

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

FAO No.5256 of 2012 (O&M)

Date of decision: 23.10.2018

Pargat Singh and others

.... Appellants

Versus

Sukhdev Singh @ Bittu and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Chandandeep Singh, Advocate
for the appellants.

None for respondents No.1 and 2.

Mr. R.N.Singal, Advocate
for respondent No.3.

Mr. Subhash Goyal, Advocate
for respondent No.4.

Avneesh Jhingan, J. (Oral)

The present appeal has been filed against award dated 12.12.2011 passed by Motor Accident Claims Tribunal, Ludhiana (hereinafter referred to as 'the Tribunal').

2. In a motor vehicular accident that occurred on 08.06.2008, Pardeep Singh, aged 18 years, lost his life. He was a pillion rider on a motorcycle bearing registration No.PB-10CC-6828. The said motorcycle was being driven by Jatinder Singh. When they reached near J. K. Dharam Kanda situated at village Nandpur, the motorcycle was struck by a rashly and negligently driven mini bus bearing registration No.PB-03D-7434 (for brevity,

'the offending vehicle'). As a result of the accident, Pardeep Singh died on the spot. FIR No.109 dated 08.06.2008 was registered at Police Station, Sahnewal, Ludhiana.

3. The claim petition under Section 166 of the Motor Vehicles Act, 1988 (for brevity, 'the Act') was filed by the parents, brother and sister of the deceased. The Tribunal, after considering the facts and on appreciating the evidence produced, held that the accident occurred due to rash and negligent driving of the offending vehicle. The owner, driver and insurer of offending vehicle were held jointly and severally liable to pay the compensation. The age of the deceased was taken as 18 years. His monthly income was assessed as ₹3000/-. The Tribunal awarded a sum of ₹3,34,000- as compensation along with interest @ 9% per annum. ½ deduction was made as only mother was considered dependent. The amount awarded included ₹10,000/- for loss of estate and funeral expenses.

4. Learned counsel for the appellants argued that the amounts awarded under the conventional heads are on the lower side and no future prospects have been awarded.

5. Learned counsel for the Insurance Company defended the award and resisted any further enhancement.

6. I have heard learned counsel for the parties and perused the paper-book.

7. There is no dispute with regard to age of the deceased, income assessed, multiplier applied and deduction made for self expenses.

8. In consonance with the decisions of the Supreme Court in **National Insurance Company Ltd. vs. Pranay Sethi and Ors., 2017 AIR (SC)**

5157 and **Hem Raj vs. Oriental Insurance Company Ltd., 2018(2) PLR, 480,**

since the deceased was 18 years of age, 40% future prospects are added. The claimants are entitled to ₹15,000/- each for funeral expenses and for loss of estate.

9. The Hon'ble 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 in **Pranay Sethi's case (supra)** held that loss of consortium is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'. The Supreme Court held :-

“8.7 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. Having due regard to the decision quoted above, ₹40,000/- is awarded to the mother as filial consortium.

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

Monthly income	₹3,000/-
40% future prospects	₹1200/-
Total income	₹4200/-
1/2 deduction for self expenses	₹2100/-
Dependency	₹2100/-
Applying multiplier of 18	₹4,53,600/-
Funeral expenses	₹15,000/-
Loss of estate	₹15,000/-
Loss of consortium to mother	₹40,000/-
Total	₹5,23,600/-

12. The award dated 12.12.2011 is modified to the extent that the amount awarded by the Tribunal of ₹3,34,000/- is enhanced to ₹ 5,23,600/-.

13. The claimants shall be entitled to enhanced amount along with interest @ 7.5% per annum from the date of filing the claim petition till the realisation of the amount.

14. It is, however, clarified that enhanced amount shall be disbursed in same ratio as was held by the Tribunal.

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

(AVNEESH JHINGAN)
JUDGE

23.10.2018

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1. Whether the order is speaking/reasoned: Yes/No
2. Whether the order is reportable : Yes/No