

Before B.S. Walia, J.

SUMAN SINHA AND OTHERS—Appellants

versus

BALDEV AND OTHERS—Respondents

**CM No. 14455-CII of 2014 in
FAO No. 2747 of 2001 (O&M)**

December 04, 2018

Code of Civil Procedure, 1908—O.41 RI.27—Motor Vehicles Act, 1988—Appellate Court may allow any document to be produced as evidence or witness to be examined for any substantial cause or for pronouncing judgment—License which could not be produced earlier for awarding proper compensation squarely falls within the definition of term substantial cause—Hence, compensation was enhanced and the insurance company was made liable to make payment to the appellant-claimants.

Held that as against the compensation of Rs. 7,29,500/- awarded by the Tribunal, the appellants/claimants are held entitled to award of compensation of Rs. 12,21,000/- along with interest @ 12% per annum w.e.f. the date of filing of the claim petition till date of payment, less amount if any already paid.

(Para 17)

Further held that the appellants would be entitled to the award of compensation in proportion to their shares determined by the Tribunal after first making payment of Rs. 40,000/- each towards loss of spousal/parental consortium to the wife and children of the deceased i.e. appellant Nos.1 to 3. The Insurance Company shall make the payment to the appellants after making deduction of the tax liability, if any, qua future prospects, in accordance with the decision of Hon'ble the Supreme Court in Pranay Sethi's case.

(Para 18)

Kanwardeep Singh, Advocate for
S.S. Narula, Advocate
for the appellants.

Vinod Chaudhari, Advocate
for respondent No.3.

B.S.WALIA, J. oral

CM No. 14455-CII of 2014

(1) For the reasons as are mentioned in the application, the same is allowed. With the consent of learned counsel for the parties, appeal is taken on board today itself.

CM No. 14634-CII of 2001

(2) For the reasons as are mentioned in the application, the same is allowed. Delay of 271 days in re-filing of the appeal is condoned.

FAO No. 2747 of 2001 (O&M)

(3) Along with appeal an application under Order 41 Rule 27 read with Section 151 CPC (CM No.14635-CII of 2001) was filed for placing on record the driving license of respondent No.1 i.e. the driver of the offending vehicle on the ground that the driving license of respondent No.1 came to the knowledge of the applicants-appellants only later on and in the meantime the Insurance Company had been exonerated of liability by the learned Motor Accidents Claims Tribunal, Panipat (hereinafter referred to as 'the Tribunal'). Prayer is that since the driving license which is now sought to be placed on record was not in the knowledge of the applicants- appellants besides the same is necessary for pronouncement of judgment and for doing substantial justice, the same be allowed to be placed on record.

(4) Notice of the application was issued to respondent Nos.1 and 2 i.e. driver and owner of the offending vehicle, but none has put in appearance on their behalf despite substituted service by way of publication in newspaper dated 10.01.2018. Accordingly, vide order dated 30.01.2018, respondent Nos.1 and 2 were proceeded ex parte.

(5) Reply has been filed by the Insurance Company/respondent No.3/Insurance Company opposing the application for leading additional evidence on the ground of there being absence of due diligence. It has been brought to the notice of the Court by learned counsel for the parties that no evidence was led by the driver and owner before the learned Tribunal. The provisions of Order 41 Rule 27 CPC *inter-alia* stipulates that if the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced. To my mind, the hyper technical approach adopted by the Insurance Company does not

merit acceptance especially in the background of the Motor Vehicles Act, 1988 being a social welfare legislation with the object of ensuring just and appropriate compensation being awarded to a claimant. It is not in doubt that in view of the aforementioned background the license as produced on record by the appellants by way of an application under Order 41 Rule 27 read with Section 151 CPC is essential for the Court to pronounce judgment with regard to the claim for award of just compensation. Allowing production of evidence which could not be produced earlier for awarding just and proper compensation squarely falls within the definition of term substantial cause. Another aspect of the matter which needs noticing is that on filing of application under Order 41 Rule 27 CPC, learned counsel appearing on behalf of the respondent No.3/Insurance Company sought time to verify as also to file response to the application. In other words, it was accepted even on behalf of the respondent No.3/Insurance Company that the verification of the driving license of the driver of the offending vehicle was for the purpose of doing substantial justice and to enable the Court to pronounce judgment in the matter. Pursuant to the exercise carried out by the respondent No.3/Insurance Company for verification of the driving license of the driver of the offending vehicle, report obtained by the respondent No.3/Insurance Company has been produced in open Court. The same is taken on record. A perusal thereof reveals that particulars of the driving license and the name of the person to whom the same was issued, is the driver of the offending vehicle, as has been verified by the respondent No.3/Insurance Company from Licensing Authority, Agra. Once, it has been established none else by the respondent No.3/insurance company itself on verification that the driving license relied upon by the appellants by way of an application under Order 41 rule 27 CPC is valid than it would be a travesty of justice if hyper technical approach of the respondent No.3/ Insurance Company is allowed to prevail. Accordingly, the application is allowed and driving license attached with the application under Order 41 Rule 27 read with Section 151 CPC is taken on record as Annexure P-1.

(6) Appeal has been filed by the wife, two children and parents of deceased Shatrughan Sinha, who died in a motor vehicular accident on 21.03.1995, seeking enhancement of compensation by addition in income on account of future prospects as well as appropriate compensation under the conventional heads. Appeal has also been filed on the ground that though there were five dependents upon the deceased, deduction was made @ 1/3rd, whereas the same ought to have been made @ 1/4th from the established income of the deceased

towards his personal expenses. Lastly it has been contended that exoneration of the Insurance Company on the ground that license of the driver of the offending vehicle had not been produced on record was legally unsustainable in the light of the subsequent tracing out of a valid driving license issued by the Licensing Authority, Agra to the driver of the offending vehicle.

