



FAO-228-2007 (O&M)

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**230 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**Reserved on: 20.09.2024
Date of Decision :01.10.2024
FAO-228-2007 (O&M)**

Misikina and others

....Appellants

Versus

Abdul Rahim and others

....Respondents

CORAM : HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**Present:** Mr.Shivam Sharma, Advocate for
Mr. Ashish Gupta, Advocate
for the appellants.Mr. Sanjeev Pabbi, Advocate
for the respondent-Insurance Company.

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SUDEEPTI SHARMA, J.

1. The instant appeal has been preferred by the claimants/appellants for enhancement of compensation awarded by the learned Motor Accident Claims Tribunal, Gurgaon (for short, 'the Tribunal') vide award dated 01.09.2006 under Section 163-A of the Motor Vehicles Act, 1988 (for short, 'MACT Act'), whereby the claimants/appellants were awarded compensation of Rs.1,25,000/- along with interest @ 6% per annum.

FACTS NOT IN DISPUTE

2. Brief facts of the case are that on 04.03.2004, Shehjad alongwith Unus and Ash Mohd was going to Nuh from Taoru on motor cycle bearing registration No RJ-02-8-M/6819 being driven by him at moderate and slow speed. Unus and Ash Mohd were pillion riders. At about 4.30 PM, when they reached near village Palla, then a tractor trolley bearing registration No.HR-27/8528, was found parked in the middle of the road. When they were about to overtake the tractor



trolley, a labourer came from the side of the road and tried to cross the road. On seeing the labourer, Shehjad i.e., driver of the motor cycle applied brakes, but an iron plate was protruding out of the trolley and the motor-cycle hit against the tractor trolley and also hit the labourer crossing the road. Due to which, Unus, Shehjad and Ash Mohd, riders of motor cycle fell down and died on the spot whereas Sirajuddin sustained injuries. The Saddik Khan (owner-cum-driver of tractor trolley) had not taken any precaution to avoid the accident and the accident solely occurred due to the rash and negligent act of him.

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

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

“1. Whether the accident in question took place due to the negligent act of respondent no. 3 Saddiq in parking the tractor trolley No. HR-27/8528 in the middle of the road or on account of rash and negligent driving of the motor cycle No. RJ-02-8M/6819 by Shehjad (since deceased) or on account of negligence of both the drivers, as alleged? OPP

(2) Whether the petitioners are entitled to get compensation. If so, to what amount and from whom? OPP

(3) Whether the respondent Saddiq was not holding valid and effective driving licence and that the insured violated the terms and conditions of the insurance policy, as alleged? OPR Insurance Company.

(4) Relief”



5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation of Rs.1,25,000/- along with interest @ 6% per annum. Hence the claimants/appellants filed the present appeal for enhancement of compensation awarded by the Tribunal.

SUBMISSIONS OF THE COUNSEL FOR THE PARTIES

6. The learned counsel for the claimants-appellants contended that the amount assessed by the learned Tribunal is on the lower side. He further contended that the petition was filed under Section 163-A of the Motor Vehicles Act, 1988, in which only accident is to be proved and not the negligence of the parties. Thus, holding of the liability of the Insurance Company to pay the compensation to the extent of 50% is not sustainable. He further contended that the learned Tribunal erroneously took income of the deceased as Rs.2000/- per month. He further contended that the learned Tribunal erroneously applied the multiplier of 15 instead of 18 and no amount has been granted for loss of estate. He further contended that the compensation for loss of consortium and funeral expenses was also on lower side.

7. Per contra, learned for the respondent-Insurance Company argues that the learned Tribunal vide award dated 01.09.2006 has rightly assessed the amount of compensation.

8. I have heard learned counsel for the parties and perused the whole record of this case.

9. A perusal of the award indicates that the claim petition was filed under Section 163-A of the Motor Vehicles Act, 1988. Compensation granted under this section is determined by a structured formula, constituting a final award, without requiring proof of negligence by the driver or the owner of the vehicle involved in the accident. However, the Tribunal erred in applying the



doctrine of contributory negligence. It is a well settled legal principle, as affirmed by the Hon'ble Supreme Court in United India Insurance Company Ltd. versus Sunil Kumar, Civil Appeal No.9694 of 2013 that claims under Section 163-A of the MACT Act are predicated on principle of no fault liability and compensation is to be awarded without the necessity of proving negligence. The relevant extract of the same is reproduced as under:-

