437 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.4306 of 2012 (O&M)
Date of Decision:25.10.2018.

Manju and another ...Appellants

Versus

Ram Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Rose Gupta, Advocate
for the appellants.

Mr. Suvir Dewan, Advocate
for respondent No.3.

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AVNEESH JHINGAN, J. (ORAL)

The claimants are in appeal against the award dated 27.04.2012 passed by Motor Accidents Claims Tribunal, Hisar (hereinafter referred to as 'the Tribunal').

2. The claim petition under Section 166 of Motor Vehicles Act, 1988 (for brevity "the Act") was filed by two minor children of Nanhe Lal (deceased). The driver; owner of Truck bearing registration No. RJ-191G/3175 (for brevity, "the offending vehicle") and the insurer of the offending vehicle i.e. National Insurance Company Ltd. were arrayed as respondents No.1 to 3 respectively, in the claim petition.

3. The facts as emanating from the record are that on 22.12.2010, Nanhe Lal along with his wife was coming from the market on his scooter. When they reached on the railway over bridge near Jindal Strips Ltd., a

rashly and negligently driven offending vehicle came from behind and struck their scooter. As a result of the accident, Nanhe Lal succumbed to injuries and died at the spot. FIR No.1065 dated 22.12.2010 under Sections 279, 337, 304-A, 427 IPC was registered.

4. 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 36 years. His monthly income assessed was ₹12,700/- per month. The Tribunal awarded a sum of ₹11,73,000/- as compensation along with interest @ 7.5% per annum. The amount awarded by the Tribunal included ₹5000/- for funeral expenses and ₹25,000/- for loss of love and affection & consortium. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

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

6. Learned counsel for the appellants contended that the deceased was earning ₹19,200/- per month as is evident from Ex. P-4. The Tribunal erred in awarding compensation by considering the net salary drawn as ₹12,700/-per month. He argued that no future prospects have been awarded and the amounts awarded under the conventional heads are on the lower side. He further contended that the Tribunal erred in making ½ deduction for self expenses whereas deceased was survived by 2 minor children.

7. Learned counsel for insurance company argued that as per Ex. P-4 there was an amount paid to him for medical reimbursement and for uniform maintenance allowances which had to be deducted. He further

argued that the income-tax payable should also be deducted. He contended that the conventional heads should be awarded strictly and in accordance with the decision of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others, (2017) AIR (SC) 5157.***

8. There is no dispute between the parties with regard to multiplier of '15' applied by the Tribunal and the fact that deceased was 36 years of age at the time of accident.

9. From the perusal of the Ex. P-4, it is evident that deceased was employed with Jindal Stainless Ltd.(JSL) at Hisar. His salary, as per EX. P-4 at the time of death, was ₹19,200/- per month. From the perusal of Ex. P-4, it is also clear that the said amount included medical reimbursement paid to him of ₹851/- and uniform maintenance allowances of ₹350/-. These two allowances were for reimbursement and cannot be considered. Further, income tax payable is to be deducted. Reliance is placed on decision of Supreme Court in case of ***Manasvi Jain vs. Delhi Tranport Corporation, 2014 (3) SCC 22*** wherein it has been held as under:-

> *"12. This Court in* ***Shyamwati Sharma & Ors. Vs. Karam Singh & Ors., 2010(3) R.C.R. (Civil)741 : (2010) 12 SCC 378,*** *while considering the issues of deduction of taxes, contributions etc., for arriving at the figure of net monthly income, held that "while ascertaining the income of the deceased, any deductions shown in the salary certificate as deductions towards GPF, life insurance*

> *premium, repayments of loans etc., should not be excluded from the income. The deduction towards income tax/surcharge alone should be considered to arrive at the net income of the deceased."*

10. In such circumstances, the compensation would be calculated taking into consideration the monthly salary of the deceased as ₹18,200/- per month. Considering the Nil Slab and rate of tax during the relevant assessment year 2010-2011, approximately an amount of ₹6000/- would be payable as income tax which would be deducted from his annual earning.

11. 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. in Civil Appeal No.19603 of 2017,** 40% future prospects are awarded as the deceased was below 40 years. Further, an amount of ₹15,000/- each for funeral expenses and for loss of estate are awarded. The deceased was survived by 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** and a multiplier of '15' is applied.

12. *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 in ***Magma General Insurance Company'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. 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/-each is awarded to two minor children under the head parental consortium.

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

Salary	₹18,200/-
Annual Income	₹2,18,400/-
Income tax	₹6,000/-
Annual earning	₹2,12,400/-
40% future prospects	₹84,960/-
Total	₹2,97,360/-
1/3 deduction for self expenses	₹99,120/-
Dependency	₹1,98,240/-
Applying multiplier of 15	₹29,73,600/-
Funeral Expenses	₹15,000/-
Loss of estate	₹15,000/-
Loss of parental consortium	₹80,000/-
Total	₹30,83,600/-

14. The award dated 27.04.2012 is modified to the extent that the amount awarded by Tribunal of ₹11,73,000/- is enhanced to ₹30,83,600/-.

15. 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.

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

(AVNEESH JHINGAN)
JUDGE

October 25, 2018
Jyoti-IV

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

Jyoti
2018.11.12 12:02
I attest to the accuracy and
integrity of this document