IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.10136 of 2014 (O&M)
Date of Decision: 28.11.2018.

Oriental Insurance Company Ltd.

...Appellant

Versus

Mohindro Devi and others

....Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. D.P. Gupta, Advocate for the appellant.

Mr. J.S. Cooner, Advocate for respondent No.6.

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B.S.WALIA, J (Oral).

1. Appeal has been filed by the Insurance Company challenging award dated 23.09.2014, passed by the learned Motor Accidents Claims Tribunal, SAS Nagar, Mohali, (hereinafter referred to as 'the Tribunal') awarding compensation of ₹18,10,056/- to Respondent Nos.1 to 4 i.e. widow, two minor children and mother of deceased Nar Singh, who died in a motor vehicular accident on 28.06.2012.

2. The Tribunal took into account the age of the deceased as 52 years, occupation as home guard and assessed the monthly income of the deceased as ₹15,744/-. A deduction of 1/4th of the income of the deceased was made by the Tribunal towards his personal expenses. Thereafter, by applying multiplier of '11' and by awarding a sum of ₹1 Lakh on account of loss of spousal consortium and ₹1 lakh on account of loss of love and affection to the two minor children besides ₹25,0000/- as funeral expenses, total compensation of ₹18,10,056/- was awarded.

3. Learned counsel for the appellant contended that since admittedly the deceased was being paid salary of ₹11,478/- in the month of May, 2012, income assessed at ₹15,744/- by taking notional annual increase in the salary was legally not sustainable especially for the claim for notional annual increase, would be taken care of by award of future prospects. Learned counsel further contended that ₹1 Lakh payable on account of loss of spousal consortium was liable to be reduced to ₹40,000/- while no amount was payable on account of loss of love and affection to the minor children. Learned counsel further contended that ₹25,000/- awarded on account of funeral expenses was also liable to be scaled down to ₹15,000/-.

4. None has put in appearance on behalf of respondent Nos.1 to 4/claimants despite service in the year 2015 (respondent Nos. 1 to 4 are however proceeded exparte) while notice could not be issued to respondent No.5 on account of non-furnishing of correct address. At this stage, learned counsel for the appellant sates that no relief is being claimed against respondent No.5, therefore, his name be deleted from the array of respondents. Ordered accordingly.

5. I have heard submissions of learned counsel for the appellant as well as learned counsel for respondent No. 6. and have gone over the record with their able assistance.

6. Admittedly, the deceased got salary of ₹11,478/- in the month of May, 2012, yet the same was taken at ₹15,744/- on account of notional annual increase. However, the same is liable to be taken at ₹11,478/-. It is also the admitted position that no compensation was awarded on account of

loss of future prospects. As per paragraph No.61 (iv) of the decision of Hon'ble the Supreme Court in National Insurance Company Ltd. versus Pranay Sethi and others, 2017(4) RCR (Civil) 1009 where the deceased is on a fixed salary and was aged between 50 to 60 years as on date of death, 10% of the established income of the deceased less tax component is to be taken into account while computing the future prospects. Relevant extract of the decision in Pranay Sethi's case (supra) is reproduced as under:-

> (iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

Since in the instant case the deceased was admittedly 52 years of age and on fixed salary, therefore, the appellants are held entitled to award of future prospects by taking into account 10% of the established income of the deceased less tax component.

7. Although, as per paragraph 61 (viii) of the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra), ₹40,000/- is payable on account of loss of spousal consortium, yet as per the decision of Hon'ble the Supreme Court in Magma General Insurance Co. Ltd vs, Nanu Ram Alias Chuhru Ram, in Civil Appeal No.9581 of 2018, decided on 18 September, 2018, it has been held that "consortium" is a compendious term

which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'" and ₹40,000/- each was awarded to the father and sister of the deceased on account of loss of filial consortium. Relevant extract of the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra) as well as in Magma General Insurance Co. Ltd.'s case (supra) is reproduced as under:-

> 61(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be ₹15,000/-, ₹40,000/- and ₹15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."
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> 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.
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> With respect to a spouse, it would include sexual relations with the deceased spouse.3 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, cooperation, affection, and aid of the other in every conjugal relation."4 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 worldover 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.
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> 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 Rs. 40,000 each for loss of Filial Consortium.

8. Accordingly, as against ₹1,00,00/- awarded on account of loss of spousal consortium, ₹1,20,000/- i.e. ₹40,000/- each is held payable to the widow and two minor children of the deceased on account of loss of spousal/parental consortium respectively. Funeral expenses awarded @ ₹25,000/- is reduced to ₹15,000/-. Besides respondent Nos.1 to 4/claimants are held entitled to ₹15,000/- on account of loss of estate. However, no amount is payable under the heading of loss of love and affection as there is no such head as per the decision of Hon'ble the Supreme Court in Pranay Sethis case (supra).

9. In the circumstances, respondent No.1 to 4/claimants are held entitled to the following compensation :

Sr. No.	Head	Amount assessed by the Tribunal	Amount assessed by this Court
1	Income	₹15744/-	₹11478/-
2	Future Prospects	Nil	₹1150/-(10% of ₹11478)
3	Total Income assessed	₹15744/-	(₹11478+ ₹1148) = ₹12,626/-
4	Multiplier applied	11	11
5	Deduction (towards personal expenses of the deceased)	1/4th of ₹15744/-= ₹3936/-	1/4th of ₹12626=₹3157/-
6	Annual dependency	₹11808(wrongly taken as ₹12008/- by the tribunal)x12x11=₹15,58,656/- (wrongly written as ₹15,85,056/- in award)	₹9469x12x11=₹12,49,908/-
7.	Funeral expenses	₹25,000/-	₹15,000/-
8.	Loss of Estate	Nil	₹15,000/-
9.	Loss of Spousal consortium	₹1,00,000/-	₹40,000/-
10.	Loss of parental consortium	Nil	₹80,000/- i.e. ₹40,000/- to each of the minor children
11.	Love and affection	₹1,00,000/-	Nil
12.	Total	₹17,83,656/- (Wrongly recorded as ₹18,10,056/- in the award)	₹13,99,908/-

10. Accordingly, as against the compensation of ₹17,83,656/- awarded by the Tribunal, (wrongly mentioned as ₹18,10,056/-) respondent Nos.1 to 4/claimants are held entitled to award of compensation of ₹13,99,908/- along with interest @ 6% per annum w.e.f. the date of filing of the claim petition till date of payment, less amount if any already paid.

11. Needless to mention, the respondents/claimants would be entitled to the award of compensation in proportion to their share determined by the Tribunal by first making Rs.40,000/- each to respondent Nos.1 to 3/widow and two minor children of deceased on account of loss of spousal/parental consortium respectively. The Insurance Company shall make payment of compensation to the appellants after making deduction of the tax liability towards future prospects, in accordance with the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra).

12. Accordingly, appeal is allowed and award dated 23.09.2014, passed by the learned Tribunal is modified to the extent as noted above.

(B.S.WALIA)
JUDGE

28.11.2018
rajesh.k.khurana

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No