

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

FAO No.10217 of 2014
Decided on: 21.12.2018.

New India Assurance Company LimitedAppellant

versus

Urmila and othersRespondents

FAO No.10222 of 2014

New India Assurance Company LimitedAppellant

versus

Poonam and othersRespondents

FAO No.8237 of 2015 (O&M)

Urmila and othersAppellants

versus

Harpreet Singh and othersRespondents

CORAM : HON'BLE MR.JUSTICE DR.RAVI RANJAN

Present: Mr.R.C.Kapoor, Advocate,
for the appellant/s (in FAO-10217-2014 &
FAO-10222-2014)

Mr.Rahul Vats, Advocate
for appellant in FAO-8237-2015
for respondents no.1 to 5 in FAO-10217-2014
for respondents no.1 to 4 in FAO-10222-2014

Mr.Sandeep Kotla, Advocate,
for respondents no. 1 and 2 in FAO-8237-2015
for respondents no.6 and 7 in FAO-10217-2014
for respondents no.5 and 6 in FAO-10222-2014

DR.RAVI RANJAN, J. (Oral)

FAO No.10217 of 2014 & FAO No.10222 of 2014 have been preferred by the appellant- Insurance Company assailing the judgment and Award dated 16.09.2014, whereas FAO no.8237 of 2015 has been filed by the claimants for enhancement of the awarded amount.

**FAO-10217-2014 &
FAO-10222-2014**

These two appeals have been preferred by the appellant- Insurance Company assailing the Judgement and Award dated 16.09.2014 passed by the Motor Accident Claims Tribunal, Fatehabad, Haryana in petition no.13-MACT of 2014 and 14-MACT of 2014 on diverse grounds.

1. It is contended that the claimants' case is that the accident was the result of rash and negligent driving by the driver, respondent no.1- Harpreet Singh, of the Escort Farmtrac Tractor (hereafter to be referred as “the offending vehicle” for the sake of brevity) is erroneous. Infact a stand has been taken in the written statement filed by respondents no.1 and 2, i.e. the driver and the owner respectively, that the accident was the result of rash and negligent driving of the driver of ill-fated motorcycle as he was trying to cross a truck going ahead of him resulting in the occurrence. Though, it was admitted in the written statement filed by respondent no.3 i.e. the appellant-Insurance Company herein, that the offending vehicle was insured to the Company, however, since there was violation of terms and conditions of the insurance policy, any liability was denied to indemnify the applicants-claimants. However, the case of the claimants in both the applications is that the deceased were proceeding on their motorcycle and one person Umed Singh son of Bir Singh was following them on another

motorcycle. When the vehicle reached near Rajbaha on Tohana-Dangra road, an Escort Farmtrac tractor being driven in rash and negligent manner by the driver Harpreet Singh came from the opposite direction and struck against the motorcycle causing fatal injuries upon the two deceased persons, for which FIR no.412 dated 12.10.2013 under Section 279 and 304-A of the IPC was also registered against the Harpreet Singh (respondent no.1 in the claim petition), at Police Station, City Tohana. According to the claimants Sultan Singh was aged 32 years whereas deceased Ram Mehar was of 22 years of age. It is claimed in the claim application that Sultan Singh was working as Operator Assistant in M/S VRL Logistic Ltd. having its branch office Hisar and was getting salary of Rs.13,600/- per month, whereas it was claimed that Ram Mehar was earning Rs.20,000/- per month by working as a sweet-maker.

2. Upon consideration of the rival pleadings the Tribunal framed following issues:

1. Whether the occurrence involving vehicle bearing registration no. HR-23/D9062 took place due to its rash and negligent driving by Harpreet Singh respondent no.1 and in which Sultan Singh and Ram Mehar received serious and multiple injuries and which proved fatal for them?OPP
2. If issue no.1 is proved in affirmative, whether the claimants are entitled to claim any amount of compensation, how much and from whom?OPP
3. Whether there was violation of terms and conditions of policy of insurance?OPR
4. Relief.

3. In order to prove rash and negligent driving by the offending vehicle the claimants have examined Umed Singh as PW4 beside proving documents Ex.P-7 to Ex.P9.

PW4-Umed Singh, who is also the author of First Information Report which has been brought on record as Ex.P-7, has supported the

version of the claimants that the occurrence involving vehicle was due to rash and negligent driving by Harpreet Singh resulting in motor vehicular accident in which Sultan and Ram Mehar received fatal injuries and died.

4. It is noticed that though he was cross-examined at length but his testimony has withstood the test. Further, it would be evident from perusal of Ex.P7 to Ex.P-11 that the case of rash and negligent driving was registered against respondent no.1, i.e. Harpreet Singh, in which he is facing trial. In the written statement the respondent no.1 has not denied the occurrence but has tried to shift the burden upon the deceased person who was driving the motorcycle, but he failed to produce himself to be examined as a witness.

