

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

**FAO No.4830 of 2010
Date of Decision:16.10.2018.**

Santosh Devi and another

...Appellants

Versus

Rajpal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. J.P. Sharma, Advocate
 for the appellants.

 Mr. Navin Kapur, Advocate
 for respondent No.3.

AVNEESH JHINGAN, J. (ORAL)

The claimants are in appeal against the award dated 09.03.2009 passed by Motor Accidents Claims Tribunal, Narnaul (hereinafter referred to as 'the Tribunal') in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for brevity, 'the Act').

2. The widow and son of Tejvir (deceased) are the appellants. Minor son and minor daughter and the mother of the deceased have been arrayed as Performa respondents No.4 to 6 respectively in the appeal. The driver of Bolero Jeep bearing registration No. HR-66-3286(for short, 'offending vehicle'); owner of the offending vehicle and the Oriental Insurance Company Ltd. have been arrayed as respondents No. 1 to 3 respectively in the appeal.

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

30.08.2007, Tejvir along with his son were going towards his village on motor cycle. On his way he was struck by a rashly and negligently driven offending vehicle. As a result of accident, Tejvir sustained grievous injuries, he was taken to the Civil Hospital, Mohindergarh where he was declared brought dead. FIR No.80 dated 31.08.2007 was registered at Police Station Satnali.

4. The legal heirs of the deceased filed a claim petition under Section 166 of the Act. The Tribunal, after considering the facts and 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 43 years (relied upon the post-mortem report). His monthly income assessed was ₹ 8,547. The Tribunal awarded a sum of ₹8,55,512/- along with interest @ 7.5 % per annum. The amount awarded by the Tribunal included ₹10,000/- for funeral expenses and ₹25,000/- for loss of consortium. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay compensation.

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

6. Learned counsel for the appellants argued that no future prospects have been awarded and the Tribunal erred in applying multiplier of 12 instead of 14. His grievance is that a deduction of 1/4 towards personal expenses should have been made instead of 1/3, as the deceased was survived by more than four dependents. His contention is that the amounts awarded under the conventional heads are on the lower side.

7. Learned counsel appearing for the insurer of the offending

vehicle defended the award and resisted any further enhancement.

8. No one has appeared on behalf of the owner and driver of the offending vehicle in spite of service.

9. There is no dispute between the parties with regard to the monthly income assessed by the Tribunal and the fact that deceased was 43 years of age at the time of accident.

10. In view of the decision of the Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others, (2017) AIR (SC) 5157,** 30% future prospects are to be awarded as the deceased was 43 years and had a permanent job. Further, an amount of ₹15,000/- each for funeral expenses and for loss of estate and a sum of ₹40,000/-for loss of consortium to the widow has to be awarded. The deceased was survived by more than four dependents. In view of the facts of the case, a deduction of 1/4 towards personal expenses shall be made and multiplier of 14 is applied, in view of the decision of Supreme Court in **Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 21.**

11. 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 the Constitution Bench of the Supreme Court in **Pranay Sethi's case (supra)** it has been 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 decision of the Supreme Court in **Magma General Insurance Company's case (supra)** is reproduced 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. **Rajesh and Ors. vs. 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 the 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 Vehicle Act is 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 sisters of the deceased, an amount of ₹40,000/- each for loss of Filial Consortium”.

12. Having due regard to the decision of the Supreme Court, ₹40,000/- each is awarded for loss of Parental consortium to two minor children and ₹40,000/ is awarded for loss of Filial consortium to the mother.

13. In view of the above discussion, the compensation is re-calculated as under:-

Monthly earning	₹8,547/-
Future prospectus @ 30%	₹2,564/-
Total income	₹11,111/-
$\frac{1}{4}$ deduction for self expenses	₹2,777/-
Monthly Dependency	₹8,334/-
Applying multiplier of 14(8334x12x14)	₹14,00,112/-
Funeral expenses	₹15,000/-
Loss of estate	₹15,000/-
Loss of consortium for three minor children(₹ 40,000/- each) (parental consortium)	₹1,20,000/-
Loss of consortium of spouse	₹40,000/-
Loss of consortium of parent (filial consortium)	₹40,000/-
Total	₹16,30,112/-

14. The award dated 09.03.2009 is modified to the extent that the amount awarded by the Tribunal of ₹8,55,512/- is enhanced to ₹16,30,112/-.

15. The claimant shall be entitled to enhancement of compensation along with interest @ 7.5% per annum from the date of filing of the claim petition till the realization of the amount. The enhanced amount would be disbursed in the same proportion to the claimants as was held by the Tribunal.

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

(AVNEESH JHINGAN)
JUDGE

October 16, 2018

Jyoti-IV

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