



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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FAO No.896 of 2006 (O&M)
RESERVED ON : 3rd DECEMBER, 2024
PRONOUNCED ON : 19th DECEMBER, 2024

Nirmala Devi

.... Appellant

Versus

Arvind Kumar Singh & others

.... Respondents

CORAM : HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

* * * *

Present : Mr. Sanjay Jain, Advocate for the appellant.

Mr. R. C. Gupta, Advocate for respondent No.3-Ins.Co.

* * * *

SUDEEPTI SHARMA, J.

1. The present appeal has been filed by the appellant against the Award dated 16.08.2005 passed in the claim petition under Section 166 of the Motor Accident Claims Tribunal, Ambala (for short, 'the Tribunal'), vide which the claim petition filed by the appellant/claimant, who is the wife of the deceased-Dalip Chand Garg, was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case as mentioned in the claim petition are that on 12.03.2003 Dalip Chand Garg (deceased) was going from Baldev Nagar Chowk side to Central Jail side on correct side of the road on katcha berm and was followed by his sister's son Rajesh Jain. At about 6.30-6.45 p.m. when they reached near Rajindra Cement Store, Baldev Nagar on Chandigarh-Ambala Cantt. Road, in the meantime a Maruti Car No.DL-2-CK-7393, being driven by respondent No.1-Arvind



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Kumar Singh in a rash and negligent manner, came from behind and hit the deceased by going on the extreme left side of the road on katcha berm. As a result of which Dalip Chand Garg suffered multiple simple and grievous injuries. Respondent No.1 stopped his car after covering a distance of about 20 yards. Rajesh Jain requested the car driver to take the injured to the hospital. On finding the reply in affirmative, he came back to the injured for taking him to the hospital but respondent No.1 instead of coming towards the injured, fled away with his vehicle from the spot. The injured was taken to Sarwal Hospital, Ambala City and on the same night he was referred to the PGI, Chandigarh, where, he remained admitted for two days i.e. up to 14.03.2003. Thereafter he continued his treatment from Sant Hospital, Ambala City and PGI Chandigarh. He was again got admitted in PGI, Chandigarh, where he died on 20.06.2003 during the course of his treatment. The claimant has alleged that a sum of ₹1,50,000/- was spent on the treatment of the deceased.

3. Upon notice of the claim petition, respondents appeared and filed written statement denying the factum of accident/compensation.

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

- i) Whether the accident in question, which has resulted in the death of Dalip Chand Garg was caused because of the rash and negligent driving of maruti car bearing registration No. DL-2-CK-7393 driven by respondent No. 1? OPP.



- ii) If issue No. 1 is proved, whether the claimant is entitled to a compensation of Rs. 10 lacs for the death of her husband, or to any other amount, as to how much and from whom? OPP.
- iii) Whether the offending car was being driven by the person who was not holding a valid and effective driving licence at the time of the alleged accident? OPR.
- iv) Relief.

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim petition. Hence the present appeal.

SUBMISSIONS OF LEARNED COUNSELS FOR THE PARTIES

6. Learned counsel for the appellant contends that the claim petition was dismissed by the learned Tribunal on the ground that the appellant was not able to prove that accident occurred due to rash and negligent driving of car No.DL-2-CK-7393, by respondent No.1

7. *Per contra*, learned counsel for respondent argues on the lines of the award and contends that the claim petition has rightly been dismissed. He prays for dismissal of the appeal.

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

9. The relevant portion of the award dated 16.08.2005 while dismissing the claim petition of the appellant is reproduced as under:

“9. In order to prove this issue there is only statement of PW4 Rajesh Jain and FIR (Exh.P11) on the file. It is not



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disputed that PW4 Rajesh Jain is sister's son of deceased Dalip Chand. PW4 Rajesh Jain while appearing in the witness box has fully corroborated the version of petition and also FIR in part, i.e., only part before the police endorsement. In his cross examination so far as the FIR (Exh.P11) is concerned in the police endorsement it has been written by HC Surinder Kumar that on 12.03.2003 he alongwith constable Gian Chand was present at Baldev Nagar Chowk. In the meantime, he received an information that injured lying admitted in Sarwal Hospital, Ambala City. On this HC Surinder Kumar reached Sarwal Hospital where after receiving the medical ruqqa, he moved an application and obtained the opinion of doctor according to which injured was unfit to make a statement. It has further come in the endorsement of the police that on 13.03.2003 in the morning hours they received an information that injured Dalip Chand son of Banwari Lal, resident of 747, Housing Board Colony, Baldev Nagar, was lying admitted in PGI, Chandigarh. On receiving this information HC Surinder Kumar alongwith Constable Gian Chand reached PGI, Chandigarh where on the application moved by HC Surinder Kumar injured was declared unfit to make statement. It is also mentioned in the endorsement that at that time no person who witnessed the accident was present near injured. The FIR was recorded only on the statement of Rajesh Jain which was made by him to HC Surinder Kumar in the evening on 13.03.2003 while said Surinder Kumar was on patrolling duty.



