

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

FAO No. 2648 of 1998

Date of decision: 13.11.2018

Sukhvinder Kaur and another

...Appellants

versus

Harpal Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. V. B. Aggarwal, Advocate,
for the petitioners.

Mr. Manoj Sharma, Advocate for
Mr. Harsh Aggarwal, Advocate,
for respondent No.2-Insurance Company.

ARUN MONGA, J.

1. The appellant/claimant feeling dissatisfied with the order passed by the Learned Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as "MACT"), preferred this appeal under Section 173 of Motor Vehicle Act, 1988 for setting aside order of dismissal of their claim vide order/award dated 01.09.1998.

2. There was fire in the record room of this High Court. The office photocopied the papers from the salvaged record of the partially burnt case and reconstructed the paper-book. On the Court file, grounds of appeal, memo of parties and impugned order of the Motor Accident Claims Tribunal are available.

3. The brief relevant facts for disposal of this appeal are

that between night of 18/19.04.1997, the deceased Balkar Singh was riding pillion on scooter No PB10-W-3755, driven by Harpal Singh-Respondent No.1. They were on way from village Kalowal (Ludhaina) to village Gurmthada Garu. Due to rash and negligent driving of the scooter by Harpal Singh, it hit a bullock cart from behind. With the impact of accident, Balkar Singh fell down, received multiple injuries and became unconscious. He was taken to the Rajindera Hospital, Patiala in this condition but succumbed to his injuries on 21.04.1997 at 3:00 AM. Respondent No. 1 only got a DDR recorded with police post Bhunerhari absolving himself of any blame.

4. Notice of the claim petition was given to the respondents. As stated in the impugned order, in the written statement filed by Respondent No.1, he admitted that deceased Balkar Singh was riding pillion on the scooter. But he denied that the scooter was being rashly and negligently driven by him. It was stated that it was very dark due to night time owing to which the scooter hit the bullock cart which was not visible. Respondent No. 2 is the insurer of the scooter. It pleaded that allegations in the claim petition are totally wrong and incorrect and that the petition had been filed in collusion with respondent No.1.

5. The learned MACT after appreciating the evidence on record dismissed the petition. It was held that this was a clear case of connivance between the petitioner and the Respondent No.1. Both were closely related to each other. Respondent No.1 was the son-in-law of petitioner No.1 . Also, he (respondent

No.1) was not even aware of injuries on the deceased. The omission to give details about the injuries of the deceased in the claim petition raised doubts about the nature of accident and sequence of events. The delay in filing of DDR by respondent No. 1 also raised doubts in the correctness of the claim. Except for rash and negligent driving of scooter, the respondents version prevailed with the learned Tribunal. Lack of any evidence besides hear-say was another ground for dismissal of the claim petition.

6. I have heard the Ld. Counsel for the parties and perused the available records.

7. The learned counsel for appellants vehemently argued the MACT erroneously discarded the claimants' version and rejected the claim. Learned counsel for the insurance company sought to support the award under appeal.

8. Death of Harpal Singh due to vehicular accident is not in dispute.

9. Categorical pleadings and positive evidence on record show that Harpal Singh respondent No.1 was driving the offending scooter and Balkar Singh was riding pillion at the time of accident. There is no rebuttal.

10. While driving a two-wheeler, the driver holds its handle with both hands. In case of any likely collision, he instinctively and instantly tightens his grip to hold the handle more firmly for safety and to stop the vehicle. As against this, the pillion rider is not in such a position instantly to act similarly for safety. Thus, the pillion rider is in much more vulnerable

situation and there is greater likelihood of his being thrown off the vehicle due to impact of the accident. Circumstances show that Harpal Singh driver could act instinctively and instantly and save himself from any serious injuries in the accident. That does not negate the factual assertion that he was not driving the scooter. His being the son-in-law of the deceased victim of accident also does not mean that the claimants' version is false.

11. In the circumstances, I am of the opinion that the MACT was not justified in discarding the appellant's version of accident. Merely on conjectures and surmises, an entirely new story has been carved out and acted upon by the Learned Tribunal for holding that Harpal Singh was not driving the scooter.

12. In view of the above circumstances, it is held that Balkar Singh was riding pillion and Harpal Singh was driving the offending scooter at the time of accident.