5. However, learned counsel appearing on behalf of the appellant-Insurance Company has submitted that the police had seized a Farmtrac Tractor, Model-55, without any registration number but later on it was stated that it was Fartrac Tractor Model-60, which was involved in the accident. Thus, it is contended that this raises suspicion as to whether the seized tractor was actually involved in the accident or not. He also raises an issue that witness Umed Singh, i.e. PW4, may not be actually following the deceased on another motorcycle as, in such case, he was the best person to take the injured to the hospital but the medical report, i.e. Ex.R1 shows that the injured persons were brought to the General Hospital, Tohana, by Tony and Rinku who have neither been produced as a witness to the occurrence nor have their statements have been recorded. However, the Tribunal has, while dealing with the issue, though noticed that there is some ambiguity with regard to the model number of the tractor but has found the explanation given by SI Om Parkash, who has been examined as PW-5, to be genuine

as, though the offending vehicle was not bearing any registration number at the time of occurrence, but during investigation its number was found to be HR-23-D-9062. It has also been put forward that a clerical mistake had occurred in remand paper, i.e. Ex.R-3 with regard to engine number and chassis number of the tractor involved in the accident. Thus, it has been held on the strength of oral and documentary evidence adduced that the same vehicle was involved as offending vehicle which was driven in rash and negligent manner by respondent no.1-Harpreet Singh, in which two persons lost their lives.

6. Learned counsel appearing on behalf of the appellant-Insurance Company has urged that this change in registration number, engine and chassis number as well as the model number of the tractor is mysterious and goes to show that there was some conspiracy hatched up by the claimants and the owner of the tractor by implanting the same subsequently.

However, in my considered view, this limb of argument can be noted to be rejected only for the reason that in case what is being argued on behalf of the Insurance Company is taken to be correct then it is evident that an issue of fraud/conspiracy committed by certain persons is being raised. However, it has to be examined as to whether there was any pleading on behalf of the Insurance Company to that effect? Learned counsel for the appellant-Insurance Company was completely at loss when he was requested to show from the written statement as to whether such pleading was there or not. He later on accepted that there is nothing regarding that in the pleading.

7. The Investigating Officer has been examined as PW5. Though suggestions were given to him that a false recovery memo after destroying

the actual recovery memo which was prepared at the place of accident was subsequently introduced in order to derive benefit for the claimants-applicants, which was denied by him, however, if it is the case of the Insurance Company that Investigating Officer was in collusion with the claimants-applicants such pleading would have been there in the written statement and cogent evidence should have been led on behalf of it to prove the same. Simply by giving suggestion even a suspicion can be raised but nothing would stand proved until and unless there is some evidence in that regard.

8. That apart, a mechanical report prepared by the authority has also been brought on record as Ex.P10 in which it is stated that offending vehicle was involved in accident. Thus, so far the physical involvement of the concerned vehicle is concerned it stands established because it was seized from the place of occurrence and mechanical report also shows that it was involved in such accident. However, there is discrepancy in describing its, engine and chassis number and model number which was rectified later on by saying that it was merely a clerical mistake. There is no reason to disbelieve such statement as nothing has been on record by the Insurance Company to rebut the same and to prove that some conspiracy was hatched up and fraud has been played in which a police personnel was also involved. It is well settled that the fraud has to be specifically pleaded and proved by leading cogent evidence. Thus, this limb argument has to be rejected.

The issue that why Umed Singh did not take the injured persons to the hospital and why some other person took them, who were not brought and examined, would also be not of much relevance as Umed Singh has been cross-examined in detail and he has withstood the test of the same and

he was also the first informant. That apart, it is well settled that the claimant does not have an obligation to prove the case beyond all reasonable doubts in these proceedings, as is to be done by the prosecution in a criminal trial.

9. The appellant-Insurance Company has also raised an issue regarding excessive compensation granted to the claimants with respect to both of the deceased. It is submitted that 50% has been taken into consideration under the head of future prospect which cannot be taken to be more than 40% as per the law laid down by the Constitution Bench of the Hon'ble Supreme Court in “**National Insurance Company Limited vs. Pranay Sethi and another**” AIR 2017 SC 5157. It has to be taken in mind that, at that point of time, when the matter was being considered, that decision of the Supreme Court was not available as the same was decided on 31.10.2017. However, now this Court even at this stage would have to consider the aforesaid Judgment and take a decision accordingly. This aspect would be dealt with in this judgment while dealing with the appeal filed by the claimants for enhancement of the compensation amount being FAO-8237-2015.