(7) The deceased was running a contractor-ship business in the name and style of M/s Renu Engineering Works. Although income claimed was to the tune of Rs. 7,000/- to Rs. 10,000/- per month, yet the Tribunal on the basis of evidence led before it assessed the income of the deceased as Rs. 5,000/- per month. Thereafter, by applying multiplier of '18' and making deduction of 1/3rd from the established income of the deceased towards his personal expenses and further by awarding a sum of Rs. 2500/- on account of loss of estate, Rs. 2,000/- on account of funeral expenses and Rs. 5,000/- on account of loss of consortium, awarded total compensation of Rs. 7,29,500/- along with pendente lite and future interest @ 12% per annum.

(8) In view of paragraph No.61 (iv) of the decision in *National Insurance Company Ltd.* versus *Pranay Sethi and others*¹ where the deceased was below 40 years of age, 40% of the established income of the deceased less tax component is to be added on account of future prospects while computing compensation.

(9) Since in the instant case deceased was employed and was 28 years of age, therefore, 40% of the established income of the deceased minus tax component is liable to be added on account of future prospects while computing compensation. At this stage, learned counsel for the respondent No.3/Insurance Company contended that deceased admittedly was 28 years of age, therefore, in accordance with the decision of Hon'ble the Supreme Court in *Sarla Verma* versus *Delhi Transport Corp. and another*² multiplier of '17' would be applicable, whereas multiplier of '18' had been applied by the learned Tribunal. As per paragraph No.21 of the decision in *Sarla Verma's* case (supra), where the deceased was between the age of 26 to 30 years, multiplier of '17' is applicable.

(10) Since, admittedly the deceased was 28 years of age on the date of death, therefore, multiplier of '17' would be applicable as against '18' ordered by the Tribunal.

¹ 2017(4) RCR (Civil) 1009

² 2009 (3) RCR (Civil) 77

(11) As regards appropriate compensation under convention heads, as per paragraph No.61 (viii) of the decision in *Pranay Sethi's* case (supra), compensation of Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively is to be awarded on account of loss of estate, loss of consortium and funeral expenses.

(12) After taking into account decision rendered in *Pranay Sethi's* case (supra), Hon'ble the Supreme Court in a subsequent decision in *Magma General Insurance Co. Ltd* versus *Nanu Ram Alias Chuhru Ram*, in Civil Appeal No.9581 of 2018, decided on 18 September, 2018, held that "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'" and awarded Rs. 40,000/- to the father and sister of the deceased therein on account of loss of filial consortium.

(13) Accordingly, the appellants are held entitled to award of Rs. 15,000/- on account of loss of estate as also Rs. 15,000/- on account of funeral expenses. As regards loss of consortium, appellant No.1-wife and two children i.e. appellant Nos.2 and 3 are held entitled to Rs. 40,000/- each on account of loss of spousal/parental consortium.

(14) Moreover, since the deceased left behind five dependants, therefore, in terms of paragraph No. 14 of the decision in Sarla Verma's case (supra) deduction is to be made @ 1/4th and not @ 1/3rd towards personal expenses of the deceased.

(15) Accordingly, the deduction towards personal expenses of the deceased is to be made @ 1/4th as against 1/3rd ordered by the Tribunal.

(16) In the circumstances, findings of the learned Tribunal on issue No.3 are reversed and the appellants/claimants are held entitled to the following compensation:-

Sr.No	Head	Amount assessed by the Tribunal	Amount assessed by this Court
1	Income	Rs. 5000/-	Rs. 5000/-
2	Future Prospects	Nil	Rs. 2000/-(40% of Rs. 5000)
3	Total Income	Rs. 5000/-	Rs. 7000/-
4	Multiplier applied	18	17

5	Deduction	1/3 rd of Rs. 5000- i.e. Rs. 1667/-	1/4 th Rs. 7000 i.e. Rs. 1750/-
6	Dependency	Rs. 3333x12x18= Rs. 7,19,928/- (round off to Rs. 7,20,000/-)	Rs. 5250x12x17= Rs. 10,71,000/-
7	Loss of spousal consortium	Rs. 5000/-	Rs. 40,000/- (Appleeant No.1- Wife)
8	Loss of parental consortium	Nil	Rs. 80,000/- i.e. Rs. 40,000/- each to appellant Nos.2 and 3.
9	Loss of Estate	Rs. 2500/-	Rs. 15,000/-
10	Funeral expenses	Rs. 2000/-	Rs. 15,000/-
	Total	Rs. 7,29,500/-	Rs. 12,21,000/-

(17) Accordingly, as against the compensation of Rs. 7,29,500/- awarded by the Tribunal, the appellants/claimants are held entitled to award of compensation of Rs. 12,21,000/- along with interest @ 12% per annum w.e.f. the date of filing of the claim petition till date of payment, less amount if any already paid.

(18) Needless to mention, the appellants would be entitled to the award of compensation in proportion to their shares determined by the Tribunal after first making payment of Rs. 40,000/- each towards loss of spousal/parental consortium to the wife and children of the deceased i.e. appellant Nos.1 to 3. The Insurance Company shall make the payment to the appellants after making deduction of the tax liability, if any, qua future prospects, in accordance with the decision of Hon'ble the Supreme Court in *Pranay Sethi's* case (supra).

(19) Accordingly, appeal is allowed and award dated 15.03.2000 passed by the learned Tribunal is modified to the extent as noted above.

Payel Mehta