IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.1418 of 2002 (O&M)
Date of decision: 24.09.2018

Smt. Santosh and others …… Appellants

Versus

Ranbir and others ….. Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Anil Kumar Malik, Advocate for the appellants.

Ms. Priya Deep, Advocate for Mr. Naresh Kumar, Advocate for respondent Nos.1&2.

Mr. Suvir Dewan, Advocate for respondent No.3-Insurance Company.

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B.S. WALIA, J. (ORAL)

[1] Appeal has been filed by the widow, and six children of Chander Bhan, husband of appellant No.1 and father of appellant Nos.2 to 6 who died in a motor vehicular accident on 01.01.1997, for enhancement of compensation of ₹ 3,70,000/- awarded by the learned Motor Accidents Claims Tribunal, Panipat (hereinafter referred to as "the Tribunal").

[2] The Tribunal by taking into account the age of the deceased as 38 years, income ₹ 3016/- and by making deduction of 1/3rd of the income of the deceased towards personal expenses worked out monthly dependency of ₹ 2000/-, annual dependency of ₹ 24,000/- and by applying multiplier of 15, worked out dependency at ₹ 3,60,000/- (i.e. ₹ 24,000/- x 15). Thereafter,

by awarding ₹ 10,000/- on account of conventional heads, total amount of ₹ 3,70,000/- was awarded by way of compensation.

[3] Learned counsel appearing on behalf of the appellants contends that in view of seven dependents of the deceased, deduction was to be made @ 1/5th of the income of the deceased instead of @ 1/3rd of the income of the deceased in view of paragraph No.30 of the decision of Hon'ble the Supreme Court in **Sarla Verma vs Delhi Transport Corporation', 2009 ACJ 1298.** Relevant extract of the same is reproduced 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 Chandra4, the general practice is to apply standardised deductions. Having 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."*

Since the deceased left behind seven dependents, therefore, deduction will be made @ 1/5th of the income of the deceased towards his personal expenses.

[4] Learned counsel for the appellant further contends that despite entitlement, no amount has been awarded on account of future prospects.

[5] As per paragraph No.61 (iii) of the decision in **National Insurance Company Limited v. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009**, where the deceased was working on a permanent job and was

less than 40 years of age, 50% of the actual salary of the deceased less tax is to be taken into account for the purpose of computing future prospects. Paragraph No.61 (iii) of the decision in Pranay Sethi's case (supra) is reproduced as under:-

> *"61 (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."*

Since in the instance case, the deceased admittedly was 38 years of age and was working on a permanent job, therefore, 50% of the actual salary less tax will be added to the income of the deceased for computing future prospects.

[6] Lastly, learned counsel for the appellants contends that compensation on account of conventional heads has been awarded at a very meager rate as against the entitlement of ₹ 15,000/- on account of funeral expenses and like amount for loss of estate while as per paragraph No.8.7 of the decision in **Magma General Insurance Co. Ltd. vs Nanu Ram Alias Chuhru Ram and others** decided on 18.09.2018 in Civil Appeal No.9518 of 2018, a sum of ₹ 40,000/- is payable on account of loss of spousal consortium to the wife of the deceased while like amount is payable to each of the children of the deceased on account of loss of parental consortium. Paragraph No.61 (viii) of the decision in **Pranay Sethi's** case (supra) and

paragraph No.8.7 of the decision in **Magma General Insurance Co. Ltd.'s case** (supra) is reproduced as under :

> Paragraph No.61 (viii) of the decision in **Pranay Sethi's** case (supra)- *"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."*
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> Paragraph No.8.7 of the decision in **Magma General Insurance Co. Ltd.'s case** (supra)-"*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. Rajesh and Ors. v. Rajbir Singh and Ors. (2013) 9 SCC 54*
>
> *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."*
>
> *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."*
>
> *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.*
>
> *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.*
>
> *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.*
>
> *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 Sethi (supra).*
>
> *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."*

7. In the light of the position noted above, the appellant's are held entitled to ₹ 15,000/- on account of loss of estate, ₹ 15,000/- towards funeral expenses besides ₹40,000/- on account of loss of spousal consortium and like amount to each of the children of the deceased on account of loss of parental consortium.

[8] In view of the position as noted above, compensation payable works out as under:-

Sr. No.	**Heads**	**Amount assessed by the Tribunal**	**Amount assessed by the Court**
1.	Income	₹ 3016/-	₹ 3016/-
2.	Future Prospects	NIL	50% of ₹ 3016/- = ₹1508/-
3.	Total Income assessed	₹ 3016/-	(₹ 3016/- + ₹ 1508/-) = ₹ 4524/-
4.	Multiplier applied	15	15
5.	Deduction (towards personal expenses of deceased)	1/3rd of ₹ 3016/- = ₹ 1005/-	1/5th of ₹ 4524/- = ₹ 904.8/- (rounded off ₹ 905/-)
6.	Dependency (Annual)	(₹ 3016/- - ₹ 1005/-) = ₹ 2011/- (i.e. ₹ 2000/- per month) ₹ 2000/- x 12 = ₹24,000/-	(₹ 4524/- - ₹ 905/-) = ₹ 3619/- (per month) ₹3619/- x 12 = ₹ 43,428/-
7.	Compensation Awarded	₹ 24,000/- x 15 = ₹3,60,000/-	₹ 43,428/- x 15 = ₹6,51,420/-
8.	Loss of Consortium	₹ 10,000 (consolidated)	₹ 40,000/- (Wife) @ ₹ 40,000/-(To each of the six children of the deceased) Total ₹ 2,80,000/-)
9.	Loss of Estate		₹ 15,000/-
10.	Funeral Expenses		₹ 15,000/-
11.	Interest	9%	9%
	TOTAL	**₹ 3,70,000/-**	**₹ 9,61,420/-**

[9] Accordingly, as against compensation of ₹ 3,70,000/- awarded by the Tribunal, the appellants-claimants are held entitled to compensation

of ₹ **9,61,420/-** along with interest @ 9 % per annum with effect from the date of claim petition till date of payment, less payment, if any, made earlier.

[10] Needless to mention, compensation be paid to the appellants in accordance with the ratio stipulated in their favour as per the award after deducting the tax liability if any qua the future prospects in accordance with the decision in Pranay Sethi's case (supra).

[11] Accordingly, appeal is allowed by modifying Award dated 23.11.2001 passed by the learned Tribunal Panipat to the extent as noted above.

(B.S. Walia)
Judge

24.09.2018
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1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.