13. The MACT has also not recorded any finding on the income of Balkar Singh and the dependency of the appellant/claimants.

14. Balkar Singh was an agriculturist. Appellants claimed that he was earning ₹10,000/- per month at the relevant time. In the absence of any documentary evidence, this Court is inclined to put his monthly income at ₹5,000/-. Similarly, there is no pleading with regard to the age of the deceased on record. Learned counsel for the appellant contends that the age of children of deceased was 17/15 years at the time of his death.

So, the age of deceased at relevant time can be assumed between 41 years to 45 years of the deceased. I am in agreement with his submission and I am inclined to hold that his age between 41 to 45 years at the time of death.

15. Gurvinder Singh claimant/appellant No.2 is the son, pro forma respondents No.3 and 4 are the married daughters of Balkar Singh deceased. Sukhwinder Kaur claimant/appellant No.1 is the widow, Kulwinder Singh and Harbans Kaur are the minor son and widowed mother respectively of Balkar Singh.

16. Taking into consideration these facts, I am of the opinion that 30% of the monthly income of Rs.5,000/- would be the fair share for own personal expenses and maintenance of Balkar Singh and the remaining 70% as the combined dependency of his widow, sons Kulwinder Singh and Gurwinder Singh and widowed mother Harbans Kaur.

17. The issue of award of compensation is no more res-integra. Addition of income for future prospects, deduction of personal and living expenses, selection of multiplier and computation of compensation has been elaborately explained in the case of **Sarla Verma and Others vs Delhi Transport Corporation and another 2009(3) RCR (Civil) 77 (SC)** and the said judgement had also been considered by the Constitution Bench of Hon'ble Supreme Court in the case of **National Insurance Company limited vs Pranay Sethi and Ors. 2017(4) RCR (Civil) 1009 (SC)**. It would be apposite to refer

the relevant paragraphs from the above said judgments.

Para 21 of **Sarla Verma (supra)** reads as under:

"21. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, 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."

Para 61 of **Pranay Sethi(supra)** reads as under:

"61. In view of the aforesaid analysis, we proceed to record our conclusions:-

xxx---

(iii) 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.

(iv) 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.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) 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."

19. After the afore judgment Hon'ble Supreme Court in the case of **Magma General Insurance Co. Ltd. vs Nanu Ram alias Chuhru Ram & Ors 2018(4) RCR (Civil) 333** in para 8.7 and 9 considered the issue of consortium. The said paras read as under:

"8.7 A Constitution Bench of this Court in Pranay Sethi (supra) 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.

xxx---

Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognized 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.

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."

20. In the light of above principles, I deem it appropriate to award compensation as under:

Head	Compensation awarded
i. Income:	₹ 5,000/-
ii. Future Prospects:	₹ 1500/- (i.e 30% of the income)
iii. Deduction towards personal expenditure:	₹2200/- (rounded off 1/3 rd of 5000+1500)
iv. Total Income:	₹ 4300/- (rounded off 2/3 rd of 5000+1500)
v. Multiplier:	14
vi. Loss of future income:	₹7,22,400/- (4300 x 12 x 14)
vii. Loss of love and affection:	₹1,00,000/-
viii. Funeral expenses	₹15,000/-
ix. Loss of estate	₹15,000/-
Total compensation awarded:	₹8,52,400/-

It is ordered accordingly.

21. Out of the amount of ₹8,52,000/- awarded, appellant No.1 shall be entitled to 50%, while appellant No.2 and respondents No.5 and 6 shall get 12-½% and respondents No.3 and 4 shall get 6.25% each along with interest @ 12% per annum from date of filing the calim petition till payment. In addition ₹30,000/- shall be payable to each of appellants i.e No.1 and 2 and to respondents No.3 to 6 each, towards filal consortium, along with interest @ 12% per annum from the date of filing the claim petition till actual payment. Respondent No.2 shall pay the compensation awarded herein.

22. The appeal is accordingly allowed. Award of MACT is set aside and compensation is awarded in above terms with no order as to costs. All pending applications, if any, stand disposed of accordingly.

(ARUN MONGA)
JUDGE

NOVEMBER 13, 2018

shalini

1.

Whether speaking/reasoned :

Yes/No
2.

Whether reportable :

Yes/No