Accordingly, the finding recorded by the Tribunal that both the deceased lost their valuable life due to rash and negligent driving of respondent no.1- Harpreet Singh and the appellant-Insurance Company being insurer of the offending vehicle would be liable to pay compensation to the claimants stands upheld.

**CM-25981-CII-2015 in
FAO No.8237 of 2015**

10. This application has been filed under Section 5 of the Limitation Act for condoning the delay of 305 days in preferring the present appeal.

No counter-affidavit or reply has been filed by the respondents opposing the aforesaid application.

Heard.

In view of the grounds mentioned in the application, the same is allowed and the delay of 305 days in filing the present is hereby condoned.

FAO No.8237of 2015

This appeal has been preferred by the appellants, who were the applicants in the claim petition, for enhancement of the awarded compensation amount by the Judgment and Award dated 16.09.2014 passed by the Motor Accident Claims Tribunal, Fatehabad, Haryana, in petition no.13-MACT of 2014 by which the Tribunal, after recording a finding that the motor vehicular accident was the result of rash and negligent driving by the offending tractor being driven by respondent no.1 of the claim petition, awarded an amount of Rs.14,58,800/- to the claimants.

11. The aforesaid claim petition was filed for compensation upon the death of one Sultan Singh, i.e. the husband of appellant no.1. In the present appeal, the claimants are seeking enhancement of the compensation amount. Since the issue in hand is involved in all the appeals are intertwined, all of them are being considered together.

12. The claimants seek enhancement of Award on diverse grounds. It is contended that it is well settled that while considering the income of the deceased, the dearness allowance and house rent allowance are to be included whereas the Tribunal has deducted Rs.3,785/- and Rs.3,127/- allowed under the head of house rent allowance and conveyance allowance respectively, as a result of which, the monthly salary of the deceased came down from Rs.13,600 to Rs.6,700. It is further contended that in place of selecting the multiplier of 16, the multiplier of 14 was erroneously selected due to which compensation amount further came down. It is also stated that only Rs.10,000/- has been awarded to the claimants for performing last rites of the deceased and nothing has been given under the head of loss of consortium etc.

13. *Per contra* learned counsel for respondent no.3-Insurance Company has submitted that so far the allowances are concerned they can not be added for calculation of income of the deceased in a motor vehicular accident. However, the issue already stands considered and decided by the Apex Court in several of its decisions. A reference in this regard is made to the decision of the Hon'ble Supreme Court rendered in **“Sunil Sharma ad others vs. Bachitar Singh and others” 2011(11) SCC 425**. It has been observed that the term income has different connotations for different purposes. It has been held that the deductions made by the Tribunal on account of HRA, CCA and medical allowance are erroneous as they should have been taken into consideration for calculation of the income of the deceased. Even the deductions made towards EPF and GIS should also not have been deducted while making

such calculation.

Accordingly, it is held that deduction of HRA to the extent of Rs.3,785/- is not correct and has to be added in the monthly salary of the deceased and correction has to be made accordingly. However, the deduction made with respect to conveyance allowance is upheld as the same is given by the employer to the employee for reaching to the place of residence.

14. The issue regarding selection of multiplier stands set at rest by the decision of the Hon'ble Supreme Court rendered in “**Sarla Verma and others vs. Delhi Transport Corporation**” AIR 2009 SC 3104. The age of the deceased at the time of death has been shown by the Tribunal to be 32 years and as such in view of the decision of the Apex Court in **Sarla Verma** (supra), the multiplier has to be taken as 16 itself for the age group of 31 to 35 years.

Apart from the above, it is stated on behalf of the appellant that nothing has been given under the conventional heads save and except, Rs.10,000/- towards the expenses of funeral and last rites, which according to the appellant, should also be Rs.15,000/-.

It is also stated that nothing has been awarded for loss of future prospects whereas it is submitted by learned counsel that towards this head actually 50% has already been added but the addition should have been of 40% of the income only in view of paragraph 61 (iv) of the decision of the Constitution Bench of the Hon'ble Supreme Court rendered in **Pranay Sethi**(supra). The relevant passage from the above stands extracted as under:

“61. In view of the aforesaid analysis, we proceed to record our conclusion:-

(i) X X X X X X X X X X X X X X X X

(ii) X X X X X X X X X X X X X X X X

(iii) X X X X X X X X X X X X X X X X

(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.

(v) X X X X X X X X X X X X X X X X

(vi) X X X X X X X X X X X X X X X X

(vii) X X X X X X X X X X X X X X X X.”

Accordingly, it is held that the appellants-claimants are entitled to get only 40% of the income under the head- loss of future prospect.

In view of the several issues raised the calculation of compensation amount has to be made afresh.

