IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-1541-2017 (O&M)
Date of Decision:**-12.02.2024**

Narinder Kaur and Others

… Appellants

Versus

Rajinder Singh and Others

... Respondents

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present:- Mr. Vipul Sharma, Advocate
for the appellants.

None for respondents No.1 and 2.

Mr. Vinod Gupta, Advocate
for respondent No.3-Insurance Company.

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RITU TAGORE, J. (Oral)

1. This appeal is for enhancement of compensation amount, granted vide award dated 04.05.2016 passed by learned Motor Accident Claims Tribunal, SAS Nagar-Mohali (hereinafter to be referred as 'the Tribunal'), on account of death of Harbans Singh, in a motor vehicle accident dated 15.02.2015.

2. On 15.02.2015 Harbans Singh was traveling from Kurali to Morinda on his motorcycle bearing No.PB-12P-3638, driving at normal

speed on extreme left side of the road. He was being followed by his brother Harmel Singh on separate motorcycle. When they reached near village Chatamali, Harbans Singh was hit by an offending car bearing No.PB-65H-8662 driven by respondent no 1 in rash and negligent manner. Harbans Singh sustained multiple grievous injuries, including a head injury, and later succumbed to them during course of his treatment on 23.2.2015.

3. FIR No.11 dated 23.02.2015 was registered under Sections 279, 304A and 427 IPC against driver, respondent No.1-Rajinder Singh for causing the accident.

4. Claimants (widow and children), filed the petition under section 166 of Motor Vehicles Act , 1988 (herein referred to 'as the Act') on account of death of Harbans Singh, seeking compensation to the tune of Rs 80,00,000 , stating that deceased was aged about 54 years and was employed with Punjab State Power Corporation Limited, Sub-Division, Kurali District Mohali as Meter Reader and his monthly income was ₹50,000/- with chances of promotion. It is stated that deceased was the sole breadwinner of the family and all the claimants were dependent upon his income.

5. Respondents (driver , owner and insurer) filed their respective replies, denied the averments of the claimants as to cause and manner of the accident, age ,income and occupation of the deceased. Dependency of the claimants upon the deceased and their entitlement to seek compensation have also been denied .Respondent No.3-Insurance Company also pleaded that driver of the vehicle was not having valid and effective driving license, and the offending vehicle was being driven in violation of terms and

conditions of insurance policy at the relevant time, and denied their liability to pay compensation.

6. On the pleadings of the parties, the Tribunal framed following issues:-

i. Whether Harbans Singh died in a motor vehicle accident on 15/02/2015 involving car bearing registration number PB-65H-8662 being driven by respondent No. 1 in a rash and negligent manner? OPP

ii. Whether the petitioners are entitled to compensation on account of death of Harbans Singh, if so, from whom and to what amount? OPP

iii. Whether respondent No. 1 did not have a valid and effective driving license at the time of accident? OPR3

iv. Whether the car bearing registration number PB-65H-8662 was being driven in violation of terms and conditions of the insurance policy? OPR 3

v. Relief.

7. Learned Tribunal, on assessment of evidence, answered the issues in favour of the claimants and passed the award for ₹46,00,000/- with interest at the rate of 6% per annum from the date of filing of petition till its actual realization and 9% p.a. interest on non payment of awarded amount within 2 months, and made all the respondents jointly and severally liable with primary liability of respondent No.3 to satisfy the award.

8. Learned counsel for the appellants contends that income is to be assessed on the basis of establish income minus income tax, without making deductions on account of HRA , medical allowance , GPF etc and relied upon **Sunil Sharma and others vs Bachitar Singh and others 2011 ACJ 1441** to support his contention. Learned counsel submits that learned Tribunal wrongly determined the salary of the deceased at ₹37,870 p.m with annual salary at ₹3,40,830/- and also wrongly deducted the income tax. In fact, annual income after income tax deduction, arrives at ₹5,49,418/-. Learned counsel made a prayer to reassess the loss of dependency.

9. On the contrary, learned counsel for respondent No.3-Insurance Company submits that Jasmine Kaur and Puneet Kaur major daughters of cannot be considered as dependent upon the deceased. Therefore, the deduction for the self-expenses of the deceased should be 1/3rd instead 1/4th as taken by the learned Tribunal. It is also argued by learned counsel for the Insurance Company that amount awarded under the conventional heads is not in consonance with the law laid down by Hon'ble the Supreme Court in **National Insurance Company Limited vs. Pranay Sethi & Ors., 2017(4) RCR(Civil) 1009**. A prayer is made to recalculate the compensation accordingly.

10. I have heard the learned counsel for the parties and have gone through the paper book with their valuable assistance.

11. There is no dispute that Harbans Singh died in road accident on 15.02.2015 involving the offending vehicle. It is also an undisputed fact that deceased was 54 years of age at the time of accident and was employed with

Punjab State Power Corporation Limited, Sub-Division, Kurali District Mohali on the post of Meter Reader. Further, it is also undisputed that deceased was married and claimants are his family members.

