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

FAO No.6656 of 2012 (O&M)
Date of decision: 23.10.2018

Rinku and another .... Appellants

Versus

Jitender Singh and others ..... Respondents

**CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present : Mr.Abhimanyu Kalsi, Advocate
for the appellants.

None for respondents No.1 and 2.

Mr. Rajbir Singh, Advocate
for respondent No.3.

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**Avneesh Jhingan, J. (Oral)**

The present appeal has been filed against award dated 28.01.2011 passed by Motor Accident Claims Tribunal, Gurgaon (hereinafter referred to as 'the Tribunal').

2. The widow and minor daughter of Kuldeep are the appellants. The driver of TATA Sumo bearing registration No.HR-55ET-1181 (for brevity, 'the offending vehicle'), owner of the offending vehicle and the insurer of offending vehicle i.e. ICICI Lombard General Insurance Company Ltd., have been arrayed as respondents No.1 to 3 respectively in this appeal. The parents of the deceased are proforma respondents No.4 and 5 respectively in this appeal.

3. The brief facts emanating from the record are that on 15.06.2010, in a motor vehicular accident, Kuldeep lost his life. He was

going from Farukh Nagar to his village on his motorcycle bearing registration No.HR-26AE-5107. On his way, the said motorcycle was struck by a rashly and negligently driven offending vehicle. As a result of the accident, Kuldeep died at the spot. FIR was registered.

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

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 25 years. His monthly income was assessed as ₹4500/-. The Tribunal awarded a sum of ₹5,96,000/- as compensation along with interest @ 6% per annum. The amount awarded included ₹10,000/- for transportation and last rites and ₹10,000/- for loss of consortium.

6. I have heard learned counsel for the parties and perused the record.

7. Learned counsel for the appellants argued that the amounts awarded under the conventional heads are on the lower side. No future prospects have been added while awarding compensation. He further contended that the deceased was survived by four dependents i.e. wife, minor daughter and old parents in the age group of 70 to 80, hence, 1/3rd deduction for self expenses has wrongly been made by the Tribunal. The grievance is that the Tribunal wrongly applied the multiplier of 16.

8. Learned counsel for the Insurance Company contended that the father of the deceased was not dependent, hence, 1/3rd deduction for self expenses has rightly been made by the Tribunal. He resisted any further enhancement.

9. Keeping in view the age of the deceased as 25 years and in view of the decision 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***, 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 to be awarded for loss of consortium to widow.

10. The Tribunal erred in applying the multiplier of 16. As per decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121,*** multiplier of 18 is to be applied.

11. The contention raised by learned counsel for the insurer of offending vehicle is that 1/3rd deduction for self expenses has rightly been made, lacks merit. The deceased was survived by a widow, minor daughter, mother aged 75 years and father aged 80 years. Keeping in view the age of the parents of the deceased, it would not be appropriate to say that the father was not dependent upon the deceased. Since the deceased was survived by four dependents, in consonance with the decision of Supreme Court in ***Sarla Verma's case (supra),*** 1/4th deduction for self expenses is to be made.

12. 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 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."*

13. Having due regard to the decision quoted above, ₹40,000/- is awarded to the parents as filial consortium and ₹40,000/-is awarded to the minor child for loss of parental consortium.

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

| | |
|---|---|
| Monthly income | ₹4,500/- |
| 40% future prospects | ₹1800/- |
| Total income | ₹6300/- |
| 1/4th deduction for self expenses | ₹1575/- |
| Annual Dependency | (4725x12)₹56,700/- |
| Applying multiplier of 18 | ₹10,20,600/- |
| Funeral expenses | ₹15,000/- |
| Loss of estate | ₹15,000/- |
| Loss of consortium to parents | ₹40,000/- |
| Loss of consortium to widow | ₹40,000/- |
| Loss of consortium to minor child | ₹40,000/- |
| Total | ₹11,70,600/- |

15. The award dated 28.01.2011 is modified to the extent that the amount awarded by the Tribunal of ₹5,96,000/-is enhanced to

₹11,70,600/-.

16. 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.

17. 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