(2019) 02 P&H CK 0050

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 2029 Of 2010, Cross Objection No. 81-CII Of 2010

Vijay Kumar And Another — APPELLANT

Vs

Reliance General Insurance Co. Ltd. And Others — RESPONDENT

Date of Decision : 07-02-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166, 171
Constitution Of India, 1950 — Article 142

Citation : (2019) 02 P&H CK 0050

Hon'ble Judges : Arun Kumar Tyagi , J

Bench : Single Bench

Advocate : Manjuli Joshi, Vandana Malhotra, Monika Jangra, A.S. Gill

Final Decision : Dismissed

Judgement

1. This order disposes of FAO No.2029 of 2010 filed by the appellants-driver and owner of Scorpio bearing registration No.PB-08-AT-3734 impleaded as respondents No.1 and 2 in MACT Case No. 2 of 2008 titled Jaswinder Singh and another Vs. Vijay Kumar and others and Cross Objections No.81-CII of 2010 filed by the parents of deceased Balwant Singh, claimants in the above said MACT Case impleaded as respondents No.2 and 3 in the present appeal.

2. Jaswinder Singh and Joginder Kaur-parents of deceased Balwant Singh filed claim petition under Section 166 of the Motor Vehicles Act,1988 (for short "the M.V. Act") before the learned Motor Accidents Claims Tribunal, Jalandhar (for short "the Tribunal") on the averments that on 07.05.2007 at about 06:30 P.M. Balwant Singh along with Harpreet Singh was going on motorcycle towards Rama Mandi. When they reached near the tubewell cum residence of Rashpal Singh on Nangal Fateh Khana-Patara Road, Scorpio bearing Registration No.PB-08-AT-3734, owned by respondent No.2 and insured with respondent No.3, driven by respondent No.1-Vijay Kumar rashly and negligently came from opposite side without blowing horn and by going towards wrong side of the road hit their

motorcycle due to which Balwant Singh and Harpreet Singh fell on the road and suffered multiple injuries. The accident was witnessed by Rashpal Singh and Jaswinder Singh. Respondent No.1-Vijay Kumar was caught on the spot and handed over to the police but the police did not record the statement of the eye witnesses. Balwant Singh died on 08.05.2007 due to the injuries suffered in the accident but the police did not get the post mortem conducted on the body of Balwant Singh.

3. The claimants further averred in the petition that Balwant Singh was bachelor, aged about 22 years, employed as driver and was earning Rs.5,000/- per month. Claiming themselves to be dependent on the deceased, the claimants accordingly prayed for award of compensation of Rs.15,00,000/- with costs and interest at the rate of 12% per annum to them.

4. On notice, the petition was contested by the respondents No.1 and 2 and respondent No.3 in terms of their respective written statements wherein they denied their liability.

5. On the basis of the pleadings of the parties, issues were framed and the parties were given opportunity to produce their evidence.

6. On perusal of the material on record and consideration of the submissions made by the learned counsel for the parties, the Tribunal held that Balwant Singh died due to injuries suffered in accident caused by rash driving by respondent No.1 of Scorpio bearing Registration No.PB-08-AT-3734 owned by respondent No.2-Gian Singh and insured with respondent No.3-insurance company and held the claimants to be entitled for payment of compensation for his death. The Tribunal assessed the income of the deceased as Rs.3,000/- per month, applied the multiplier of 17, divided that multiplier in two parts of 5 and 12, deducted 1/3rd towards personal expenses of the deceased and by taking dependency of the claimants as Rs.2,000/- per month for five years, assessed the loss of dependency as Rs.1,20,000/- and by assessing dependency for twelve years at Rs.1,000/- per month assessed loss of dependency as Rs.1,44,000/- for twelve years and by adding Rs.2,000/- towards funeral expenses, awarded a sum of Rs.2,66,000/- as compensation and directed respondents No.1 and 2-driver and owner and respondent No.3-insurance company to pay the compensation amount jointly and severally.

7. Feeling aggrieved, respondents No.1 and 2-driver and owner have filed the present appeal for exonerating them from joint and several liability whereas the claimants have filed cross objections for enhancement of the compensation amount awarded.

8. It deserves to be mentioned at the very outset that in the present case, in their appeal, respondents No.1 and 2 have not challenged the findings of the Tribunal as to death of Balwant Singh due to injuries suffered by him in the accident caused on 07.05.2007 at about 06:30 P.M. by rash and negligent driving by respondent No.1 of Scorpio bearing registration No.PB-08-AT-3734, owned by

respondent No.2 and insured with respondent No.3. Respondent No.3 has not filed any appeal or cross-objections challenging these findings. These findings of the Tribunal, which are based on proper appreciation of the cogent and reliable evidence on record, cannot be faulted and are accordingly liable to be affirmed.

