

*Before Arun Kumar Tyagi, J.*

**GEETA DEVI AND ANOTHER**—*Appellants*

*versus*

**GURDAS MANN AND OTHERS**—*Respondents*

**FAO No.6464 of 2010**

March 01, 2019

***Motor vehicles Act, 1988—Ss. 163-A, 166 and 171— Code of civil procedure, 1908—S. 34—Interest—Tribunal not bound by S. 34 CPC to restrict interest to 6 per cent— Interest modified to 9 percent per annum.***

*Held that* in claim petitions under Section 163-A or 166 of the M.V. Act, the Motor Accident Claims Tribunal is empowered by Section 171 of the M.V. Act to award interest, in the eventuality of claim petition being allowed, from the date of making the claim at such rate as may be specified by it. In awarding interest, the Motor Accident Claims Tribunal is not bound by the provisions of Section 34 of the Code of Civil Procedure, 1908 to restrict the award of interest to 6 per cent per annum.

(Para 20)

*Further held that* 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 percent per annum awarded by the Tribunal to 9 percent per annum.

(Para 22)

Lalit Kumar Sharma, Advocate and  
Sunil Kumar Sharma, Advocate  
*for the appellants.*

Rajnish Malhotra, Advocate  
for respondent no.3-Insurance Company

**ARUN KUMAR TYAGI, J.**

(1) The appellants-claimants have filed the present appeal seeking enhancement of the compensation awarded by the Motor Accidents Claims Tribunal, Yamuna Nagar at Jagadhri (for short 'the Tribunal') in ***MACT case No.53 of 2009 titled as Geeta Devi and***

*another* versus *Gurdas Mann and others* on account of death of Yogesh Saini in motor vehicle accident which took place on 08.10.2008.

(2) Briefly stated, the relevant facts giving rise to the filing of the present appeal are that the claimants-parents of deceased Yogesh Saini filed claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the M.V. Act') on the averments that on 08.10.2008 when Vikas Saini and Yogesh Saini were going to SRM College of Technical Education by walking on the extreme left side of the road on the katcha berm, Indica Car bearing registration No.HR02M-4575, owned by respondent No.2 and insured with respondent No.3, driven by respondent No.1 in a rash and negligent manner came at high speed and hit them due to which Yogesh Saini suffered injuries and died while Vikas Saini suffered multiple simple and grievous injuries. FIR No.210 dated 08.10.2008 was registered in Police Station, Naraingarh under Sections 279, 337 and 304-A of the Indian Penal Code, 1860 (for short 'the IPC') regarding the accident. While pleading that they had great expectations from their son who was a bright student of mechanical engineering in the aforementioned college, the claimants sought award of compensation with costs and interest against respondents No.1 to 3

(3) The petition was contested by the respondents in terms of joint written statement filed by respondents No.1 and 2 and separate written statement filed by respondent No.3. The respondents No.1 and 2 denied the accident and pleaded false implication. The respondent No.3 took objections as to the respondent No.1 not having valid and effective driving license and breach of the terms and conditions of the insurance policy by the insured.

(4) It may be mentioned here that injured Vikas filed separate claim petition under Section 166 of the M.V. Act bearing *MACT Case No.21 of 2009 titled Vikas Saini* versus *Gurdas Mann and others* which was contested by the respondents and was tried with the claim petition filed by the present claimants.

(5) Issues were framed and evidence produced by the parties was recorded by the Tribunal.

(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 Yogesh Saini died and Vikas Saini suffered injuries in accident caused due to rash and negligent driving by respondent No.1 of Indica car owned by respondent No.2 and insured with respondent No.3 and that respondent No.1 was having valid and effective driving licence at

the time of the accident. The Tribunal, by looking into the facts of the case and age of the parents and the contributions the deceased would have made, awarded to the claimants amount of Rs. 2,50,000/- in equal shares as compensation for the death of their son Yogesh Saini and directed the respondents to pay the compensation amount jointly and severally with costs and interest at the rate of 7.5 % per annum.

