IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.339 of 2012
Date of Decision : 26.09.2018

Smt. Bado Devi and anr. ....Appellants

VERSUS

Vipin Bansal & ors. ...Respondents

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Bhupinder S. Bairagi, Advocate for the appellants.

Mr. R.K. Bashamboo, Advocate for respondent No.3-Insurance Company.

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B.S. WALIA, JUDGE

1. Appeal has been filed by the widowed mother and minor brother of deceased Kuldeep Singh who died in a motor vehicular accident on 19.11.2009. The learned Motor Accident Claims Tribunal, Hisar (hereinafter referred to as 'the Tribunal') by taking into account the age of the deceased as 23 years, income as ₹ 3600/- per month and by treating the widowed mother and minor brother as dependents, by imposing a deduction of 1/3rd income of the deceased towards his personal expenses and by applying multiplier of 12, worked out dependency at ₹3,45,600/-. By adding ₹8,000/- on account of the cost of treatment of the deceased and ₹ 6,000/- on account of transportation charges and last rites, compensation of ₹3,59,600/- was awarded. Further by holding the drivers of both the vehicles liable for contributory negligence to the extent of 50%, the claimants were held entitled to half of the compensation, accordingly were awarded ₹1,79,800/- along with interest @ 9% per annum from the date of filing of the claim petition till realisation out of which ₹1,00,000/- was awarded to the widowed mother and ₹ 79,800/- to appellant No.2 (minor brother of the deceased). The Tribunal also ordered that 50% amount of compensation payable

to the mother be paid as per rules whereas the remaining 50% be deposited in a Nationalized Bank in a fixed deposit for a period of two years and the entire share of compensation payable to minor appellant No.2 be placed in a fixed deposit in some nationalized bank till his attaining the age of majority.

2. Learned counsel for the appellants contended that multiplier of 12 was incorrectly applied by taking into account the age of the mother of the deceased whereas multiplier applicable is as per the age of the deceased in view of the decision of Hon'ble the Supreme Court in **National Insurance Company Limited vs Pranay Sethi and others-2017(4) RCR (Civil) 1009.**

3. Learned counsel further contended that the finding of contributory negligence solely on the ground that the deceased was not wearing a helmet was also legally unsustainable in view of various pronouncements of different Courts. Learned counsel also contended that no future prospects had been awarded despite entitlement for award of the same and lastly that only a sum of ₹6,000/- had been awarded on account of transportation and last rites whereas a sum of ₹15,000/- was payable on account of funeral expenses, ₹15,000/- on account of loss of estate and ₹40,000/- on account of loss of consortium to the widowed mother of the deceased in view of decision of Hon'ble the Supreme Court in **Magma General Insurance Co.Ltd. vs Nanu Ram Alias Chuhru Ram and others** decided on 18.09.2018 in Civil Appeal No.9518 of 2018.

4. As regards the plea of contributory negligence, it needs noticing that the Tribunal took into account the decision of Hon'ble the Supreme Court in **Ajay Canu versus Union of India and others 1989 ACC 554** wherein it was held that wearing of crash helmet was mandatory for drivers of two wheeler. Likewise the decision of Hon'ble the Kerala High Court was taken into account wherein it was held that on account of non-wearing of helmet resulting in death there certainly was contributory negligence and accordingly drivers of both the vehicles were equally responsible in the ratio of 50:50. The aforementioned decision of Hon'ble the Supreme Court is primarily on the point of compulsory use of helmet by two wheeler drivers on the ground that the same does not restrict or curtail the freedom of movement, on the contrary it helps a two wheeler driver to drive the vehicle in exercise of his freedom of movement without being subjected to a constant apprehension of a fatal head injury in case of accident and that there was no

fundamental right against any act aimed at doing some public good. No doubt the Hon'ble Kerala High Court in **Siby Paul versus Parveen Kumar II (2009) ACC 533 (DB)** has held that use of helmet would have reduced the impact of accident which resulted in head injury. However, non use of helmet does not establish contributory negligence on the part of the deceased driver or other motorcyclist. In **Jagdev Singh and others versus Parveen Kumar and others 2017(1) Law Herald case 768,** a Coordinate Bench of this Court held that concept of contributory negligence was wrongly understood by the Tribunal in assuming that by not wearing the helmet deceased was guilty of contributory negligence. The Coordinate Bench of this Court in the aforementioned decision held that qua 'contributory negligence' the contributory factor must be to the extent of collision and not because deceased was not wearing a helmet and that in the circumstances a finding could not be given that the deceased was negligent in causing the accident. At the most, it could be said that deceased was only negligent in not wearing the helmet that caused her death but the same could not be taken as a factor for reduction of the compensation. Relevant extract of the decision in **Jagdev Singh's** case (supra) is reproduced as under:

> *6. The Tribunal was in error in giving the finding that 10% reduction must be made for contributory negligence. There was no plea that the deceased had contributed in the accident, no issue was framed nor any evidence was led. The concept of contributory negligence was wrongly understood by the Tribunal in assuming that by not wearing a helmet she was guilty of contributory negligence. The contributory factor must be to the extent of collision and not because she was not wearing a helmet. The finding could not be given that she was negligent in causing the accident. At the most, it could be said that she was only negligent in not wearing the helmet that caused her death. This could not have been taken as a component for reduction of the compensation.*

5. The view in **Jagdev Singh's** case (supra) was based on the findings given in **Rupinder Sharma alias Komal Sharma and others versus SPR Basant Kumar and another** 2013(35) RCR (Civil) 446. Relevant extract of the decision in **Rupinder Sharma's** case (supra) is reproduced as under:

> *"4. The Tribunal was in error in finding that 20% deduction must be made for contributory negligence. Contributory negligence must be attributed to how the accident itself had taken place and not how he exposed himself to a danger of*

> *death. The concept is wrongly understood by the Judge in assuming that by not wearing helmet, he was guilty of contributory negligence. The contributory factor must be to the extent of collision and if he was not wearing helmet, he could not be stated to be a negligent "in causing the accident". He could be stated to be only negligent in not wearing helmet that "caused his death". I will not taking this to be the component for reduction of the damage assessed."*

6. Accordingly, in the light of the decision of this Court in **Jagdev Singh's** case (supra), the finding of the learned Tribunal of there being contributory negligence is reversed.