9. So far as the appeal filed by respondents No.1 and 2-driver and owner challenging the impugned award directing payment of compensation amount awarded by respondents No.1 and 2-driver and owner and respondent No.3-insurance company jointly and severally is concerned, it may be observed that respondent No.3-insurance company failed to prove that the respondent No.1 was not having valid and effective licence at the time of the accident and that respondent No.2 owner committed breach of the terms and conditions of the insurance policy. Therefore, respondent No.3 insurance company was held to be liable to indemnify respondent No.2-the insured owner for payment of compensation to the claimants. On realizing that respondent No.2 owner-the insured is entitled to be indemnified by respondent No.3 in case of payment of compensation amount by him to the claimants, Learned counsel for the appellants-driver and owner has not pressed the present appeal and prayed for its dismissal as withdrawn, which is accordingly dismissed as withdrawn.

10. However, cross objections filed by the claimants for enhancement of compensation awarded by the Tribunal, not being liable to be dismissed with the appeal, survive for disposal.

11. Learned counsel for the cross-objectors-claimants has argued that the deceased was earning Rs.5,000/- per month by his employment as driver. The Tribunal did not properly assess his income. The Tribunal also did not make any addition towards future prospects. The Tribunal ought to have applied multiplier of 18 instead of 17. The Tribunal erred in dividing the multiplier. The Tribunal also awarded meager amount towards funeral expenses. The Tribunal also did not award any amount towards loss of estate and loss of filial consortium. The Tribunal also awarded lesser rate of interest of 7.5% per annum instead of 18% per annum. Therefore, the award may be modified and compensation awarded may be enhanced and ordered to be paid with interest @ 18 % per annum.

12. These arguments have been vehemently controverted by learned counsel for respondents No.1 & 2 and learned counsel for respondent No.3 who have argued that the claimants have failed to produce any cogent and convincing evidence regarding employment of the deceased as driver. Therefore, his income was liable to be assessed on the basis of minimum wages payable to the unskilled labourer. The Tribunal has awarded just and adequate compensation to the claimants. Therefore, the cross-objections may be dismissed.

13. Even though the claimants had pleaded and PW-2 Jaswinder Singh had stated in his affidavit that the deceased Balwant Singh was employed as driver and earning Rs.5,000/- per month but they did not examine the employer and did not produce any documentary evidence regarding his employment and

payment of salary. In the absence of such evidence, income of the deceased was liable to be assessed on the basis of minimum wages payable to an unskilled labourer. In view of the rate of minimum wages notified for the relevant period assessment of income of the deceased as Rs.3,000/- cannot be faulted with. However, the Tribunal did not make any addition towards future prospects. In view of the observations made by Hon'ble the Supreme Court in para No.61(iv) of its judgment in National Insurance Company Limited vs. Pranay Sethi and others, 2017 (4) R.C.R. (Civil) 1009, addition of 40% is required to be made towards income of the deceased towards future prospects. On such addition, income of the deceased comes to Rs.4,200/-. Admittedly, the deceased, who was aged about 22 years, was a bachelor. In view of the observations made by Hon'ble the Supreme Court in para No.15 of its judgment in Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) R.C.R. (Civil) 77, deduction of ½ instead of 1/3rd was required to be made towards personal expenses of the deceased. In Pranay Sethi's case (supra), it was observed by Hon'ble the Supreme Court that multiplier has to be applied on the basis of the age of the deceased. Since the deceased was aged about 22 years, the Tribunal ought to have applied multiplier of 18 instead of 17. There was no justification for the Tribunal to divide the multiplier in two parts of 5 and 12 and the Tribunal erred in doing so. When multiplier of 18 is applied to annual dependency of Rs.25,200/- of the claimants, loss of dependency of the claimants comes to Rs.4,53,600/-.

