

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

**FAO No.3687 of 2011
Date of Decision:16.10.2018.**

Mindro Bai and another

...Appellants

Versus

Sahib Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Pankaj Mehta, Advocate
for the appellants.

Mr. Nikunj Dhawan, Advocate for
Mr. T.K. Joshi, Advocate
for respondent No.3.

AVNEESH JHINGAN, J. (ORAL)

Unfortunately the parents who lost their son in a motor vehicle accident, are in appeal against the award dated 20.01.2011 passed by Motor Accidents Claims Tribunal, Hisar (hereinafter referred to as 'the Tribunal').

2. The parents of Karnail Singh (deceased) are the appellants. The driver of TATA-407 bearing registration No. HR-25GA-1675(for brevity, 'the offending vehicle'); owner of the offending vehicle and Reliance General Insurance Company Ltd. have been arrayed as respondents No. 1 to 3 respectively in the appeal.

3. The brief facts as emanating from the record are that on 06.05.2009, Karnail Singh along with Jarnail Singh were returning from Anmol Place after doing catering work in a marriage. They were on foot and

when reached near Nehru College, Hansi, Karnail Singh was run over by rashly and negligently driven offending vehicle. As a result which he died on spot. FIR No.232 dated 07.05.2009 under Sections 279/304-A of the IPC was registered at Police Station, City Hansi.

4. Parents of the deceased filed a claim petition under Section 166 of the Motor Vehicle Act, 1988 (for brevity 'the Act') before the Motor Accident Claim Tribunal, Hisar.

5. 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 20 years. His monthly income assessed was ₹45,00/- per month. The Tribunal awarded a sum of ₹5,09,000/- along with interest @ 6% per annum. The amount awarded by the Tribunal includes ₹5,000/- each for transportation of dead body and for funeral expenses. The owner, driver and insurer of the offending vehicle were held jointly and severely liable to pay compensation.

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

7. Learned counsel for the appellants argued that no future prospects have been awarded and the Tribunal erred in applying multiplier of 14 instead of 18. His contention is that the amounts awarded under the conventional heads are on the lower side.

8. Learned counsel appearing for the insurer of the offending vehicle defended the award and resisted any further enhancement. His grievance is that a deduction of 1/3 towards personal expenses have been wrongly made instead of 1/2.

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

10. There is no dispute between the parties with regard to the monthly income assessed by the Tribunal on the basis of minimum wages.

11. In view of the decisions of the Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others, (2017) AIR (SC) 5157, and in Hem raj vs. Oriental Insurance Company Ltd. in Civil Appeal No.19603 of 2017 decided on,** 40% future prospects are to be awarded as the deceased was 20 years. Further, claimants are entitled to an amount of ₹15,000/- each for funeral expenses and for loss of estate. In view of the facts of the case, multiplier of 18 should be applied and a deduction of 1/2 towards personal expenses shall be made in view of the decision of Supreme Court in **Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 21.**

12. 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”.

13. Having due regard to the decision of the Supreme Court ₹40,000/- is awarded for loss of filial consortium to the parents.

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

Monthly earning	₹4,500/-
Future prospectus @ 40%	₹1,800/-
1/2 deduction for self expenses	₹3,150/-
Annual Dependency	₹37,800/-
Applying multiplier of 18	₹6,80,400/-
Funeral expenses	₹15,000/-
Loss of estate	₹15,000/-
Loss of consortium of parent (filial consortium)	₹40,000/-
Total	₹7,50,400/-

15. The award dated 20.01.2011 is modified to the extent that the amount awarded by the Tribunal of ₹5,09,000/- is enhanced to ₹7,50,400/-.

16. 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.
17. 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