**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

202 FAO-1632-2006 (O&M)
Date of Decision: May 24, 2024

Narinder Kaur and others **......Petitioner(s)**

Vs.

Amrik Singh and others **......Respondent(s)**

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Simranjit Singh, Advocate for
Mr. H.S. Dhandi, Advocate for the appellant.

Mr. Amit Kumar, Advocate for
Mr. Gopal Sharma, Advocate
for respondents No.1 and 2.

SUDEEPTI SHARMA.J. (ORAL)

The present appeal has been preferred against the award dated 17.02.2006 passed by the learned Motor Accident Claims Tribunal, Fatehgarh Sahib (in short 'Tribunal'), whereby the appeal filed by the claimants was dismissed.

2. The brief facts of the case as mentioned in the claim petition are that on 28.06.2002, deceased-Gurmail Singh was going towards his village from Sirhind on a scooter. When he reached at Bus stop of village Bhaironpur, a tempo No.PB-23-A-6239 driven by respondent No.2 in a rash and negligent manner was going ahead of Gurmail Singh. Respondent No.2 without giving any signal applied breaks and due to this reason Scooter of Gurmail Singh struck against the tempo. Gurmail Singh fell down and received multiple injuries. Balwinder Singh (uncle of Gurmail Singh) was also going towards his village on his motorcycle

who saw the whole occurrence. He took Gurmail Singh to Civil Hospital, Fatehgarh Sahib, where injured was declared brought dead.

3. Upon notice, respondents appeared and denied the factum of claim.

4. From the pleading of the parties, the Tribunal framed the following issues:-

> *1. Whether Gurmail Singh died on 28.6.2002 at about 8.30/9.00 P.M. in the area of Bus Stand Bhaironpur on account of rash and negligent driving by respondent No.2 of tempo bearing No. PB-23-A/6239 OPP.*
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> *2. Whether claimants are entitled to compensation, if so, how much and from whom, being the legal representatives of Late Gurmail Singh? OPP*
>
> *3. Whether respondent No.1 was not holding a valid and effective driving licence at the time of accident? OPR-3.*
>
> *4. Relief.*

5. That on 22.07.2019, this Court passed the following order:-

> *Learned counsel for the appellants will hand over the copy of the judgment (Annexure A-1) whereby respondent No. 2-driver of the offending vehicle has been convicted after registration of FIR and the Tribunal has dismissed the claim petition only on the ground that as per the evidence, accident had not taken place due to rash and negligent driving of respondent No. 2 but keeping in view the judgment (Annexure A-1) this finding has to be reversed. Adjourned to 31.07.2019 to assess the compensation keeping in view the judgment passed by the Supreme Court in* ***National Insurance Company Limited Vs. Pranay Sethi and others,*** *Special Leave petition (Civil) No. 25590 of 2014.*

6. Learned counsel for the appellants contends that only on the ground that rash and negligent driving on the part of the driver was not proved, the claim petition of the appellants was dismissed and now as per the judgment which is placed on record as Annexure A-1, respondent No.2-driver of the offending vehicle has been convicted. This Court, vide order dated 22.07.2019 adjourned the matter to assess the compensation, keeping in view the judgment passed by Hon'ble the Supreme Court ***National Insurance Company Ltd. Vs. Pranay Sethi & Ors.*** **[(2017) 16 SCC 680].**

7. Learned counsel for the Insurance Company, on the other hand, contends that it was negligence on the part of the appellant as well, since he had to maintain sufficient distance while driving the vehicle. He has relied upon the judgment of Hon'ble the Supreme Court in ***Nishan Singh and others Vs. Oriental Insurance Company Ltd. Through Regional Manager & others, 2018 (6) SCC 765,*** whereby Hon'ble the Supreme Court has held that the expression 'sufficient distance' has not been defined in the Regulations or elsewhere but the thumb rule of sufficient distance is atleast safe distance of two to three seconds gap in ideal condition to avert collusion and to allow following driver time to respond.

8 Learned counsel for respondent No.1 and 2 (Owner and driver) submits that the vehicle was insured and the copies of the driving licence and insurance policy are on record, before the Tribunal.

9. I have heard learned counsel for the parties and have thoroughly gone through the record.

10. Hon'ble Supreme Court in the case of ***Sarla Verma Vs. Delhi Transport Corporation and Another*** **[(2009) 6 Supreme Court Cases 121]**, laid

down the law on assessment of compensation and the relevant paras of the same are as under:-

> "***30***. *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 standardised deductions. Having a 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 dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.*
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> ***31***. *Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. c Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.*

> ***32***. *Thus even if the deceased is survived by parents and siblings, only d the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.*
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> * * * * * *
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> ***42.*** *We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas[3], Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.*

11. Hon'ble Supreme Court in the case of ***National Insurance Company Ltd. Vs. Pranay Sethi & Ors.*** **[(2017) 16 SCC 680]** has clarified the law under Sections 166, 163-A and 168 of the Motor Vehicles Act, 1988, on the following aspects:-

(A) Deduction of personal and living expenses to determine multiplicand;

(B) Selection of multiplier depending on age of deceased;

(C) Age of deceased on basis for applying multiplier;

(D) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses, with escalation;

(E) Future prospects for all categories of persons and for different ages: with permanent job; self-employed or fixed salary.

The relevant portion of the judgment is reproduced as under:-

> "***52.*** *As far as the* ***conventional heads*** *are concerned, we find it difficult to agree with the view expressed in Rajesh[2]. It has granted Rs.25,000 towards funeral expenses, Rs 1,00,000 towards loss of consortium and Rs 1,00,000 towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh[2] refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems*

to us that 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 principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.

