



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

322

FAO No.3167 of 2007 (O&M)
DATE OF DECISION : 16th OCTOBER, 2024

Kumari Priti & others

.... Appellants

Versus

Mahender and others

.... Respondents

CORAM : HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

* * * *

Present : Mr. Yash Dev Kaushik, Advocate for the appellants.

Mr. Mohan Singh Rana, Advocate
for respondents No.1 & 2.

Mr. Suvir Dewan, Advocate for respondent No.3.

Mr. Arjun Kundra, Advocate
for respondent No.6-Insurance Co.

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SUDEEPTI SHARMA, J. (Oral)

1. This is an old matter pertaining to the year 2006 but no one has put in appearance on behalf of the Insurance Company.
2. Previously vide order dated 18.07.2024 passed in FAO No.1682 of 2007, this Court had already issued directions to the Insurance Companies that in the event, any of their empanelled counsel fails to appear, this Court would request the counsel empanelled with the Insurance Company, who is present in the Court to assist in the matters. Further, the concerned Insurance Companies were directed to disburse the current scheduled fees to the counsel engaged by this Court for assisting in the matters.



3. On the asking of the Court, Mr. Suvir Dewan, Advocate accepts notice on behalf of respondent No.3-Insurance Company.

4. Learned counsel for the appellants has handed over copy of the paper-book alongwith relevant record to the learned counsel for respondent No.3-Insurance Company-Mr. Suvir Dewan, Advocate.

FAO No.3167 of 2007 (O&M)

1. The present appeal has been filed by the appellants-claimants against the award dated 27.02.2007 passed by the Motor Accident Claims Tribunal, Gurgaon (for short, the Tribunal), in the claim petition No.38 of 2004 filed by the claimants, who are the minor children and parents of the deceased-Devinder Kumar, for enhancement of compensation granted to the appellants.

FACTS NOT IN DISPUTE

2. Brief facts of the case are that on 09.12.2003, Devinder Kumar (deceased) along with one Naresh Kumar was going to his village Hazipur at about 4.30 a.m. while riding into jeep No. HR-35-A-5877 which was going from Rajiv Chowk, Gurgaon to Sohna. When the said jeep reached near Devi Lal Stadium at a distance of one kilometer from Rajiv Chowk, Gurgaon a car Wagon-R bearing registration No.HR-26-N-4665 came from the side of Sohna in a very rash and negligent manner being driven by respondent No.1 and hit the jeep in which Devinder Kumar was travelling. Due to the impact of that jeep Devinder Kumar received head injury and driver of the jeep also received injury. Devinder Kumar was shifted to the General Hospital, Gurgaon where he breathed his last. The matter was reported to the Police by Naresh Kumar and FIR



No.714 dated 09.12.2003 under Sections 279, 337 and 304-A IPC was registered to this effect.

3. Upon notice of the claim petition, respondents No.1 and 2 filed their joint statement in which certain preliminary objections were raised regarding the facts that the petitioners have no *locus standi* and cause of action to file the present petition and the same is not maintainable as well. The respondent No.1 was holding a valid and effective driving license and the compensation if any awarded is liable to be paid by the respondent No.3-Insurance Company. Respondent No.3-Insurance company has filed its separate written statement and taking preliminary objections that respondent No.1 was not holding a valid and effective driving license; the alleged offending vehicle was not the actually at fault the accident took place due to rash and negligent driving of respondent No.4, who was driving the vehicle No.HR-35-A-5877 rashly and negligently. On merits, the income; profession of the deceased and all other allegations in toto were denied. They prayed for dismissal of the claim petition. The respondents No.4 and 5 also filed their written statement denying the accident with vehicle No. HR-35-A-5877. Rather they have admitted that the accident was caused due to rash and negligent driving of car bearing registration No. HR-26-N-4665.

