



FAO-4233-2007 (O&M)

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

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**FAO-4233-2007 (O&M)
Date of Decision : 07.11.2024**

Jagmal and Another

....Appellants

VERSUS

Attar Singh and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**Present:** Mr. S.S.Mor, Advocate
for the appellantsMr. Paul S.Saini, Advocate with
Mr. Vipul Sharma, Advocate
for the respondent – Insurance Co.

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SUDEEPTI SHARMA, J. (Oral)

1. The present appeal has been preferred against award dated 25.07.2007 passed in claim petition filed under Section 166 of the Motor Vehicles Act, 1988, by the learned Motor Accident Claims Tribunal, Bhiwani (for short, 'the Tribunal') for setting aside the finding of the Tribunal regarding contributory negligence as well as for enhancement of compensation granted to the claimants/appellants, who are family members of the deceased.

FACTS NOT IN DISPUTE

2. Brief facts of the case are that on 13.12.2004 at about 8:30 AM, son of the claimants/appellant, namely, Anil (since deceased) aged about 19 years, was pillion rider on a scooter bearing registration No.HR-20-6954 being driven by his cousin Surender. When they were 2/3 kilometres from Bawani Khera towards Hansi side, a police van bearing registration No.HR-39A-2140 (hereinafter referred to as 'the offending vehicle') being driven by respondent No.1 in a rash and



negligent manner despite heavy fog struck against their scooter as a result whereof, Anil suffered grievous injuries and was accordingly shifted to General Hospital Bhiwani, where he was declared as brought dead. FIR No.161, dated 13.12.2004 was got registered at PS Bawani Khera for offences under Sections 279/337 IPC qua the accident. The deceased was stated to be earning Rs.10,000/- per month from agricultural activities and sale of milk.

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

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

1. Whether the accident which took place on 13.12.2004 at about 8.30 a.m was because of rash and negligent driving of respondent No.1 while driving the vehicle i.e. Swaraj Mazda Police Van No.HR-39A-2140, if so, its effect? OPP
2. Whether the petitioners are entitled to receive compensation, if so, how much and from whom? OPR
3. Whether the petition is not maintainable in the present form? OPP
4. Whether the respondent No.1 was not holding the valid and effective driving license on the date of accident, if so, its effect? OPR
5. Relief.

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the tune of Rs.3,00,000/- alongwith interest @ 7% per annum. However, learned Tribunal further held that



case involved contributory negligence, attributing 50% liability to the deceased. Consequently, the claimants were awarded compensation of Rs.1,50,000/-. Hence the claimants/appellants filed the present appeal for seeking enhancement of compensation and challenging the finding regarding contributory negligence.

SUBMISSIONS OF LEARNED COUNSELS FOR THE PARTIES

6. The learned counsel for the claimants-appellants contends that the amount assessed by the learned Tribunal is on the lower side. He further contends that the learned Tribunal has erred in holding the case in hand as case of contributory negligence as the deceased – Anil was a pillion rider on the motor-cycle driven by his cousin Surender. He further contends that a pillion rider had no control over driving of motor vehicle and the accident in question solely occurred due to negligent driving respondent No.1. Moreover, the Tribunal has erroneously applied multiplier of 15 instead of 18 and no amount has been granted for future prospects, loss of consortium and for loss of estate. He further contends that no compensation was granted for funeral expenses. He, therefore, prays that the present appeal be allowed and finding of the Tribunal qua contributory negligence be set aside and the awarded amount of compensation be enhanced as per the latest law.

7. Per contra, learned for the respondent-Insurance Company argues that the learned Tribunal vide award dated 25.07.2007 has rightly assessed the amount of compensation. Therefore, he prays for dismissal of the present appeal.

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

9. The relevant paragraph of the award dated 25.07.2007 is reproduced as under:-



“7. Qua this issue, Surender Kumar who was statedly driving the scooter No. HR-20/6954 and whereon Anil Kumar, since deceased, was driving pillion on the date and time in question viz 13.12.2004 has testified that on the date and time of accident in question there was a heavy fog when they were returning on the said scooter at which time police van No HR-39A/2140 while being driven rashly by respondent No.1 Attar Singh came from the opposite side and struck against their scooter as a result whereof Anil fell down and received injuries and ultimately succumbed thereto. He added that he had lodged the FIR Ex.P2 qua this accident. During his cross examination, he has admitted that a 35 Kg capacity milk drum was being carried on the scooter by the pillion rider Anil on the date and time in question. On the strength of the said admission, the learned counsel for the insurance company has argued that the accident in question took place on account of contributory negligence in as much as the scooter is meant for travel by riders thereon and is not meant for carrying goods such as milk drums etc. I find merit in this contention because on account of the pillion rider Anil admittedly traveling while holding a 35 Kg milk drum would not have been in a position to travel safely. None-the-less, the fact cannot be lost sight of that the respondent driver had equally contributed for the accident in question because he has admitted during his cross examination that it was a foggy day meaning thereby that had he driven consciously and at a moderate speed, the accident in question could not have taken place. It will not be out of place to add here that the respondent driver



is admittedly standing trial pursuant to the FIR Ex. P/2 lodged qua the accident in question.

8. In view of the foregoing discussion, this issue stands decided partly in favour of the claimant to the effect that the accident in question took place on account of contributory negligence on the part of the respondent driver and the deceased Anil.”