14. In Pranay Sethi's case (Supra) in para No.61 (viii) of its judgment, Hon'ble Supreme Court observed 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 aforesaid amounts should be enhanced at the rate of 10% in every three years. In Magma General Insurance Co. Ltd. versus Nanu Ram alias Chuhru Ram and others 2018 (4) Recent Civil Reports 333, a Two Judge Bench of the Hon'ble Supreme Court clarified that in legal parlance 'consortium' is compendious term which encompasses 'spousal consortium', 'parental consortium' and 'filial consortium' and awarded compensation of Rs.40,000/- each for loss of filial consortium to father and sister of the deceased. However, the Bench observed in para No.8.7 of its judgment that the amount of compensation to be awarded for loss of consortium will be governed by the principles of awarding compensation under 'Loss of Consortium' as laid down in Pranay Sethi case (Supra). In view of these observations, award of compensation of Rs.40,000/- each for loss of filial consortium to father and sister of the deceased in Magma General Insurance Co Ltd. case (Supra) has to be construed as being in exercise of powers under Article 142 of the Constitution of India. In view of the principles of awarding compensation under 'Loss of Consortium' as laid down in para No.61 (viii) Pranay Sethi case (Supra) referred to above, the claimants, parents of the deceased are entitled to award of compensation of Rs.40,000/- only towards loss of filial consortium in equal shares. The Tribunal merely awarded Rs.2,000/- towards funeral expenses and

did not award any amount under the head loss of estate. In view of observations made by Hon'ble Supreme Court in para No. 61 (viii) of its judgment in Pranay Sethi's case (supra), the claimants are entitled to award of Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate.

15. In view of the above discussion compensation payable to the claimants is worked out as under :-

Sr.

Head

Compensation

No.

1.

Monthly income of the deceased

Rs.3000/-

2.

Income after addition of future

Rs.3000 + Rs.1200 = Rs.4200

prospects at the rate of 40%

3.

Deduction of ½ on account of personal

Rs.4200 x ½ = Rs.2100

expenses

4.

Annual dependency

Rs.2100 x 12 = Rs.25200/-

5.

Loss of Dependency

Rs.25200 x 18 =

Rs.4,53,600/-

6.

Funeral Expenses

Rs.15,000/-

7.

Compensation payable for loss of filial

Rs.40,000/-

consortium

8.

Loss of Estate

Rs.15,000/-

Total Compensation

Rs.5,23,600/-

16. In the present case, the Tribunal directed the payment of compensation amount with interest at the rate of 7.5% per annum from the date of filing of the claim petition till realization of the whole amount which is challenged to be inadequate and the question which arises is as to what would be the appropriate rate of interest.

17. In claim petitions under Section 163-A or 166 of the M.V.Act, the Motor Accidents Claims Tribunal is empowered by Section 171 of the M.V.Act to award interest from the date of making the claim at such rate as may be specified by it.

18. In Puttamma and others Vs. K.L.Narayana Reddy and another 2014 (1) R.C.R. (Civil) 443, Hon'ble Apex Court observed in para 60 as under :

" This Court in Abati Bezbaruah Vs. Deputy Director General, Geological Survey of India and another (2003) 3 SCC 148 noticed that varying rate of interest is being awarded by the Tribunals, High Courts and this Court. In the said case, this Court held that the rate of interest must be just and reasonable depending on the facts and circumstances of the case and should be decided after taking into consideration relevant factors like inflation, change in economy, policy being adopted by the Reserve Bank of India from time to time, how long the case is pending, loss of enjoyment of life etc."

19. In Supe Dei and others Vs. National Insurance Company Ltd. and another 2009 (4) SCC 513, Hon'ble Apex Court held that 9% per annum would be the appropriate rate of interest to be awarded in Motor Accidents Claims compensation cases.

20. In Sube Singh and another Vs. Shyam Singh (Dead) and others 2018 (2) R.C.R. (Civil) 131 (SC) rate of interest of 6% per annum awarded by the Motor Accidents Claims Tribunal was modified by Hon'ble Supreme Court of India to 9% per annum.

21. In view of the observations in above referred judicial precedents, mercantile rate of interest prevalent, rate of interest allowed by Nationalized Banks on fixed

deposit receipts and other relevant factors, it will be appropriate to modify the rate of interest of 7.5% per annum awarded by the Tribunal to 9% per annum.

22. As per above discussion, the claimants will be entitled to payment of compensation amount of Rs.5,23,600/- with interest at the rate of 9% per annum from the date of filing of the petition till realization. The amount of compensation of Rs.2,66,000/- already awarded to the claimants will be liable to be deducted from the amount calculated above. Enhanced amount shall be payable to the claimants in equal shares. The directions of the Tribunal as to manner of disbursement of compensation amount to the claimants shall also apply to disbursement of enhanced amount of compensation.

23. In view of the above discussion, the appeal is dismissed as withdrawn while cross-objections are allowed leaving the parties to bear their own costs and the award dated

29. 07.2009 is modified as mentioned above.