10. In his cross examination PW4 Rajesh Jain, who is author of FIR, has admitted that he do not know which portion of the car hit with his maternal uncle. It has also been mentioned in the cross examination of the witness that distance between him and his maternal uncle was about 1 to 2 feet. Had PW4 Rajesh Jain been following his maternal uncle who was ahead of him, he is supposed to know which portion of the car hit his maternal uncle, if he had actually seen the accident. This fact shows that this witness was not present at the time of alleged accident. Even no record of the hospital of Dr. Sarwal has been produced to prove the fact that this witness (i.e., PW4) has taken the injured Dalip Chand to Sarwal Hospital. The police visited the Sarwal Hospital but doctor declared the injured unfit to make his statement. PW4 Rajesh Jain deposed in his cross-examination conducted on behalf of respondents No.1 & 2 that he got Dalip Chand admitted in the hospital of Dr. Darwal and he (PW4 Rajesh Jain) remained there till night and disclosed his particular to Dr. Sarwal while admitting Dalip Chand in his hospital. This deposition of PW4 totally smashed their case because if he would have been present there in the hospital of Dr. Sarwal, then there was no reason for the doctor to record the arrival of an unknown patient in the 'medical ruqqa' sent to police. (Copy of medical ruqqa was placed on record by court order after perusal of connected criminal case file).

11. Not only this in the FIR PW4 Rajesh Jain has disclosed full particulars of driver and the car but in his



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cross examination conducted on behalf of respondent No.3 deposed that he asked the name of the driver, who disclosed his name and except his name he had not disclosed anything at that time. It has also come in the cross examination of the witness that the name of the driver was not got recorded by him before the police, whereas in the FIR name of the driver and car number have been mentioned.

12. It has come in the version of FIR that nobody was with the injured when the police reached Sarwal Hospital, Ambala and PGI, Chandigarh. This all depicts that the accident, if any, was caused by some other vehicle and the FIR was got lodged disclosing the full particulars of driver and vehicle by making necessary arrangements after one day. This all shows that the vehicle was introduced later on to get compensation.

13. The challan against respondent No.1 was submitted by the police under Section 279/337/338 IPC. Said Dalip Chand died on 16.06.2003 in PGI, Chandigarh but no efforts were made to get the case converted under Section 304-A, IPC. Firstly Dalip Chand was taken to PGI on 13.03.2003 with alleged history of hit by a car in Ambala City on 12.03.2003. He was discharged on 14.03.2003 in satisfactory condition. Thereafter, Dalip Chand visited PGI on 16.06.2003 after a gap of three months with some injury on his head, but there is no such medical record of any hospital that Dalip Chand (since deceased) suffered any head injury on 12.03.2003.



14. PW4 Rajesh Jain is interested witness being real son of sister of Dalip Chand and as such he was introduced to get compensation.

15. For the reasons recorded above, claimant failed to prove that the accident in question, which resulted in the death of Dalip Chand Garg, was caused because of the rash and negligent driving of maruti car bearing registration NO. DL-2-CK-7393 by respondent No.1. Therefore, this issue is decided accordingly against the claimant and in favour of the respondents.”

10. A perusal of the above shows that the learned Tribunal dismissed the claim petition on flimsy grounds. The learned Tribunal observed that the author of the FIR should know which portion of the car hit with his maternal uncle and doubted his presence as eye witness. Further, that Dr. Sarwal in the medical *ruqa* noted down in the record the arrival of an unknown person and if as per the statement of PW-4 Rajesh Jain, he got admitted Dalip Chand in Sarwal Hospital but name of the patient is not there. Therefore, this court does not accept the reasoning given by learned Tribunal for dismissing the claim petition filed by the appellant.

ANALYSIS OF RECORD

11. The perusal of the written statement filed on behalf of respondents No.1 and 2, in para 21 respondents have stated that the claimant has demanded too much excessive amount which she does not deserve and further in para 22 that the deceased was 69 years of age and was getting pension as well.