10. A perusal of the award indicates that the accident was duly reported to the police resulting in registration of FIR No.161, dated 13.12.2004 under Sections 297 and 304-A of the Indian Penal Code,1860. The contents of the FIR explicitly states that the accident occurred due to rash and negligent driving of the offending vehicle bearing registration No.HR-39A/2040 by respondent No.1 at excessive speed. The facts recorded in the FIR clearly and unambiguously establish that the accident occurred due to rash and negligent driving of the offending vehicle by respondent No.1. The deceased – Anil was merely a pillion rider on the motor-cycle which was being driven by his cousin Surrender. As per FIR, they were returning to their village after selling milk and the milk drum they carried was empty at the time of accident. These details unequivocally establish that deceased-Anil had no contributory role in causation of the accident. Being pillion rider, Anil (since deceased) had no control over operation of the motor-cycle. Consequently, no contributory negligence can be attributed to deceased-Anil .

11. Evidence by way of affidavit of PW-1 Jamal Singh establishes that deceased – Anil after selling the milk was returning to his village. His testimony further confirms that the milk drum was empty at the time of accident. The Tribunal, however, erred in imputing contributory negligence to the deceased.



Such a finding is devoid of any evidentiary basis and fails to demonstrate a casual link between deceased's position on the vehicle as pillion rider and the occurrence of the accident. The reasoning as returned by Tribunal is legally unsustainable as the mere act of being a pillion rider does not ipso facto constitute contributory negligence.

12. Evidence by way of affidavit of PW-2 Surender Kumar, the driver of motor-cycle was placed on record. In his deposition, he categorically attributed the accident to the rash and negligent driving of the offending vehicle by respondent No.1. He further deposed that the deceased – Anil was seated as a pillion rider, and they were returning to their village after selling milk, with the milk drum being empty at the time of accident. PW-2 also stated that accident occurred under conditions of heavy fog when the vehicle coming from the Hansi side, driven rashly and negligently by respondent No.1 collided with their motor-cycle. The testimony of PW-2 conclusively establishes that the deceased was a pillion rider and did not in any manner, contribute to the occurrence of the accident. The proximate cause of the collision is solely attributable to the rash and negligent driving of respondent No.1, who was driving the offending vehicle negligently under the conditions of heavy fog. Further there is no factual or legal basis to infer contributory negligence on the part of the deceased – Anil, as his mere presence as a pillion rider does not amount to any act or omission contributory to the negligence.

13. A perusal of the award shows that the FIR was lodged solely against respondent No.1, who was stated to be facing trial pursuant to the FIR Ex.P/2 in relation to the accident. This fact serves as compelling evidence that the accident was exclusively attributable to the negligent driving of respondent No.1 while



driving the offending vehicle. Furthermore, there is no material on the record to suggest any element of contributory negligence on the part of deceased – Anil, pillion rider of the motor-cycle, who, by all account played no role, whatsoever, in causation of the said accident .

14. Further Hon'ble the Supreme Court in *Mohammed Siddique and another Vs. National Insurance Company Ltd. and others, 2020(3) SCC 57* held in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence.

15. On touch-stone of hereinabove discussed findings, the award dated 25.07.2005 passed by learned Tribunal Bhiwani, stand vitiated by a complete absence of application of judicial mind.

16. In view of the above, the finding of Tribunal regarding contributory negligence is set aside.

17. With respect to determination of compensation, the record contains deceased earning, his age etc. Consequently, this Court shall adjudicate the compensation in accordance with the documentary evidence on the record.

18. A perusal of record further shows that the Tribunal has rightly assessed the monthly income of the deceased as Rs.3000/-. It is further revealed that the learned Tribunal has not granted future prospectus, loss of estate, consortium as per the settled law. Moreover, no amount was granted for funeral expenses, therefore, the award requires interference by this Court.

SETTLED LAW ON COMPENSATION

19. 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 if 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.

20. 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.”

21. 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

22. 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 Tribunal’s finding regarding the contributory negligence is set aside. The award dated 25.07.2007 is modified accordingly. The appellants-claimants are entitled to compensation as per the calculations made here-under:-

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.3,000/-
2	Future prospects @40%	Rs.1200/-
2	Deduction towards personal expenditure (1/2)	Rs.2100/- [1/2 of 4200]
3	Total Income	Rs.2100/-
4	Multiplier	18
5	Annual Dependency	Rs.4,53,600/- (2100 x 12 x 18)
6	Loss of Estate	Rs.18,000/-
7	Funeral Expenses	Rs.18,000/-
8	Loss of Consortium Filial : Rs.48,000/- x 2	Rs.96,000/-
	Total Compensation	Rs.5,85,600/-
	Amount awarded by the Tribunal	Rs.1,50,000/-
	Enhanced amount	Rs.4,35,600/-



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23. 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 appellants-claimants are granted the interest @ 9% per annum on the enhanced amount from the date of filing of claim petition till the date of its realization.

24. 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 in the accounts of both the claimants/appellants as per the ratio settled by the Tribunal in award dated 25.07.2007. The claimants/appellants are directed to furnish their bank account details to the Tribunal.

25. In views of the order passed in FAO No.1682 of 2007 dated 18.07.2024, the insurance company is hereby directed to deposit the current scheduled fees to Mr. Paul S. Saini, Advocate within a period of ten days from the date of receipt of copy of this judgment.

26. Disposed of accordingly.

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

November 7, 2024
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(SUDEEPTI SHARMA)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No