423 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1408 of 2012
Date of Decision:16.10.2018.

Parveen Kaur and others ...**Appellants**

Versus

Kuldeep Singh and others ...**Respondents**

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Prabhjyot Singh Chahal, Advocate for
Mr. G.S. Nagra, Advocate
for the appellants.

Mr. V. Ramswaroop, Advocate
for respondent No.3.
****

AVNEESH JHINGAN, J. (ORAL)

The claimants are in appeal against award dated 15.11.2011 passed by the Motor Accident Claims Tribunal, Ropar (for brevity "the Tribunal"). The appeal has been filed for enhancement of compensation awarded by the Tribunal.

2. A claim petition under Section 166 of Motor Vehicles Act, 1988 (for brevity "the Act") was filed by the widow, two minor children and father of Tarlochan Singh alias Taru (deceased). The driver; owner of Tractor 575-Mohindra (for brevity, "offending vehicle") and the insurer of the offending vehicle i.e. United Insurance Company Ltd. were arrayed as respondents No.1 to 3 respectively, in the claim petition.

3. In brief, the facts as emanating from the record are that on 18.07.2010, Tarlochan Singh alias Taru along with Manpreet Singh was

going on his motorcycle bearing registration No.PB-12-D-9391(temporary) to take vegetables towards Khanna. Tarlochan Singh was the pillon rider on the motorcycle. When they reached near A.S. College, Khanna, a rashly and negligently driven offending vehicle (it may be mentioned here that the offending vehicle was without registration at the time of the accident) hit the motorcycle and as a result of impact, Tarlochan Singh suffered grievous injuries and died at the spot. FIR No.195 dated 18.07.2010 under Sections 279, 337, 427, 304-A of the IPC was registered.

4. A claim petition under Section 166 of the Act was filed. 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 owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The age of the deceased was taken as 26 years. His monthly income assessed was ₹4,000/- per month. The Tribunal awarded a sum of ₹5,50,000/- as compensation along with interest @ 9% per annum. The amount awarded included ₹2000/- for loss of consortium, ₹2000/- for funeral expenses and ₹2000/- for mental agony.

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 amounts awarded under the conventional heads are on the lower side.

7. Learned counsel appearing for insurer of the offending vehicle defended the award and resisted any further enhancement.

8. 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. , 2018 (2) PLR 480,*** *4*0% future prospects are awarded as the deceased was 26 years old. Further, an amount of ₹15,000/- each for funeral expenses and for loss of estate are awarded. ₹40,000/- is given to widow for loss of consortium.

9. The deceased was survived by three dependents i.e. widow and two minor children, a deduction of 1/3 towards personal expenses is made. In view of the decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 21*** , keeping in view age of deceased a multiplier of '17' is applied.

10. *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'. The relevant portion of the decision* is 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".

11. In view of the decision, ₹40,000/- each is awarded to two minor children under the head parental consortium.

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

Monthly earning	₹4,000/-
Future prospects @ 40%	₹1600/-
Income after 1/3 deduction for self expenses	₹3734/-
Annual Dependency	₹44,808/-
Applying multiplier of 17	₹7,61,736/-
Funeral expenses	₹15000/-
Loss of estate	₹15000/-
Loss of consortium of widow	₹40,000/-
Loss of parental consortium of two minor children (₹40,000/-each)	₹80,000/-
Total	₹9,11,736/-

13. The award dated 15.11.2011 is modified to the extent that the amount awarded by Tribunal of ₹5,50,000/- is enhanced to ₹9,11,736/-.

14. The claimants shall be entitled to enhanced amount of compensation along with interest @ 7.5% per annum from the date of filing of the claim petition till the realization of the amount.

15. 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