211(2)

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.1270 of 2014
Date of Decision: 01.11.2018

Dhanpati

Appellant

Versus

Rampal @ Lala and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ajit Kumar Sharma, Advocate for
Mr. R.D. Yadav, Advocate
for the appellant.

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

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AVNEESH JHINGAN, J (Oral):

The claimant has filed the present appeal against the award dated 23.08.2013 passed by the Motor Accident Claims Tribunal, Rewari (for brevity 'the Tribunal') in MACT Case No.170 of 2011/2013.

2. Mother of Ompal @ Monu is the appellant. The driver of Maruti Car bearing registration No. HR-36J-6587 (hereinafter referred to as 'the offending vehicle'); the owner of offending vehicle and insurer of the offending vehicle i.e. ICICI Lombard General Insurance Company Ltd. have been arrayed as respondents No.1 to 3, respectively in this appeal.

3. The brief facts emanating from the record are that on

11.01.2011 at about 01:30 A.M., Ompal @ Monu, aged about 24 years and Surender @ Sunder were going on a motorcycle bearing registration No. HR-36K-6364. When they reached near Railway Station of village Palhawas, their motorcycle was hit by rashly and negligently driven offending vehicle. As a result of the impact, both the occupants of the motorcycle fell down, sustained fatal injuries and died at the spot. FIR No. 04, dated 11.01.2011 was registered at Police Station Rohrai. The legal heir of the deceased filed claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') before the Tribunal.

4. The Tribunal after considering the facts and appreciating the evidence adduced, held that the accident occurred due to rash and negligent driving of the offending vehicle. The owner, driver and the insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

5. The Tribunal assessed the monthly income of the deceased as ₹5000/- per month, relying upon the minimum wages prevalent in the State at the time of accident. The deceased was unmarried, hence, ½ deduction towards self expenses was made. Keeping in view the age of mother of the deceased, multiplier of 14 was applied by the Tribunal. The Tribunal awarded a sum of ₹4,55,000/- alongwith interest @ 6% per annum. The amount awarded included compensation of ₹35,000/- towards conventional heads.

6. Heard learned counsel for the parties.

7. Learned counsel for the appellant contended that no amount for future prospects have been awarded. The Tribunal erred in applying multiplier of 14 considering the age of mother of the deceased. It was further argued that compensation awarded towards the conventional heads is on the lower side.

8. Learned counsel for the insurer defended the award. He resisted further enhancement and argued that the compensation under conventional heads be granted strictly in consonance with the decision of Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others (2017) AIR (SC) 5157*** and ***Hem Raj Vs. Oriental Insurance Company Ltd. 2018(2) PLR 480.***

9. The contention of learned counsel for the appellant deserves acceptance. In view of decisions of the Supreme Court, in case of ***Pranay Sethi*** (supra) and ***Hem Raj*** (supra), 40% future prospects are awarded as the deceased was 24 years of age at the time of accident. The appellant is entitled to ₹15,000/- each for funeral expenses and loss of estate.

10. The Tribunal erred in applying the multiplier of 14 considering the age of 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 decision of the Supreme Court, multiplier is to be applied keeping in view the age of the deceased and not the age of mother of the deceased. The deceased was 24 years of age at the time of accident, as such, multiplier of 18 is to be applied.

12. The 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 the Constitution Bench of the Supreme Court in ***Pranay Sethi's case*** (supra) has held that loss of consortium is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'. The Supreme Court held:~

"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. vs. 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 the 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 Vehicle Act is 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 sisters of the deceased, an amount of ₹40,000/- each for loss of Filial Consortium".

13. In view of decision of the Supreme Court, ₹40,000/- is awarded to mother of the deceased towards loss of filial consortium.

14. In view of above discussion, compensation is recalculated below:-

Particulars	***Amount (in ₹)***
Monthly income of the deceased assessed	5,000/-
40% Future Prospects	2,000/-
Sub Total	7,000/-
1/2 deduction for self expenses	3,500/-
Monthly Dependancy	3,500/-
Annual Dependancy	42,000/-
Applying multiplier of 18	**7,56,000/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Loss of filial consortium to the mother	**40,000/-**
Grand Total	**8,26,000/-**

15. The award dated 23.08.2013 is modified to the extent

that the amount awarded by the Tribunal of ₹4,55,000/- is enhanced to ₹8,26,000/-.

16. The claimant shall be entitled to enhanced compensation alongwith interest @ 7.5% per annum from the date of filing of the claim petition till the date of realization of the amount.

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

[AVNEESH JHINGAN]
JUDGE

November 01, 2018
pankaj baweja

1. Whether speaking/ reasoned	:	Yes/ No
2. Whether reportable	:	Yes/ No