IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1422 of 2011 (O&M)
Date of decision: 12.10.2018

Manoj Kumari and others .... Appellants

Versus

Bishnu and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Ms. Deep Shikha, Amicus Curiae
for the appellants.

Mr. M.B.Jain, Advocate
for respondent No.3-Insurance Company.

****

Avneesh Jhingan, J. (Oral)

The claimants have filed the present appeal against the award dated 05.10.2010 passed by Motor Accidents Claims Tribunal, Rewari (hereinafter referred to as 'the Tribunal').

2. The appellants are the widow and two minor children of Bijender Singh (deceased). The parents of the deceased have been arrayed as Performa respondents No.4 and 5 respectively in this appeal. The driver of Trolla bearing registration No.HR-63A-5025 (for brevity, 'offending vehicle'); owner of the offending vehicle and insurer i.e. ICICI Lombard General Insurance Company Ltd. have been arrayed as respondents No.1 to 3 respectively in this appeal.

3. The brief facts emanating from the record are that on

15.03.2008 at about 5.30 p.m., Bijender Singh was going on his motorcycle bearing registration No.DL-7SK-7050. When he reached near village Naya Tahana, a rashly and negligently driven offending vehicle ran over him and he died at the spot. FIR No.16 dated 15.03.2008 was registered at Police Station Rohdai.

4. The legal heirs of the deceased filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for brevity, 'the Act').

5. The Tribunal, after considering the facts and on appreciating the evidence produced held that the accident occurred due to rash and negligent driving of the offending vehicle. The owner, driver and insurer of offending vehicle were held jointly and severally liable to pay the compensation.

6. The deceased was a Constable in Border Security Force (BSF). His monthly income was ₹8650/-as per pay fixation record produced by PW6. The age of the deceased was 32 years. Keeping in view the fact that he was survived by five dependants, 1/4th deduction for self expenses was made. A multiplier of 16 was applied. The Tribunal awarded a sum of ₹12,60,600/- along with interest @ 6% per annum. The amount awarded included ₹5,000/-each for loss of estate, funeral expenses and loss of consortium.

7. No one had appeared for the appellants on last date, even today, none has appeared for the appellants. Ms. Deep Shikha (Enrolment No.H.I.M.-121/2018), who is present in Court, is appointed as Amicus Curiae. Copy of the paper-book has been handed over to her. She has

assisted the court after going through the paper book and record.

8. Heard learned counsel for the parties and perused the paper book and record.

9. Learned Amicus Curiae argued that no future prospects have been awarded by the Tribunal and the amounts awarded under the conventional heads are on the lower side.

10. Learned counsel for the Insurance Company contended that the amounts under the conventional heads should be enhanced strictly as per the decision of the Supreme Court in ***National Insurance Company Ltd. vs. Pranay Sethi and Ors., 2017 AIR (SC) 5157.***

11. As per the decision of ***Pranay Sethi's case (supra)***, 50% future prospects are to be awarded as the deceased was 32 years of age and had a permanent job. An amount of ₹15,000/- each is awarded for loss of estate and for funeral expenses. Further, a sum of ₹40,000/-is awarded for loss of consortium to the widow.

12. The deceased was survived not only by widow but also two minor children and old parents.

13. Learned counsel for Insurance Company contended that no loss of consortium can be given to children and parents of deceased. The argument raised by learned counsel for the Insurance Company deserves rejection in view of the latest decision of Supreme Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram & Ors., 2018(4) R.C.R. (Civil) 333.***

13. The Supreme Court in ***Magma General's case (supra)*** after

considering the decision of Constitution Bench in ***Pranay Sethi's case (supra)*** held that loss of consortium is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium' and thereafter awarded a sum of ₹40,000/- to the father of deceased.

The relevant portion of the Supreme Court decision is reproduced below:-

> "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, co-operation, 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 ₹40,000 each for loss of Filial Consortium."

14. Having due regard to the decision of Supreme Court, ₹40,000/- each is awarded for loss of consortium to two minor children, ₹40,000/-is awarded for loss of consortium to the parents.

15. In view of the above discussion, the compensation is recalculated as under :-

Monthly income	₹8650/-
50% future prospects	₹4325/-
Total income	₹12,975/-
1/4th deduction for self expenses	₹3,244/-
Dependency	₹9731/-
Applying multiplier of 16	₹18,68,352/-
Funeral expenses	₹15,000/-
Loss of estate	₹15,000/-
Loss of consortium two minor children (Rs.40,000/-each)	₹80,000/-
Loss of consortium to wife	₹40,000/-
Loss of consortium to parents	₹40,000/-
Total	₹20,58,352/-

16. The award dated 05.10.2010 is modified to the extent that the

amount awarded by the Tribunal of ₹12,60,600/-is enhanced to ₹ 20,58,352 /-.

18. The claimants would be entitled to enhanced amount along with interest @ 7.5% per annum from the date of filing the claim petition till the realisation of the amount. The enhanced amount should be disbursed in the same proportion to the claimants as was held by the Tribunal.

19. The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

12.10.2018
anju

1.Whether the order is speaking/reasoned: Yes/No

2.Whether the order is reportable : Yes/No