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

1. Whether the accident took place due to rash and negligent driving of car No. HR-26-N-4665 by respondent no.1 or due to rash and negligent driving



of Jeep No. HR-35-A-5877 and Car No.HR-26-N-4665 by respondents No.4 and 1 respectively ? OPP

2. Whether the petitioners are entitled to compensation. If so how much and from whom? OPP.

3. Whether respondents No.1 and 4 were not holding a valid driving license at the time of accident ? OPR.

4. Relief.

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the tune of ₹4,88,128/- along with interest @ 7.5% per annum. Hence, the claimants/appellants filed the present appeal for enhancement of compensation awarded by the learned Tribunal.

SUBMISSIONS OF LEARNED COUNSELS FOR THE PARTIES

6. The learned counsel for the claimants-appellants contends that the compensation granted by the learned Tribunal is on lower side. He further contends that the Tribunal has wrongly taken the income of the deceased as ₹4268/- p.m. He further contends that the deduction of 1/3rd amount towards his personal expenditure is at higher side whereas it should be 1/4th. The Tribunal erred in applying the multiplier of 14 instead of multiplier of 16 as per settled law. The learned Tribunal has not awarded any amount on account of consortium and for future prospects. He further contends that the amount of compensation granted for loss of estate and funeral expenses is also on lower side. Therefore he prayed that the present appeal be allowed and the amount of compensation awarded to the appellants/claimants shall be enhanced.



7. Per contra, learned counsel for the respondent-Insurance Company, however, vehemently argues that the award has rightly been passed and the amount of compensation as assessed by the learned Tribunal has rightly been granted.

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 deceased was 31 years of age at the time of accident and as per salary certificate and statement of PW-1 i.e. Ashok Chugh, Superintendent Personnel and Administration, M/s. Nuchem Weir Limited, Faridabad, deceased-Devender Kumar was receiving a salary of ₹6808/- per month plus field allowances of approximately ₹1250-1300 per month. A perusal of the award shows that the Tribunal has erred in taking monthly income of deceased-Devender Kumar as ₹4268/- pm however, taking into consideration the statement of PW-1 and salary certificate this court assess the monthly income of the deceased as ₹7400/- after deducting the taxes. Further, no amount was granted for future prospects and for loss of consortium as per the settled law. Further the Tribunal has erred in applying the multiplier of 14 instead of 16 moreover, the amount of compensation awarded for loss of Estate and for funeral expenses is also on lower side. Therefore, the award requires interference by this Court.

SETTLED LAW ON COMPENSATION

10. 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 d 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.

11. 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 Santosh Devi, 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 seemly 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 Verma 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.”

12. 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 of Rs 40,000 each for loss of filial consortium.

CONCLUSION

13. 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 27.02.2007 passed by the Motor Accident Claims Tribunal, Gurgaon is modified accordingly. The appellants-claimants are entitled to compensation as per the calculations made here-under:-

Sr. No.	Heads	Compensation Awarded (In Rs.)
1.	Monthly Income	7400
2.	Future prospects @50%	3700
3.	Deduction towards personal expenditure (1/4 th)	7400+3700x1/4 = 2775
4.	Total Income	11100-2775=8325



5.	Multiplier (16)	8325 x 16
6.	Annual Dependency	(8325x 16x 12) =1598400
7.	Loss of Estate	18000
8.	Funeral Expenses	18000
9.	Loss of Consortium Parental : Rs.48000/- x 3 Filial : Rs.48000/- x 2	240000
	Total Compensation	Rs.18,74,400/-
	Already Awarded by the Tribunal	4,88,128/-
	Enhanced Compensation	13,86,272/-

10. 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.

11. 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 the date of receipt of certified copy of this judgment. The Tribunal is further directed to disburse the amount of compensation along with interest as per its award dated 27.02.2007. The claimants/appellants are directed to furnish their bank accounts details to the Tribunal.

12. Before parting with the judgment, this Court extends its appreciation to Mr. Suvir Dewan, Advocate, for his able assistance to the Court in the present matter.



13. The respondent No.3-Insurance Company is hereby directed to disburse the current scheduled fees to Mr. Suvir Dewan, Advocate within a period of ten days from the date of receipt of the copy of this judgment.
14. Disposed of accordingly.
15. Pending application(s), if any, also stand disposed of.

16th OCTOBER, 2024
'raj'

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/reasoned:	Yes	No
Whether Reportable:	Yes	No