IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 923 of 2012
DECIDED ON: OCTOBER 16, 2018

RAM NATH & ANR

.....APPELLANTS

VERSUS

GURJIT SINGH & ORS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Suman Sharma, Amicus Curiae.

Mr. Nikunj Dhawan, Advocate for
Mr. Harsh Aggarwal, Advocate
for respondents.

AVNEESH JHINGAN J. (ORAL)

Neither the appellants nor their counsel has put in appearance, today. So, was the position on the last date of hearing i.e. 15.10.2018. As such, Ms. Suman Sharma, Advocate (enrolment No. 30/4123/16) who is present in Court, is appointed as Amicus Curiae to assist the Court. Copy of the paper book has been supplied to her and after going through the same she assisted the Court.

2 The unfortunate parents, who lost their 20 years old son namely Sandeep Sharma, are in appeal against the award dated 8.12.2011 passed by Motor Accident Claims Tribunal, Panchkula (for brevity 'the Tribunal').

3. The driver of Maruti Car bearing registration No.HR 03C 0041 (hereinafter referred to as 'offending vehicle'); owner of the offending vehicle and insurer of the offending vehicle have been arrayed as respondents no. 1 to 3 respectively, in the appeal.

4. The facts emanating from the record are that on 12.2.2009, the deceased Sandeep Sharma was returning from his job to his village on bicycle. Near bus stand Derabassi, he was hit by a rashly and negligently driven offending vehicle. As a result of accident Sandeep Sharma suffered injuries and was taken to Civil Hospital, Derabassi where he was declared brought dead. FIR was registered on the basis of statement of Jasbir Sharma, an eye witness to the accident.

5. Parents of the deceased filed a claim petition under section 166 of Motor Vehicles Act, 1988 (for short 'the Act').

6. The Tribunal after considering the facts and on appreciating the evidence adduced, held that the accident occurred due to rash and negligent driving of the offending vehicle. The driver, owner and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded compensation to the tune of ₹3,17,000/- alongwith interest @ 7.5% per annum.

7. The age of the deceased was taken as 20 years. The income of the deceased was claimed as ₹6000/- per month but the claimants failed to prove the same. The Tribunal assessed the monthly income of the deceased as ₹4500/-. ½ deduction was made for self expenses and ₹10,000/- each was awarded for loss of estate and for funeral expenses.

8. The issues involved in the present appeal are that no future prospects

have been awarded; the amounts awarded under the Conventional Heads are on the lower side; The Tribunal erred in applying multiplier of 11 relying upon the age of the mother of the deceased.

9. The deceased was 20 years of age and his income was assessed as ₹4500/- per month, in view of the judgment rendered by the Supreme Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi and others;* *2017 (4) RCR (Civil) 1009*** and ***Hem Raj vs. Oriental Insurance Company*** Ltd in *Civil Appeal No.19603 of 2017, decided on 22.11.2017,* 40% future prospects has to be awarded. Claimants are also entitled to ₹15000/- each for funeral expenses and for loss of estate.

10. The Tribunal erred in applying the Multiplier of 11 considering the age of the mother of the deceased. The Supreme Court in the case of ***Sube Singh and another vs. Shyam Singh (Dead) and others;* *2018 (3) SCC 18;*** has held as under:

> *"On the basis of the finding recorded by the Tribunal and affirmed by the High Court, it is evident that the deceased was 23 years of age on the date of accident i.e 22.09.2009. He was unmarried and his parents who filed the petition for compensation were in the age group of 40 to 45 years. The High Court, relying on the decision in the case of Ashvinbhai Jayantilal Modi (supra), held that multiplier 14 will be applicable in the present case, keeping in mind the age of the parents of the deceased. The legal position, however, is no more res integra. In the case of Munna lal Jain (supra) decided by a three Judge Bench of this Court, it is held that multiplier should depend on the age of the deceased and not on the age of the dependants."*

11. In view of the judgment rendered by the Supreme Court in ***Sube Singh's*** case (supra), multiplier has to be applied considering the age of the

deceased and not of the parents. Hence, compensation has to be calculated considering the age of the deceased, therefore, multiplier of 18 has to be applied.

12. In the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram & others;*** ***2018 (4) RCR (Civil) 333;*** the Supreme Court after considering Constitutional Bench decision in ***Parney Sethi's*** case has held 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'.*
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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."*
>
> *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. In view of the judgment, claimants/appellants are entitled to ₹40,000/-

for loss of Filial Consortium.

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

	Head	**Compensation awarded**
(i)	Income	₹4,500/- per month
(ii)	Future prospects at 40%	₹1800/- per month
(iii)	Total Income	₹6,300/- per month
(iv)	Deduction of personal expenses	₹3150/- (i.e. 1/2nd of total income)
(v)	Multiplier	18 (as per age of deceased)
(vi)	Loss of income	6300-3150x12x18= ₹6,80,400/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
(ix)	Filial Consortium	₹40,000/-
	Total Compensation awarded	₹7,50,400/-

15. The award dated 08.12.2011 is modified to the extent that amount awarded of ₹3,17,000/- is enhanced to ₹7,50,400/-. The appellants shall be entitled to enhanced amount alongwith interest @7.5% per annum from the date of filing of the claim petition till realization of amount.

16. The appeal is partly allowed in the afore-said terms.

(AVNEESH JHINGAN)
JUDGE

OCTOBER 16, 2018
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Whether speaking/reasoned: Yes / No
Whether reportable : Yes / No