IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3868 of 2010 (O&M)
Date of decision: 12.10.2018

Moti Ram and others .... Appellants

Versus

Kiran Deep Baweja and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Shashank Sharma, Amicus Curiae for the appellants.

Ms. Vandana Malhotra, Advocate for respondent No.3-Insurance Company.

****

Avneesh Jhingan, J.

The claimants i.e. father, mother and two minor children of the deceased Mahendra @ Mahender Singh have filed the present appeal against the award dated 01.10.2009 passed by Motor Accidents Claims Tribunal, Gurgaon (hereinafter referred to as 'the Tribunal').

2. The grievance raised by the claimants is that the compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for brevity, 'the Act') is on the lower side and deserves enhancement.

3. The driver of the car bearing registration No.DL-3C-AP-1239 (for brevity, 'offending vehicle'); owner of the offending vehicle and the ICICI Lombard General Insurance Company (insurer of offending vehicle) have been arrayed as respondents No.1 to 3 respectively in the appeal.

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

11.10.2008, Mahender Singh, who was going on foot from Udyog Vihar Gurgaon to Converges Building, was struck by a rashly and negligently driven offending vehicle. As a result of the accident, Mahender Singh suffered injuries and was taken to Army Hospital, Delhi Cantt., where he lost his life on 13.10.2008. FIR No.312 dated 11.10.2008 was registered at Police Station, DLF Phase-II, Gurgaon.

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 age of the deceased was 29 years. He was survived by parents and two minor children. The Tribunal awarded a sum of ₹ 12,38,800/- along with interest @ 9% per annum. Owner, driver and insurer of offending vehicle were held jointly and severally liable to pay compensation.

6. No one had appeared for the appellants on last date, even today, none has appeared for the appellants. Mr. Shashank Sharma, Advocate (Enrolment No.4048/2016), who is present in Court, is appointed as amicus curiae. Copy of the paper-book has been handed over to him. He has assisted the court after going through the paper book and record.

7. Learned amicus curiae argued that the claimants were able to prove that deceased was working in Indian Army and his last drawn salary was ₹16,234/- but the Tribunal wrongly deducted allowances from the last drawn salary and awarded compensation by considering the monthly income of the deceased as ₹9,613/-. No future prospects has been awarded; multiplier of 16 has been applied instead of 17 and only a sum of ₹10,000/-

has been awarded for funeral expenses, transportation, loss of estate and consortium.

8. Learned counsel for the Insurance Company contended that the claimants failed to prove the salary of the deceased as ₹16,234/-. She resisted any further enhancement.

9. The claimants had duly proved the last drawn salary of the deceased by producing the record i.e. salary ledger as Ex.P-7. The Tribunal erred in deducting the various allowances from the monthly salary of the deceased. It is only the income tax payable, if any, which is to be deducted from the salary. There is nothing on record to establish that during the relevant assessment year, the deceased came within the taxation ambit.

10. The Supreme Court in ***Manasvi Jain vs. Delhi Transport Corporation, 2014(3) SCC 22,*** has held as under :-

> *"This Court in **Shyamwati Sharma & Ors. Vs. Karam Singh & Ors. (2010) (3) R.C.R. (Civil) 741 : (2010) 12 SCC 378**, while considering the issues of deduction of taxes, contributions etc., for arriving at the figure of net monthly income, held that"while ascertaining the income of the deceased, any deductions shown in the salary certificate as deductions towards GPF, life insurance premium, repayments of loans etc., should not be excluded from the income. The deduction towards income tax/surcharge alone should be considered to arrive at the net income of the deceased."*

11. Having due regard to the decision of the Supreme Court, the

compensation should be awarded considering the salary of the deceased as ₹16,234/-. There is no dispute regarding the age of deceased. Hence, multiplier of 17 is to be applied.

12. As per the decision of the Supreme Court in ***National Insurance Company Ltd. vs. Pranay Sethi and Ors., 2017 AIR (SC) 5157,*** 50% future prospects are to be awarded as the deceased was below 40 years. Further, the claimants are entitled to ₹15,000/- each for loss of estate and funeral expenses.

13. It is pertinent to note that in the present case, the widow of deceased was neither a party before the Tribunal nor before this Court.

14. The Supreme Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram & Ors., 2018(4) R.C.R. (Civil) 333***, considering the decision of Constitution Bench in ***Pranay Sethi's case (supra)*** has 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/- each to the father and unmarried sister of the 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.

15. As per decision of Supreme Court in ***Magma General Insurance's case (supra)***, a sum of ₹40,000/- each is awarded to two minor children and ₹40,000/- Filial Consortium to the mother of deceased.

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

For the purpose of calculation the monthly salary of the deceased is rounded off to ₹16,200/-.

Monthly income	₹16,200/-
50% future prospects	₹8100/-
Total income	Rs.24,300/-
1/3rd deduction for self expenses	₹8100/-
Annual Dependency (16,200x12)	₹ 1,94,400/-
Applying multiplier of (1,94,400x17)	₹33,04,800/-
Funeral expenses	₹15,000/-
Loss of estate	₹15,000/-
Loss of consortium to two minor children (Rs.40,000/-each) parental consortium	₹80,000/-
Loss of filial consortium to mother	₹40,000/-
Total	₹34,54,800/-

17. The award dated 01.10.2009 is modified to the extent that the amount awarded by the Tribunal of ₹12,38,800/-is enhanced to ₹34,54,800/-.

18. The claimants shall be entitled to enhanced amount along with interest @ 7.5% per annum from the date of filing of the claim petition till the realisation of the amount. The enhanced amount would 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
2.Whether the order is reportable : Yes