“8. From the above discussion, it is clear that grant of compensation under Section 163-A of the Act on the basis of the structured formula is in the nature of a final award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the driver/owner of the vehicle(s) involved in the accident. This is made explicit by Section 163A(2). Though the aforesaid section of the Act does not specifically exclude a possible defence of the Insurer based on the negligence of the claimant as contemplated by Section 140(4), to permit such defence to be introduced by the Insurer and/or to understand the provisions of Section 163A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163A of the Act, namely, final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability was taking an unduly long time. In fact, to understand Section 163A of the Act to permit the Insurer to raise the defence of negligence would be to bring a proceeding under Section 163A of the Act at par with the proceeding under Section 166 of the



Act which would not only be self-contradictory but also defeat the very legislative intention.

9. For the aforesaid reasons, we answer the question arising by holding that in a proceeding under Section 163A of the Act it is not open for the Insurer to raise any defence of negligence on the part of the victim.”

10. In view of the above, the Tribunal’s findings’ qua contributory negligence is hereby set aside.

11. Further, the Tribunal has assessed the income of the deceased at Rs.2000/- per month. However, his income to be assessed as Rs.2250/- per month in accordance with the minimum wages prescribed for unskilled workers in the State of Haryana. Further the Tribunal applied a multiplier of 15, however, the appropriate multiplier should be 18. Furthermore, no amount has been granted for loss of estate and the sum awarded for loss of consortium and funeral expenses is also on the lower side.

SETTLED LAW ON COMPENSATION

12. 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.

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. 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 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.

* * * * *

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 Thomas³, 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.

13. 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 Rajesh². 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 refers to SantoshDevi, 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 seems 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.

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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 Verma⁴ which we have reproduced hereinbefore.



59.6. The selection of multiplier shall be as indicated in the Table in Sarla Verma¹ 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.”

14. Hon’ble Supreme Court in the case of **Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram & Others [2018(18) SCC 130]** after considering **Sarla Verma(supra)** and **Pranay Sethi (Supra)** has settled the law regarding consortium. Relevant paras of the same are reproduced as under:-

“21. A Constitution Bench of this Court in Pranay Sethi² dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium. In legal parlance, "consortium" is a compendious term which encompasses "spousal consortium", "parental consortium", and "filial consortium". The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.

*21.1. **Spousal consortium** is generally defined as rights pertaining to the relationship of a husband-wife which allows*



compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation".

*21.2. **Parental consortium** is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training".*

*21.3. **Filial consortium** is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.*

22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognised that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

23. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of

genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. Parental consortium is awarded to children who lose their parents in motor vehicle accidents under the Act. A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of filial consortium.

24. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under "loss of consortium" as laid down in Pranay Sethi². In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount ofRs 40,000 each for loss of filial consortium.

CONCLUSION

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 award dated 01.09.2006 is modified accordingly. The appellants-claimants are entitled to enhanced compensation as per the calculations made here-under:-

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.2250/-
2	Deduction towards personal expenditure	Rs.750/- [1/3 of (2250)]
3	Total Income	Rs.1500/- (2250-750)

4.	Multiplier	18
4	Annual Dependency	Rs.3,24,000 /- (1500x12x18)
5	Loss of Estate	Rs.18,000/-
6	Funeral Expenses	Rs.18,000/-
7	Loss of Consortium Parental : Rs.48,000/- x 2 Spousal : Rs. 48,000/-x1 Filial : Rs. 48,000/-x1	Rs.1,92,000/-
8	Total Compensation	Rs.5,52,000/-
	Amount Awarded by the Tribunal	Rs.1,25,000/-
	Enhanced amount	Rs.4,27,000/-

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 appellant-claimant is granted the interest @ 9% per annum on the enhanced amount from the date of filing of claim petition till the date of its realization.

17. The Insurance Company is directed to deposit the enhanced amount of compensation along with interest with the Tribunal within a period of two months from today. The Tribunal is further directed to disburse the enhanced amount of compensation along with interest in the accounts of all the claimants/appellants as per ratio settled in the award dated 01.09.2006. The claimants/appellants are directed to furnish the bank account details to the Tribunal.

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

October 01, 2024
A.Kaundal

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/non-speaking : Speaking

Whether reportable : Yes/No