15. The Tribunal has considered the gross salary of the deceased to be Rs.16,600/- per month, however, after deducting the HRA of Rs.3,785/- as well as conveyance allowance of Rs.3,127/- the monthly income has been assessed as Rs.6,700/- which is erroneous. In this total, the amount which the deceased was getting as HRA, would have to be added. It appears that the Tribunal has deducted $\frac{1}{4}$ of the income towards maintenance of deceased, personal and expenses as the number of dependents are about five. It does not appear from the record that there has been serious challenge to this, however, at the time of hearing of this appeal as it has been submitted by the learned counsel that $\frac{1}{3}$ rd of income should be deducted as father and mother of the deceased cannot be considered to be dependent upon the deceased. However, in view of the fact father, mother, widow of

the deceased and minor children all are living together at village Dangra, Tehsil Tohana and there is no material available on the record to show that father and mother are earning separately, in my considered opinion the deduction of ¼ of the income in the present case would be justified.

In view of the above discussion, the income of the deceased for the present purpose is assessed as Rs.6,700/- + Rs.3,785/-. The total comes to Rs.10,485/-.

16. So far loss of consortium is concerned the Apex Court in “Magma General Insurance Company Limited Vs. Nanu Ram alias Churu Ram and others,”2018 (4) RCR (Civil) 333, has held after considering the judgment of Constitution Bench rendered in **Pranay Sethi** (supra), as under:

“8. The grounds of challenge by the Insurance Company are dealt with seriatim.

8.1. XXXXXXXXXXXXXXXX

8.2. XXXXXXXXXXXXXXXX

8.3. XXXXXXXXXXXXXXXX

8.4. XXXXXXXXXXXXXXXX

8.5. XXXXXXXXXXXXXXXX

8.6. XXXXXXXXXXXXXXXX

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. 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."^[20]

[20] BLACK'S LAW DICTIONARY (5th ed. 1979)]

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^[21]. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of Filial Consortium.

[21 Rajasthan High Court in *Jagmala Ram @ Jagmal Singh & Ors. v. Sohi Ram & Ors* 2017 (4) RLW 3368 (Raj);

Uttarakhand High Court in *Smt. Rita Rana & Anr. v. Pradeep Kumar & 6 Ors.* 2014 (3) UC 1687;

Karnataka High Court in *Lakshman and Ors. v. Susheela Chand Choudhary & Ors* (1996) 3 Kant LJ 570 (DB)]

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."

17. In view of the aforesaid decision of the Hon'ble Supreme Court in the present case, I deem it proper and appropriate to award the father and the mother of the deceased, an amount of Rs.40,000/- each for loss of Filial Consortium. In addition to that I grant the widow the loss of Spousal

Consortium at the rate of Rs.40,000/-.

Accordingly, in the light of the above mentioned discussion the appellants-claimants are held entitled for following amount by way of compensation:

1.	Income	-	Rs.10,485 p.m.
2.	Income after addition of 40% Future Prospect.	-	Rs.14679 p.m. (10485+4194)
3.	$\frac{1}{4}$ deduction towards personal - expenses.	-	Rs.3669.75 p.m. (round figure 3670) (14679 X $\frac{1}{4}$)
4.	Total income after $\frac{1}{4}$ deduction.	-	Rs.11,009/-p.m. (14679-3670)
5.	Multiplier	-	16
6.	Loss of future income	-	Rs.21,13,728/-p.a. (11009x12x16)
7.	Funeral expenses	-	Rs.15,000/-
8.	Loss of estate	-	Rs.15,000/-
9.	Loss of Filial Consortium	-	Rs.80,000/- (Rs.40,000/- each to appellants no.4 and 5)
10.	Loss of Spousal Consortium-	-	Rs.40,000/-
Total compensation			- Rs.22,63,728/-

This amount will also carry interest at the rate of 12% per annum from the date of filing of claim petition till its payment, as has been given by the Apex Court in **Magma General Insurance Company** (supra).

18. Before parting with the matter it is made clear that since no appeal assailing the Judgment and Award of Tribunal by Smt.Poonam and others, who were the claimants in Claim Petition no.14-MACT of 2014, for enhancement of awarded amount, has been preferred and the appeals filed by the Insurance Company assailing the Judgment and Award with respect to grant of compensation to the aforesaid claimants has already been dismissed as above, this Court is refraining itself from deciding such issue of enhancement of awarded amount with respect to the Claim Petition no.14-C of 2014.

Accordingly, in view of the discussion made as above, the FAO no.10217 and 10222 of 2014 stand dismissed and FAO no. 8237 of 2015 stands allowed to the aforesaid extent and the impugned Award stands modified as above.

December 21, 2018

dharamvir

(DR. RAVI RANJAN)

JUDGE

Whether speaking/reasoned

Whether Reportable

Yes

Yes