12. A perusal of Exhibit P-6 shows the admission and discharge of Dalip Chand in Philadelphia Hospital, Ambala City. The FIR was registered immediately after the accident. The medical ruqa was sent to the Police Station Baldev Nagar by Sarwal Hospital, Ambala City informing admission of unknown person in their hospital. If, the hospital authorities having written the name of the patient, it cannot be presumed that the person, who took the injured to the hospital did not inform about the name of the person who was admitted. Nirmala Devi wife of Dalip Chand was examined as PW-1, who stated the factum of accident and admission of her husband in Sarwal Hospital, Ambala City wherefrom he was referred to the PGI, Chandigarh, driven by respondent No.1.

13. Ms. Shally, Additional Ahlmad to Court of Chief Judicial Magistrate, Ambala was examined as PW-3 who brought the summoned record pertaining to FIR No.85 dated 13.03.2003 registered under Sections 279, 337 and 338 IPC at Police Station Baldev Nagar for causing injuries to Dalip Chand by rash and negligent driving of car No. DL-2CK-7393.

14. Sh. Rajan Jain eye witness to the incident was examined as PW-4. He stated the factum of accident. He further stated that Dalip Chand was got admitted in Sarwal Hospital and thereafter referred to PGI, Chandigarh. There is no major discrepancy in his cross-examination.

15. Dr. Rahul Gupta, Senior Resident, Department of Neuro Surgery, PGIMER, Chandigarh, was examined as PW-5, who stated that the patient Dalip Chand came to Emergency OPD on 13.03.2003 with



alleged history of hit by car in Ambala City on 12.03.2003. He was discharged on 14.03.2003. Thereafter, he visited PGI again on 16.06.2003 with a chronic subdural hematoma for which he was operated upon on 16.06.2003 but expired on 20.06.2003. He further stated that the second disease is a sequel of initial head injury. In his cross-examination he denied the suggestion that it is incorrect to suggest that patient died due to his own negligence and his death has no nexus with the alleged accidental injuries.

16. A perusal of the above analysis of the record shows that death of Dalip Chand Garg was caused due to rash and negligent driving of offending vehicle by respondent No.1 and therefore, this court decides issue No.1 in favour of the appellant.

17. So far as the issue No.2 is concerned, the evidence is very much on record to show that Dalip Chand Garg was drawing a pension of ₹8459/- per month who retired as Head Master. He was also earning from doing tuition work.

SETTLED LAW ON COMPENSATION

18. 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.

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42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by



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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.

19. 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.

* * * * *

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.”

20. 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.

RELIEF

21. 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 14.03.2005 is hereby set aside. The appellant-claimant is entitled to compensation as per the calculations made here-under:-

Sr. No.	Heads	Compensation Awarded
1.	Monthly Income	Rs.8,500/-
2.	Deduction towards personal expenditure 1/3 rd	Rs.2,833/- (1/3 of 8,500)
3.	Total Income	Rs.5,667/- (8,500-2,833)
4.	Multiplier	5
5.	Annual Dependency	Rs.3,40,020/- (5,667X12X5)
6.	Loss of Estate	Rs.18,000/-
7.	Funeral Expenses	Rs.18,000/-
8.	Loss of Consortium Spousal : Rs. 48,000/- X 1	Rs.48,000/-
9.	Total Compensation	Rs.4,24,020/-



25. 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 Nadu State Transport Corporation (2022) 5 Supreme Court Cases 107, the appellants-claimants are granted the interest @ 9% per annum on the enhanced compensation amount from the date of filing of claim petition till the date of its realization.

26. Since, the finding given by the Ld. Tribunal on issue No.1 is set aside. Therefore, the present appeal is allowed and issue No.1 is decided in favour of the appellant and against the respondents.

27. So far as issue No.(iii), i.e., "Whether the offending car was being driven by the person who was not holding a valid and effective driving licence at the time of the alleged accident", is concerned, no findings were given by learned Tribunal. However, regarding the driving licence whether it is valid or not the record to that effect is also on record. Since, this matter pertains to the year 2006 and no finding is given by the learned Tribunal on issue No.3, therefore, the matter is remanded back to the learned Tribunal to decide the claim petition on Issue No.3 on day to day basis within a period of three months from the date of receipt of certified copy of this order.

28. The parties are directed to appear before the Tribunal on 16.01.2025.

30. The respondent No.3-Insurance Company is hereby directed to disburse the current scheduled fees to Mr. R. C. Gupta, Advocate within



a period of twenty days from the date of receipt of the copy of this judgment.

- 31. Disposed off accordingly.
- 32. Pending applications, if any, also stand disposed of.

19 DECEMBER, 2024
'raj'

(SUDEEPTI SHARMA)
JUDGE

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