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

FAO No. 6257 of 2011 (O&M)
Date of Decision:12.10.2018.

Rajbala and others **...Appellants**

Versus

Sukhdev and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ram Pal Verma, Advocate
for the appellants.

None for respondents No. 1 & 2.

Mr. Lalit Kumar, Advocate for
Mr. Ashwani Talwar, Advocate
for respondent No.3.

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AVNEESH JHINGAN, J. (ORAL)

The legal heirs of Jitender Singh (deceased) are in appeal against award dated 29.01.2011 passed by the Motor Accident Claims Tribunal, Jhajjar (for brevity "the Tribunal"). The appeal has been filed for enhancement of compensation .

2. The claim petition under Section 166 of Motor Vehicles Act, 1988 (for brevity "the Act") was filed by the parents, widow, brother and sisters of the deceased. The driver; owner of Hydro Crane bearing No. HR-63-A-7357 (for brevity, "the offending vehicle") and the insurer of the offending vehicle i.e. Reliance General Insurance Company were arrayed as respondents No.1 to 3 respectively, in the claim petition.

3. In brief, the facts of the case are that on 16.09.2009 Jitender

Singh along with his uncle Prem Singh was coming back to his house from his shop situated near Reshma Factory, Bahadurgarh. When they reached near power house, Jhajjar road, Bahadurgarh, the offending vehicle came from behind and hit Jitender Singh, as a result of the accident, Jitender Singh suffered multiple injuries and he lost his life. FIR No.384 dated 21.09.2009 was registered at Police Station City, Bahadurgarh.

4. In the claim petition filed under Section 166 of the Act by the legal heirs of the deceased, the Tribunal awarded a sum of ₹5,55,000/- as compensation along with interest @ 6% per annum. The amount of award included ₹5,000/- for loss of consortium and ₹6,000/- for transportation and last rites. The amount was to be paid by respondents No. 1 to 3 jointly & severally.

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

6. Learned counsel for the appellants contended that the Tribunal has not awarded future prospects and erred in applying multiplier of 17 instead of 18. He argued that the deceased was survived by more than 4 dependents and a deduction of 1/4 towards personal expenses should have been made. Further grievance is that the amount 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. No one has appeared today on behalf of the owner and driver of the offending vehicle inspite of service.

9. The parties have not disputed the fact that the deceased was 21

years of age at the time of the accident and was survived by more than 4 dependents. There is no challenge to monthly income assessed by the Tribunal.

10. In the facts of the case, multiplier of 18 is to be applied and a deduction of 1/4 towards personal expenses is to 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.***

11. In view of the decision of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others,(2017)(16) SCC 680, decided on 31.10.2017*** 40% future prospects are awarded and the claimants are entitled to ₹15,000/- for funeral expenses and ₹15,000 for loss of estate and the widow is entitled to ₹40,000/- for loss of consortium.

12. The Supreme Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram & Ors., 2018(4) R.C.R. (Civil) 333,*** after considering the decision of the Constitution Bench of the Supreme Court 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'. 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".

13. In view of the Supreme Court decision, ₹40,000/- is awarded as filial consortium to the parents.

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

Monthly earning	₹4,000/-
Future prospects @ 40%	₹1600/-
¼ deduction for self expenses	₹1400/-
Annual Dependency	₹50,400/-
Applying multiplier of 18	₹9,07,200/-
Funeral expenses	₹15000/-
Loss of estate	₹15000/-
Loss of consortium of spouse	₹40,000/-
Filial consortium of parent	₹40,000/-
Total	₹10,17,200/-

15. The award dated 29.01.2011 is modified to the extent that the amount awarded by Tribunal of ₹5,55,000/- is enhanced to ₹10,17,200/-.

16. 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. The enhanced amount should be disbursed in the same proportion to the claimants as was held by the Tribunal.

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

(AVNEESH JHINGAN)
JUDGE

October 12, 2018
Jyoti-IV

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