435 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3831 of 2012
Date of Decision:26.10.2018

Sharmila and others ...Appellants

Versus

Leela Ram and others ...Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Tarun Yadav, Advocate for
Mr. Tapan Kumar Yadav, Advocate
for the appellants.

Mr. Vipul Sharma, Advocate for
Mr. Paul S.Saini, Advocate
for Insurance Company.

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AVNEESH JHINGAN, J. (ORAL)

The present appeal has been filed against award dated 06.03.2012 passed by Motor Accident Claims Tribunal, Narnaul (hereinafter referred to as 'the Tribunal').

2. The widow and two minor children of Babu Lal (deceased) are the appellants. The parents of the deceased have been arrayed as performa respondents No. 4 & 5. The driver of tractor bearing registration No. RJ-18RA-3339 (for brevity, 'the offending vehicle'); owner and insurer i.e. United India Insurance Company Ltd. of the offending vehicle 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 01.02.2009 Babu Lal was going on his motorcycle bearing No.HR-34-B-2698 from Balaji Hotel, Khera Mod to Akhoda bus stand. On his way, he was struck by a rashly and negligently driven offending vehicle. Babu Lal succumbed to injuries suffered in accident. FIR dated 01.07.2009 under Sections 279/304-A, IPC was registered at Police Station, Mohindergarh.

4. The legal heirs of the deceased filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act') before the Tribunal.

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 22 years. His monthly income assessed was ₹4500/-. The Tribunal awarded a sum of ₹7,49,000/- along with interest @ 6% per annum. The amount awarded by the Tribunal includes ₹5,000/- each for funeral expenses & loss of estate and ₹10,000/- for loss of consortium. The owner, driver and insurer of the offending vehicle were held jointly and severally 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 were awarded and 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.

9. The argument raised by learned counsel for the appellants deserves acceptance, 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,*** 40% future prospects are to be awarded as the deceased was 22 years. Further, claimants are entitled to an amount of ₹15,000/- each for funeral expenses and for loss of estate. ₹40,000/- is awarded to widow for loss of consortium.

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 of the Supreme Court 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".*

11. Having due regard to the decision quoted above ₹40,000/- is awarded for loss of filial consortium to the parents and ₹40,000/- each is awarded to two minor children for parental consortium.

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

Monthly earning	₹4,500/-
Future prospectus @ 40%	₹1,800/-
1/4 deduction for self expenses	₹1575/-
Annual Dependency	₹56700/-
Applying multiplier of 18	₹10,20,600/-
Funeral expenses	₹15,000/-
Loss of estate	₹15,000/-
Loss of parental consortium to two children	₹80,000/-
Loss of consortium to widow	₹40,000/-
Loss of consortium of parent (filial consortium)	₹40,000/-
Total	₹12,10,600/-

13. The award dated 06.03.2012 is modified to the extent that the amount awarded by the Tribunal of ₹7,49,000/- is enhanced to ₹12,10,600/-.

14. The claimants shall be entitled to enhanced amount 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 would be disbursed in

the same proportion to the claimants as was held by the Tribunal.

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

(AVNEESH JHINGAN)
JUDGE

October 26, 2018
Jyoti-IV

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