(7) Feeling aggrieved, the claimants have filed the present appeal for enhancement of the compensation.

(8) I have heard arguments addressed by learned counsel for the parties and have gone through the material on record.

(9) It may be observed that in the present case, the findings of the Tribunal as to death of Yogesh Saini due to the accident caused by rash and negligent driving by respondent no.1 of Indica Car owned by respondent No.2 and insured with respondent No.3, the respondent No.1 having valid and effective driving license and the claimants being entitled to recover compensation for his death from respondents No.1 to 3 jointly and severally have not been challenged by the respondents by filing appeal, cross-objections or even during arguments and the same being based on proper appreciation of evidence are not liable to be interfered with.

(10) Mr. Lalit Kumar Sharma, learned Counsel for the appellants has argued that the Tribunal awarded a lump sum amount of Rs. 2,50,000/- without assessing notional income of the deceased, addition of 40% towards future prospects, determining the multiplicand after making deduction towards personal expenses and applying the multiplier of 18 as per his age at the time of his death. While referring to the judgments in *Sarla Verma and others* versus *Delhi Transport Corporation and another*<sup>1</sup> and *National Insurance Company Limited* versus *Pranay Sethi and others*<sup>2</sup> learned Counsel for the appellants has further argued that the Tribunal also did not award any amount towards funeral expenses, loss of filial consortium and loss of estate. Therefore, the impugned award may be modified and the compensation awarded by the Tribunal may be enhanced.

(11) On the other hand, Sh. Rajnish Malhotra, learned Counsel for the respondent No.3-Insurance Company has argued that deceased-Yogesh Saini aged about 17½ years was a student and was not having

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<sup>1</sup> R.C.R. (Civil) 77 : 2009 (3) (SC)

<sup>2</sup> 2017 (4) R.C.R. (Civil) 1009 (SC)

any income. The Tribunal has awarded just and reasonable compensation and the claimants are not entitled to enhancement thereof.

(12) In the present case, the Tribunal by looking into the facts of the case, age of the parents and the contributions which deceased would have made awarded an amount of Rs. 2,50,000/- to the claimants but the Tribunal did not assess notional income of the deceased, make any addition towards future prospects, determine the multiplicand after making deduction towards personal expenses and apply the multiplier as per his age at the time of his death and did not award any amount under the conventional heads of funeral expenses, loss of estate and loss of consortium. Therefore, the compensation awarded by the Tribunal cannot be said to be just and appropriate.

(13) Admittedly, the deceased-Vikas Saini aged about 17½ years was a student of mechanical engineering in SRM College of Technical Education and was not having any income. However, for determining just compensation payable to the claimants, notional income of the deceased was required to be assessed. On completion of the education, the deceased would have secured job as highly skilled person and would have earned. In ***FAO No.1502 of 2015 titled as National Insurance Company Ltd. versus Pushpa Singh Chauhan and others*** decided on 20.03.2015 an Hon'ble Coordinate Bench of this Court affirmed computation of compensation by the Tribunal whereby in regard to death of a student of B.Tech. Mechanical in Chander Mohan Jha University, Shilong (Meghalya) income was assessed as Rs. 10,000/- per month and addition for future prospects was made at the rate of 50% which was upheld by the Hon'ble Supreme Court in Special Leave Petition(C) S.No.19533 of 2015. In ***FAO No.510 of 2015 titled as Anita Joshi and another versus Sarwan Singh and another*** an Hon'ble Co-ordinate Bench of this Court assessed the notional income of deceased aged about 18/20 years who was a student of Diploma in Engineering as Rs. 10,000/- per month and made addition towards future prospects at the rate of 40% in view of judgment of Hon'ble Supreme Court in ***Pranay Sethi's case*** (Supra). In view of the facts and circumstances of the present case and above referred judicial precedents, it will be just and proper to determine by guess work notional income of the deceased as Rs. 10,000/- per month.

