

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 6339 of 2011

DECIDED ON: OCTOBER 15, 2018

BHARTI DEVI AND OTHERS

.....APPELLANTS

VERSUS

MOHD. MANSOOR ALI & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Atul Pratap Dhankar, Advocate for
Mr. Deepender Ahlawat, Advocate
for the appellants.

None for the respondents.

AVNEESH JHINGAN, J (ORAL)

The legal heirs of Sandeep Kumar are in appeal against the award dated 26.07.2011 passed by Motor Accident Claims Tribunal, Jhajjar (for short 'the Tribunal'). The appeal has been filed for the enhancement of compensation awarded under Section 166 of Motor Vehicles Act, 1988 (for brevity 'the Act').

2. The appellants are, widow, minor son and mother of Sandeep Kumar-deceased. The driver of maruti Wagonr car bearing registration No. HR-99FP 7837 (Temporary) (hereinafter referred to as 'offending vehicle'); owner of the offending vehicle and insurer of the offending vehicle, have been arrayed as respondents No.1 to 3 respectively in the appeal.

3. The facts as emanating from the record are that on 03.08.2010, Sandeep Kumar alongwith Ramesh was travelling from Jhajjar to Farukh Nagar on motor-cycle. When they reached near the power house on Gurgaon Road, the motor-cycle was hit by a rashly and negligently driven offending vehicle. As a result of the accident Sandeep Kumar suffered injuries and lost his life.

4. The legal heirs of Sandeep Kumar-deceased filed a claim petition under Section 166 of Motor Vehicles Act, 1988 (for short 'the Act').

5. The Tribunal after considering the facts and appreciating the evidence adduced, awarded a compensation to the tune of ₹7,60,000/- alongwith interest @7.5% per annum. The amount awarded includes 20,000/- each for loss of consortium and for funeral expenses. The Tribunal 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.

6. In the claim petition, it was pleaded that the deceased was an agriculturist and milk vendor but the claimants failed to prove the monthly earning of the deceased. The Tribunal assessed the monthly earning of the deceased as ₹5,000/- per month. 1/3rd deduction for self expenses was made, as the deceased was survived by three dependants. The age of the deceased was taken as 25 years, hence, multiplier of 18 was applied.

7. Learned counsel for the appellants argued that no future prospects have been awarded by the Tribunal and the amounts awarded under the conventional heads are on lower side. No other issue has been raised.

8. The deceased was 25 years of age and his income was assessed as ₹5,000/- per month. In view of the Apex Court judgments rendered in the case

of National Insurance Co. Ltd. vs. Pranay Sethi and others; 2017 (4) RCR (Civil) 1009 and Hem Raj vs. Oriental Insurance Company Ltd in Civil Appeal No.19603 of 2017, decided on 22.11.2017, 40% future prospects are to be awarded. Claimants are also entitled to a sum of ₹15,000/- each, for funeral expenses and for loss of estate. The widow of the deceased is entitled to ₹40,000/- for loss of consortium.

9. The Supreme Court in the case of Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram & others; 2018 (4) RCR (Civil) 333; has held 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. 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.”

10. In view of the law laid down by the Supreme Court in ***Magma General*** (supra), the minor son and mother of the deceased are entitled to an amount of ₹40,000/- each for Parental and Filial Consortium.

11. In view of afore-said discussion, the compensation is recalculated as under:

	Head	Compensation awarded
(i)	Income	₹5,000/- per month
(ii)	Future prospects at 40%	₹2,000/- per month
(iii)	Total Income	₹7,000/- per month
(iv)	Deduction of personal expenses	₹2333/- (i.e. 1/3 rd of total income)
(v)	Multiplier	18 (as per age of deceased)
(vi)	Total Dependency	₹7000-₹2333x12x18=₹10,08,072/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
(ix)	Loss of consortium	₹40,000/-
(x)	Parental Consortium	₹40,000/-
(xi)	Filial Consortium	₹40,000/-
	Total Compensation awarded	₹11,58,072/-

12. The award dated 26.07.2011 is modified to the extent that amount awarded of ₹7,60,000/- is enhanced to ₹11,58,072/-. The appellants shall be entitled to enhanced amount alongwith interest @7.5% per annum from the date of filing of the claim petition till realization of amount. It is, however, clarified that the compensation shall be disbursed in the same proportion, as has been held by the Tribunal.

13. The appeal is partly allowed in the afore-said terms.

OCTOBER 15, 2018

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(AVNEESH JHINGAN)

JUDGE

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No