IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3077 of 2011 (O&M)
Date of decision: 15.10.2018

Santro and another .... Appellants

Versus

Ramesh and another ..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Amit Mann, Advocate for
Mr. Jasbir Mor, Advocate
for the appellants.

Mr. Nagar Singh, Advocate for
Mr. A.S.Virk, Advocate
for respondent No.1.

Mr.Sandeep Suri, Advocate
for respondent No.2-Insurance Company.

****

Avneesh Jhingan, J. (Oral)

The unfortunate parents, who lost their young son Rakesh, aged 22 years, in a motor vehicular accident are in appeal for enhancement of compensation awarded by Motor Accidents Claims Tribunal, Jind (hereinafter referred to as 'the Tribunal') passed in a petition filed under Section 166 of the Motor Vehicles Act, 1988 (for brevity, 'the Act') vide award dated 13.08.2010.

2. The brief facts emanating from the record are that on 06.12.2009 Rakesh along with Subhash and Satish was participating in a marriage procession. When they were proceeding towards Bhiwani Road and reached near the Bhiwani Road barrier, a rashly and negligently driven trailer bearing registration No.HR-63A-8104 (for brevity, 'the offending

vehicle') came from wrong side and stuck Rakesh and Satish. The driver of the offending vehicle fled away from the spot leaving his vehicle there. They were taken to General Hospital, Jind, where Rakesh was declared brought dead. FIR No.826 dated 07.12.2009 was registered at Police Station, City Jind.

3. The parents of Rakesh filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for brevity, 'the Act'). It was claimed that deceased was 22 years of age and was an agriculturist. It was pleaded that he was having his own land and besides that he had taken some land on lease and was earning ₹10,000/- per month.

4. 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 taken as 22 years. His monthly income was assessed as ₹3600/-. The Tribunal awarded compensation by calculating the same by applying different deductions for self expenses for different time period, i.e. different rate of deduction for first five years and different rate for remaining period of 11 years. The Tribunal awarded a sum of ₹3,12,400- along with interest @ 9% per annum. The amount awarded included ₹10,000/- for transportation, funeral and last rites etc.

5. Learned counsel for the appellant argued that the deceased was an agriculturist and the Tribunal erred in assessing the monthly income of ₹3600/-. The Tribunal has wrongly applied the multiplier of 16 as the deceased was 22 years of age at the time of the accident. The calculation

made by the Tribunal by taking a different rate of deduction for initial five years and different for remaining 11 years has also been challenged. Further, the amount awarded of ₹10,000/- for funeral expenses is stated to be on the lower side. It was also contended that while awarding the compensation, future prospects have not been awarded.

6. Learned counsel for the Insurance Company defended the award and vehemently resisted any further enhancement. He argued that the Tribunal has correctly awarded the compensation.

7. I have heard learned counsel for the parties and perused the record.

8. In the claim petition, it was pleaded that the deceased was an agriculturist and was owned the land. From the perusal of the record, it is evident that no evidence was adduced by the claimants to prove ownership of the agricultural land. The Tribunal has specifically recorded that the monthly income claimed by the claimants have not been substantiated. It would be pertinent to mention here that there was no evidence adduced apart from the statement made by the complainant that the deceased was an agriculturalist. In such circumstances, the safest yardstick would be to rely upon the minimum wages prevalent in the State at the time of accident. The minimum wages for unskilled labourer prevalent in the state of Haryana during December, 2009 was ₹3914/-. For calculation purposes the monthly income of the deceased is rounded of to ₹4,000/-.

9. In consonance with the decision of the Supreme Court in ***National Insurance Company Ltd. vs. Pranay Sethi and Ors., 2017 AIR***

(SC) 5157, 40% future prospects are to be awarded for self employed persons below 40 years of age.

10. There is no dispute with regard to the age of deceased. As per the decision of Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121,*** multiplier of 18 has to be applied. The deceased was unmarried, 1/2 deduction for self expenses is made.

11. There is no justification for awarding the compensation by making two different deductions for initial five years and for the remaining 11 years as has been done by the Tribunal. The compensation is calculated as per the guidelines of the Supreme Court in case of ***Sarla Verma's case (supra)*** and ***Pranay Sethi's case (supra).***

12. An amount of ₹15,000/- each has to be awarded for loss of estate and funeral expenses.

13. 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***, 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/- each to the father and sister of deceased. The relevant portion of the Supreme Court decision (supra) is reproduced below:-

> "8.7 *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/- is awarded for loss of consortium to the parents.

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

Monthly income	₹4,000/-
40% future prospects	₹1600/-
Total income	₹5600/-
1/2 deduction for self expenses	₹2800/-
Annual Dependency (2800x12)	₹33,600/-
Applying multiplier of 18 (33,600x18)	₹6,04,800/-
Funeral expenses	₹15,000/-
Loss of estate	₹15,000/-
Loss of consortium to parents	₹40,000/-
Total	₹6,74,800/-

16. The award dated 13.08.2010 is modified to the extent that the amount awarded by the Tribunal of ₹3,12,400/-is enhanced to ₹6,74,800 /-.

17. 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. It is clarified that enhanced amount would be disbursed in same manner as held by the Tribunal.

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

(AVNEESH JHINGAN)
JUDGE

15.10.2018
anju

1.Whether the order is speaking/reasoned: Yes
2.Whether the order is reportable : Yes