(14) In ***Pranay Sethi's case*** (Supra) Hon'ble Supreme Court observed in para No.61(iv) of its judgment that in case of self-employed persons or persons employed on fixed salary, addition of 40% of the established income be made towards future prospects. The above

referred observations will also be applicable to the facts of present case involving assessment of notional income of the deceased. When so added, notional income of the deceased comes to (Rs. 10,000 + 4000=) Rs. 14,000/-. Since, the deceased was a bachelor, deduction of  $\frac{1}{2}$  has to be made towards personal expenses as per the observations made by Hon'ble Supreme Court in para No.15 of its judgment in *Sarla Verma's case* (Supra). In view of the observations made by Hon'ble Supreme Court in para No.61(vii) of its judgment in *Pranay Sethi's case* (Supra) multiplier has to be applied on the basis of age of the deceased and not age of the parents. In view of the age of the deceased being 17 $\frac{1}{2}$  years and observations of Hon'ble Supreme Court in para No.21 of its judgment in *Sarla Verma's Case* (Supra), multiplier of 18 is applicable. When multiplier of 18 is applied to multiplicand of (Rs. 7,000 X 12=) Rs. 84,000, loss of dependency of the claimants on the deceased comes to (Rs. 84,000 X 18=) Rs. 15,12,000/-.

(15) In the present case, the Tribunal did not award any amount towards funeral expenses, loss of estate and loss of consortium. In para No.61(viii) of its judgment in *Pranay Sethi's case* (Supra) Hon'ble Supreme Court observed as under:-

“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.”

(16) As a corollary to above direction of Hon'ble Supreme Court for enhancement of the figures on conventional heads at the rate of 10% in every three years for assessment of compensation in cases arising in future, the figures on conventional head will be liable to reduction at the rate of 10% for every block of three years for assessment of compensation in cases which have arisen in the past.

(17) In *Magma General Insurance Company' case* (Supra), 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's case* (Supra).

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(18) In view of the principles of awarding compensation under conventional heads as laid down by Hon'ble Supreme Court in ***Pranay Sethi's case*** (Supra) referred to above, the claimants will be entitled to award of compensation of Rs. 28,000/- only in equal shares towards loss of filial consortium and Rs. 10,500/- towards funeral expenses and Rs. 10,500/- towards loss of estate.

(19) 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.

(20) In claim petitions under Section 163-A or 166 of the M.V. Act, the Motor Accident Claims Tribunal is empowered by Section 171 of the M.V. Act to award interest, in the eventuality of claim petition being allowed, from the date of making the claim at such rate as may be specified by it. In awarding interest, the Motor Accident Claims Tribunal is not bound by the provisions of Section 34 of the Code of Civil Procedure, 1908 to restrict the award of interest to 6% per annum. In ***Puttamma and others*** versus ***K.L. Narayana Reddy and another***<sup>3</sup> 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.”

(21) In ***Supre Deo and others*** versus ***National Insurance Company Ltd. and another***<sup>4</sup> 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. In ***Sube Singh and another*** versus ***Shyam Singh (Dead) and others***<sup>5</sup> rate of interest of 6% per

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<sup>3</sup> 2014 (1) R.C.R. (Civil) 443

<sup>4</sup> 2009 (4) SCC 513

<sup>5</sup> 2018 (2) R.C.R. (Civil) 131 (SC)

annum awarded by the Motor Accidents Claims Tribunal was modified by Hon'ble Supreme Court of India to 9% per annum.

(22) 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.

(23) As per the above discussion, the appellants/claimants are entitled to payment of compensation amount of Rs. 15,61,000/- with interest at the rate of 9% per annum from the date of filing of the petition till realization in equal shares. However, the amount of compensation of Rs. 2,50,000/- already awarded to the appellants/claimants shall be liable to be deducted from the amount calculated as above.

(24) The present appeal is, accordingly, allowed with the above said modifications of the award dated 10.02.2010 passed by the Tribunal, Yamuna Nagar at Jagadhri.

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*Shubhreet Kaur*