* * * * *

***59.3**. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.*

***59.4**. In case the deceased was self-employed (or) on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the* *necessary method of computation. The established income means the income minus the tax component.*

***59.5**. For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paras 30 to 32 of Sarla Verma[4] which we have reproduced hereinbefore.*

***59.6.** The selection of multiplier shall be as indicated in the Table in Sarla Verma[1] read with para 42 of that judgment.*

***59.7**. The age of the deceased should be the basis for applying the multiplier.*

59.8. 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."

12. Reference at this stage can be made to judgment dated 03.06.2009 passed in FIR No.155 of 28.06.2002, under Sections 279, 304-A IPC, registered at Police Station Sirhind, titled as State Vs. Karamjit Singh, the relevant portion of which is reproduced as under:-

" 15 I have considered the rival contentions of both the ld. APP for the state as well as Ld. defence counsel. So far as the contention of the Ld. defence counsel that identification of the accused has not been done by the police party from the complainant is concerned then that has no basis as although accused was not arrested on the day of occurrence as he whisked away from the scene. However, his identification was not required as complainant in his statement before the police Ex.PW5/A has categorically

deposed that driver of the three wheeler was known to him. Moreover there is prompt FIR naming the accused in the same. Therefore, as the driver of the three wheeler i.e. accused was already known to the complainant there was no need to conduct identification parade. So far as the contention of the Ld. defence counsel that no independent witness from the three wheeler has been joined by the police party then admittedly investigating officer reached the place of occurrence only after the intimation of alleged accident when accused had already whisked away from the scene of occurrence and obviously up to that time when investigating officer reached the alleged place of occurrence the passengers of the three wheeler were not to be expected standing at that place when investigation. officer reached there.

16. The Ld. defence counsel has argued one more point that alleged accident has occurred due to negligence of scooter driver as he struck his scooter in the three wheeler from behind. However I do not find favour with this argument of the ld. defence counsel as he cannot be allowed to sail on two boats at the same time. In one breath he is saying that accused has not caused the alleged accident and in the next breath he is saying accident has occurred due to negligent driving of scooter driver. Complainant has categorically deposed as PW6 that alleged accident has occurred due to negligent driving of the accused present in the Court. The ld. defence counsel has not pointed out any other lacuna in the prosecution case.

17. In the present case, witness appearing on behalf of the prosecution i.e. complainant PW6 has categorically deposed that accused was driving the three wheeler tempo No.PB-23-A-6239 *negligently at the time of accident and thereby driving so negligently he has caused the accident. As such accident had occurred due to negligent driving of the accused and by his such rash and negligent act Gurmail Singh died.*

18. In view of the above discussion this court comes to the conclusion that on 28.6.2002 at about 8.30/9.00 am in the area of Bus stand V. Bhaironpur, accused drove vehicle i.e. his three wheeler tempo bearing No. PB-23-A-6239 on a public way so rashly and negligently so as to endanger human life and personal safety of others and thereby committed an offence punishable under Section 279 IPC.

19. Accused on the same date, time and place also caused death of Gurmail Singh son of Swaran Singh by driving the above said vehicle i.e. three wheeler tempo so rashly and negligently which was rash and negligent act not amounting to culpable homicide and thereby committed an offence punishable under Section 304-A of IPC.

20. Therefore, the accused is held guilty of the aforesaid offences and convicted accordingly. Let the convict be heard on the quantum of sentence."

13. A perusal of the same shows that it has been proved by way of leading evidence that respondent No.2-the driver of the offending vehicle in the present case was at a fault and he has been convicted as well.

14. So far as the income of the deceased is concerned, the evidence with respect to that was lead by way of the statement of the claimant and the claimant was examined as well as cross examined. Therefore, deceased has been proved to be earning Rs.15,000/- per month as per the evidence lead.

15. In view of the law laid down by the Hon'ble Supreme Court in the above referred to judgments, the present appeal is allowed. The appellants/claimants are entitled to compensation as per the calculations made here-under:-

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.15,000/-
2	Future prospects @ 40%	Rs. 6,000/- (40% of 15,000)
3	Deduction towards personal expenditure	Rs.5,250/- ¼th of (15,000+6,000/-)
4.	Total Income	Rs.15,750/- (21,000-5250)
4	Multiplier	17
5	Annual Dependency	Rs.32,13,000/- (15,750 x 17 x 12)
6	Loss of Estate	Rs.18,000/-
7	Funeral Expenses	Rs.18,000/-
8	Loss of Consortium Parental : Rs.48,000/- x 2 Spousal : Rs. 48,000/- Filial: Rs.48,000/-	Rs.1,92,000/-
	Total Compensation	Rs.34,41,000/-

16. So far as the interest part is concerned, as held by Hon'ble Supreme Court in ***Dara Singh @ Dhara Banjara Vs. Shyam Singh Varma*** **2019 ACJ 3176** and ***R.Valli and Others VS. Tamil Nandu State Transport Corporation*** **(2022) 5 Supreme Court Cases 107,** the appellants-claimants are granted the interest @ 9% per annum on the awarded amount from the date of filing of claim petition till the date of its realization.

17. The Insurance Company is directed to deposit the awarded amount along with interest with the Tribunal within a period of three months from today. The Tribunal is further directed to disburse the awarded amount of compensation

along with interest as stated above equally in the bank accounts of the appellants/claimants. The appellants/claimants are directed to furnish their bank account details before the Tribunal.

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

(SUDEEPTI SHARMA)
JUDGE

May 24, 2024
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Whether speaking/reasoned: Speaking
Whether reportable: Yes / No