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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.3732 of 2013
Date of Decision: 14.11.2018

Babli and others

Appellants

Versus

Pritam Singh and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Amit Singla, Advocate
for the appellants.

Mr. Vishal Kashyap, A.A.G., Haryana.

Mr. Paul S. Saini, Advocate
for the Insurance Company.

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AVNEESH JHINGAN, J (Oral):

The award dated 08.02.2013 passed by Motor Accident Claims Tribunal, Hisar (for brevity 'the Tribunal') has been assailed by legal heirs of Bir Singh (deceased) for enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act').

Widow, two minor chilren and mother of Bir Singh are the appellants. The driver of Bus bearing registration No. HR-57-1393 (hereinafter referred to as 'offending vehicle'); owners of the offending vehicle i.e. Haryana Roadways, Sirsa Depot & State of Haryana and insurer of offending vehicle i.e. the New India

Assurance Company Ltd., Divisional Office, Hisar have been arrayed as respondents No.1 to 4 respectively in the appeal.

On 22.02.2012, Bir Singh was coming from M/s Jai Hanuman Bhatta Udyog, Badhawar. When he reached near Jai Hanuman Petrol Pump, Jind Road, Barwala, his Scooter was hit by rashly and negligently driven offending vehicle. As a result of the accident, he suffered multiple injuries and was taken to Community Health Centre, Barwala, where he was declared dead. A claim petition was filed under Section 166 of the Act. The Tribunal after considering the facts and appreciating the evidence on record held that the accident had 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 compensation. The Tribunal awarded a sum of ₹7,20,000/- alongwith interest @ 7.5% per annum as compensation. The amount awarded included ₹20,000/- each for loss of consortium and funeral expenses.

The claimants had failed to adduce any evidence with regard to occupation or monthly income of the deceased, consequently, the Tribunal assessed monthly earning of deceased as ₹5,000/-. 1/3rd deduction for self expenses was made and multiplier of 17 was applied.

Heard learned counsel for the parties, perused the paper book and relevant documents on record.

Learned counsel for the appellants assailed the award on three grounds, firstly, that no future prospects have been awarded;

secondly, that deceased was survived by four dependants and the Tribunal had erred in making 1/3rd deduction for self expenses and lastly, that the amount awarded under the conventional heads is on the lower side.

Learned counsel for the insurer defended the award and resisted any further enhancement.

The contentions raised by learned counsel for the appellants deserve acceptance. Having due regard to the decisions of Supreme Court in case of ***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***, 40% future prospects are awarded as the deceased was 27 years of age. The appellants are entitled to ₹15,000/- each for funeral expenses and loss of estate. ₹40,000/- is awarded for loss of consortium to the widow.

Deceased was survived by four dependants, in view of decision of Supreme Court in case of ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21,*** 1/4th deduction for self expenses is to be made.

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'.*
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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. vs. 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".*
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> *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 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 sisters of the deceased, an amount of ₹40,000/- each for loss of Filial Consortium".

In view of decision quoted above, ₹40,000/- each is awarded to two minor children for loss of parental consortium. ₹40,000/- is awarded to mother of the deceased for loss of filial consortium.

In view of above discussion, compensation is re-calculated and tabulated as under:-

Particulars	***Amount (in ₹)***
Monthly income of the deceased assessed	5,000/-
40% Future Prospects	2,000/-
Sub Total	7,000/-
1/4th deduction for self expenses	(-) 1,750/-
Monthly Dependancy	5,250/-
Annual Dependancy	63,000/-
Applying multiplier of 17	**10,71,000/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Loss of consortium to widow	**40,000/-**
Loss of parental consortium to two minor children [40,000/- x 2]	**80,000/-**
Loss of consortium to the mother	**40,000/-**
Grand Total	**12,61,000/-**

The award dated 08.02.2013 is modified to the extent that amount awarded of ₹7,20,000/- by the Tribunal is enhanced to ₹12,61,000/-.

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

The appeal is allowed in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

November 14, 2018
pankaj baweja

1. Whether speaking/ reasoned : Yes/ No

2. Whether reportable : Yes/ No