if any, stands

disposed of; as such.

(RAJBIR SEHRAWAT)
JUDGE

17.02.2023
adhikari

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