IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5413 of 2012 (O&M)
Date of decision: 30.10.2018

Sunita Devi and others .... Appellants

Versus

Rajender Singh and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. S.S.Khurana, Advocate
for the appellants.

Mr. Sanjeev Goyal, Advocate
for respondent No.3-Insurance Company.

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Avneesh Jhingan, J. (Oral)

The legal heirs of Satbir Singh are in appeal against award dated 25.07.2012 passed by Motor Accident Claims Tribunal, Rewari (hereinafter referred to as 'the Tribunal').

2. The widow and three minor children of the deceased are the appellants and the mother of the deceased has been arrayed as proforma respondent. The driver of TATA-407 bearing registration No.HR-38D-4426 (for brevity, 'offending vehicle'); owner and insurer of offending vehicle i.e. Shree Ram General Insurance Company Ltd. have been arrayed as respondents No.1 to 3 respectively in the appeal.

3. The facts emanating from the record are that on 16.11.2010, Satbir Singh along with his relative namely, Inderjeet was going to village

Gugodh from village Mau Kokari on separate motorcycles. When they reached near Ahamadpur Padtal Bus Stand, the motorcycle of Satbir Singh was struck by rashly and negligently driven offending vehicle. As a result of the impact, he suffered grievous injuries. He was taken to Civil Hospital, Rewari, where he was declared brought dead. FIR No.209 dated 17.11.2010 was registered at Police Station Kosli.

4. A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for brevity, 'the Act') was filed.

5. 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 35 years. The income of the deceased was assessed as ₹4200/- per month. The Tribunal applied a multiplier of 16. The deceased was survived by five dependents, therefore, 1/4th deduction for self expenses was made. The Tribunal awarded a sum of ₹6,19,800/- along with interest @ 6% per annum. The amount awarded included ₹15,000/- for loss of consortium and funeral expenses etc.

6. Heard learned counsel for the parties and perused the paper book and documents on record.

7. Learned counsel for the appellants argued that the deceased was having a shop of carpenter in the village and the monthly income assessed by the Tribunal is less than that of an unskilled labourer. His grievance is that the amount awarded under the conventional heads is on

the lower side and no future prospects have been awarded.

8. Learned counsel for the Insurance Company contended that the claimants failed to substantiate the monthly income of the deceased. He further argued that the conventional heads be awarded strictly in accordance with the decision of the Supreme Court in ***National Insurance Company Ltd. vs. Pranay Sethi and Ors., 2017 AIR (SC) 5157.***

9. The contentions raised by learned counsel for the appellants deserve acceptance. The deceased was a carpenter, albeit, the claimants failed to substantiate his monthly earning. Ex.P5, i.e., certificate issued by Sarpanch of village was produced to state that he was a carpenter by profession and was running a shop of carpenter in the village. In such circumstances, it would be appropriate to assess the monthly income of the deceased as semi-skilled labourer. In the State of Haryana at the time of the accident, the minimum wages for a semi-skilled labourer was ₹4478/-per month and for calculation purposes, the same is rounded off to ₹4500/- per month.

10. In consonance with the decision of the Supreme Court in ***Pranay Sethi's case (supra)*** and ***Hem Raj vs. Oriental Insurance Company Ltd., 2018(2) PLR, 480***, 40% future prospects are awarded. The claimants are entitled to ₹15,000/- each for funeral expenses and for loss of estate and ₹40,000/- is awarded to widow for loss of consortium.

11. The Supreme Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram & Ors., 2018(4) R.C.R. (Civil) 333***, after 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.*
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> *In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'.*
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> *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.***
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> *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."*
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> *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."*

12. Having due regard to the decision quoted above, ₹40,000/- is awarded to the mother as filial consortium and ₹40,000/-each is awarded to three minor children as loss of parental consortium.

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

Monthly income	₹4500/-
40% future prospects	₹1800/-
Total income	₹6300/-
1/4th deduction for self expenses	₹1575/-
Dependency	₹4725/-
Applying multiplier of 16	₹9,07,200/-
Funeral expenses	₹15,000/-
Loss of estate	₹15,000/-
Loss of consortium to widow	₹40,000/-
Loss of consortium to mother	₹40,000/-
Loss of consortium to three minor children (₹40,000/-each)	₹1,20,000/-
Total	₹11,37,200/-

14. The award dated 25.07.2012 is modified to the extent that the amount awarded by the Tribunal of ₹6,19,800/-is enhanced to ₹11,37,200/-.

15. 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.

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

(AVNEESH JHINGAN)
JUDGE

30.10.2018
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1.Whether the order is speaking/reasoned: Yes/No
2.Whether the order is reportable : Yes/No