7. As regards applicability of multiplier, it needs noticing here that the deceased was 23 years of age. As per paragraph No.61(vii) of the decision in **Pranay Sethi**'s case (supra), it is the age of the deceased which is to be taken into account for applying the multiplier. Further as per paragraph No.42 of the decision in **'*Sarla Verma and others*** *versus* ***Delhi Transport Corporation and another*'**, *2009(6) SCC 121*., multiplier of 18 is applicable where the deceased was 23 years of age. Paragraph No.61(vii) of the decision of **Pranay Sethi's** case(supra) and paragraph No. 42 of the decision in **Sarla Verma's** case (Supra) which are relevant are reproduced as under :

> ***Paragraph No.61(vii) of the decision of Pranay Sethi's case(supra)-*** *The age of the deceased should be the basis for applying the multiplier."*
>
> ***Paragraph No. 42 of the decision in Sarla Vermas case (Supra)-*** *We therefore hold that the multiplier to be used should be as mentioned in column (4) of the table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70*

years."

Since, in the instant case the deceased was 23 years of age, multiplier of 18 shall be applicable for working out the compensation payable.

8. Likewise as per paragraph No.61 (iv) of the decision in Pranay Sethi's case (supra) where deceased was self employed and less than 40 years of age, 40% of the established income of the deceased minus the tax component is to be taken into account for computing the future prospects. Paragraph No.61(iv) of the decision in Pranay Sethi's case (supra) is reproduced as under :

> "*61 (iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."*

Since the deceased was admittedly 23 years of age, self employed therefore, 40% of ₹3600/- i.e. his established income, minus the tax component shall be taken into account for computing the future prospects payable.

9. Lastly, as regards compensation under conventional head, the appellants were held entitled to only ₹6,000/- on account of transportation charges and last rites whereas as per the decision in **Pranay Sethi's** case (supra), a sum of ₹15,000/- is payable on account of funeral expenses while another sum of ₹ 15,000/-is payable on account of loss of estate. Paragraph No.61 (viii) of the decision in **Pranay Sethi's** case (supra) is reproduced as under :-

> "*61(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."*

10. Accordingly, in the light of the aforementioned decision of Hon'ble the Supreme Court, the appellants are held entitled to a sum of ₹15,000/- on account of funeral expenses and ₹15,000/- on account of loss of estate. However, no amount will be payable on account of transportation charges. As per paragraph

No.8.7 of the decision of Hon'ble the Supreme Court in **Magma General Insurance Co. Ltd. vs Nanu Ram Alias Chuhru Ram** and others decided on 18.09.2018 in Civil Appeal No.9518 of 2018, a sum of ₹40,000/- is payable on account of loss of filial consortium to the widowed mother of the deceased. Paragraph No.8.7 of the decision in Magma General Insurance Co. Ltd.'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. 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, cooperation, 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 L 40,000 each for loss of Filial Consortium."

Accordingly, widowed mother of the deceased will be entitled to ₹40,000/- on account of loss of filial consortium.

11. Accordingly, in the light of the position as noted above, the award is modified and compensation payable enhanced as under :

Sr. No.	**Head**	**Amount assessed by Tribunal in `**	**Amount assessed by this Court in `**
1	Income	₹3600/-	₹3600/-
2	Future prospects	NIL	40%=₹1440
3	Deduction towards personal expenses of deceased.	1/3rd of total income ₹3600/3=₹1200/-	1/3rd of total income (₹3600+₹1440)₹ 5040/3= ₹1680/-
4	Dependency arrived at	₹2400/-	₹3360/-
5	Multiplier applied	12	18
6	Compensation awarded	₹2400x12x12 = ₹3,45,600/-	₹3360x18x12 = ₹7,25,760/-
7	Medical expenses	₹8000/-	₹8000/-
8	Loss of filial consortium	NIL	₹40,000/- to mother.
9	Loss of estate	NIL	₹15,000/-
10	Cremation/last rites	₹6,000/-	₹15,000/-
11	Deduction on account of contributory negligence	50%	Nil
12	Interest	9%	9%

Sr. No.	Head	Amount assessed by Tribunal in `	Amount assessed by this Court in `
13	Total	₹1,79,800/-	₹8,03,760/-

12. Accordingly, in the light of the position as noted above, the appellants are held entitled to compensation of ₹ 8,03,760/- as against compensation of ₹1,79,800/- awarded along with interest @ 9% per annum with effect from the date of claim petition till date of payment less amount, if any, already paid. Compensation shall be paid to the appellants in the ratio and manner determined by the Tribunal after first making payment of ₹40,000/- as loss of filial consortium to the widowed mother of the deceased.

13. Needless to mention, tax liability if any on the established income of the deceased shall be deducted in accordance with the decision in **Pranay Sethi's** case (supra) while paying amount on account of future prospects.

14. Accordingly, appeal is allowed. Award dated 20.04.2011 passed by the learned MACT, Hisar is modified to the extent as noted above.

(B.S. WALIA)
JUDGE

September 26, 2018
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No