12. PW-3-Gurnam Singh, Upper Division Clerk in PSPCL, Division Office, Kharar (Mohali), brought the service record of the deceased and deposed that deceased was a permanent government employee and was drawing monthly salary ₹48,524/-. He also deposed that ₹32,870/- was deducted as income tax from the annual salary of the deceased for the financial year 2014-15 and last carry home salary of deceased was ₹37,870/-, after deducting of G.P.F. etc. Perusal of award shows that learned Tribunal took per month salary of deceased at the rate of ₹37,870/-, which also includes deduction of G.P.F. In **Sunil Sharma (supra),** held that deduction like GPF, GIS etc are not to be excluded from salary while deducting the salary of a deceased employee. Learned Tribunal fell in error while taking income of deceased ₹37,870/-p.m. In **National Insurance Company Limited vs. Pranay Sethi & Ors., 2017(4) RCR(Civil) 1009**, it is held that establish income means the income minus the tax component. Therefore, the net income of the deceased should be taken @ ₹48,524/- per month.

13. Insofar as dependency of the major daughters is concerned, the Tribunal considered the statement of petitioner/appellant No.1 (PW1), who in her testimony substantiated the fact of dependency of all the claimants upon the deceased. The counsel for the Insurance Company failed to point out any infirmity or circumstance in the statement of mother claimant (PW1) to conclude that she made wrong statement and that daughters were not entitled

for compensation. Primarily, it is the element of dependency and not the age factor of the dependents upon the deceased, that is required to be considered while determining the loss of dependency. In **National Insurance Company Ltd. vs. Birender and Ors. (2020) 11 SCC 356** Hon'ble the Supreme court observed that even major and married sons of deceased being LRs have right to apply for compensation in case of motor accidental death. Therefore, deduction made by learned Tribunal at 1/4th towards expenses on self-expenses are justified as per the spirit of principles laid down in **Smt. Sarla Verma and Ors vs Delhi Transport Corporation and another 2009 (3) RCR (Civil) 77**.

14. Learned counsel for the appellants could not deny that grant of compensation under the conventional heads is not in consonance with the directions laid down in **Parnay Sethi's** case (supra) and followed in various other consequent judgments. In **'Magma General Insurance Company Ltd. Vs. Nanu Ram @ Chuhru Ram and others' (2018) 18 Supreme Court Cases 130** observing that parents losing their minor child or unmarried son/daughter in motor accident are entitled to be awarded compensation for 'loss of consortium' under the head of 'filial consortium'. Moreover, Hon'ble the Supreme Court in its latest judgment **'Rahul Ganpatrao Sable vs. Laxman Maruti Jadhav (Dead) through LRs and others' 2023 (3) R.C.R. (Civil) 573** while relying upon other judicial precedents including **Pranay Sethi (supra)** and **Sarla Verma (supra)** in paragraph No.33 observed as under that "in the present case, the MACT had granted a meagre amount of ₹5,000/- towards loss of consortium. However, the High Court granted a total amount of ₹70,000/- as consolidated amount

under all conventional heads, which included loss of consortium, loss of estate and funeral expenses. In the case of Pranay Sethi (supra), Constitution Bench of this Court had provided that all dependents should be separately awarded towards loss of consortium and had actually awarded ₹40,000/- to each of the dependents.

15. In view of the above discussion, the award amount is re-determined as below :-

Name of the deceased – Harbans Singh Age – 54 years Status – Married Amount given by learned MACT – ₹46,00,000/- along with 6% interest per annum		
Reassessment of award amount		
Sr. No.	**Heads**	**Income (in Rupees)**
1.	Gross Annual Income (₹48,524x12=₹5,82,288/-) **minus** Income Tax ₹32,870/-	₹5,82,288/ **(-)** ₹32,870/- =₹5,49,418/-
2.	Future prospects 15% in view of **Pranay Sethi and Kirti** (supra)	₹5,49,418/- **(+)** ₹82,413/- =**₹6,31,831/-**
3.	Deduction 1/4th being married	₹1,57,958/- ₹6,31,831/- (-) ₹1,57,958/- = **₹4,73,873/-**
4.	Multiplier	11
5.	Total loss of dependency	₹52,12,603/-
6.	Loss of estate (10% increase in every three years in view of Pranay Sethi (supra)	₹18,000/-
7.	Loss of funeral expenses (10% increase in every three years in view of Pranay Sethi (supra)	₹18,000/-
8.	Loss of consortium x 4 claimants (10% increase in every three years in view of Pranay Sethi (supra)	₹1,92,000/-

9.	Medical Expenses	₹43,000/-
10.	**Total**	**₹54,83,603/-**

16. After deducting the amount already awarded by the learned Tribunal, the enhanced amount of compensation is held to be ₹8,83,603/- (₹46,00,000/- **(-)** ₹54,83,603/-). Thus, claimants are entitled to **₹8,83,603**/- over and above, the amount already granted by learned Tribunal, along with same rate of interest as granted by learned Tribunal from the date of filing the petition till its realization, payable within 30 days from the date of receipt of certified copy of this judgment. Remaining conditions of disbursal of amount as given by learned Tribunal shall remain unaltered. Needless to mention that the amount, if any, already deposited by Insurance company shall be adjusted.

17. No other point was raised or pressed.

18. Accordingly, appeal preferred by the claimants is allowed in the above terms.

19. No order as to cost.

20 Since the main case has been decided, pending miscellaneous application(s), if any, stands also disposed of accordingly.

(RITU TAGORE)
JUDGE

12.02.2024
Gaurav Sorot

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No