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

**XOBJC No.102-CII of 2015 in/and
FAO No.1606 of 2015 (O&M)
Date of Decision : 06.10.2018**

ORIENTAL INSURANCE COMPANY

....APPELLANT

V/S

SEETA AND ANOTHER

....RESPONDENTS

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

Present: Mr. Shivam Grover, Advocate
for the appellant.

Ms. Ekta Thakur, Advocate
for respondent Nos.1 & 2/Cross-objectors.

Service of Respondent No.3 *dispensed with* vide order dated 26.05.2015.

B.S. WALIA, JUDGE (ORAL)

[1] FAO No.1606 of 2015 as well as Cross Objection No.102-CII of 2015, CM Nos.12453-54-CII of 2015 are being decided vide this common order.

[2] Challenge to award dated 31.10.2014 has been made by the Insurance Company on the ground that the issue of rashness and negligence has been wrongly decided by the learned Motor Accidents Claims Tribunal, Chandigarh (hereinafter referred to as the 'Tribunal') in favour of the respondent-claimants. Further that compensation on account of future prospects had erroneously been granted to the extent of 50%. Lastly, that the multiplier had wrongly been applied as '18' by taking into account the age of

the deceased, whereas multiplier was required to be applied as per the age of the respondent/claimant Nos.1 & 2.

[3] *Per contra*, cross-objections have been filed, stating that future prospects ought to have been awarded @ 100% of the income, besides oral prayer is also for award of filial consortium to both parents. The 'Tribunal' by taking into account the age of the deceased as 25 years, occupation as Driver, income as Rs.6000/- per month, by adding 50% of the income towards future prospects, by applying 50% deduction towards personal expenses and further by applying multiplier of '18' and awarding Rs.25,000/- towards funeral expenses and Rs.50,000/- towards loss of estate, awarded a compensation of Rs.10,47,000/-, out of which, respondent/claimant No.1-mother was held entitled to 70% share, while respondent/claimant No.2 was held entitled to 30% share alongwith interest @ 7.5% per annum from the date of filing of the claim petition till date of realization.

[4] During the course of arguments, learned counsel for the appellant contended that the compensation on account of future prospects as well as for funeral expenses and loss of estate had been wrongly awarded and the future prospects could not have been awarded more than 40% of the established income of the deceased minus the tax component while compensation on account of loss of funeral expenses was liable to be reduced from Rs.25,000/- to Rs.15,000/-. Likewise, compensation on account of loss of estate was liable to be reduced from Rs.50,000/- to Rs.15,000/-. It was further contended that it was only the mother, who was entitled to compensation since it had not been proved that the father of the deceased was dependant on the deceased.

[5] *Per contra*, learned counsel for the respondents/claimants/cross-objectors contended that each of the parents was entitled to award of loss of

parental consortium @ Rs.40,000/- besides interest payable was liable to be enhanced from 7.5% per annum to 12% per annum in view of the decision of Hon'ble the Supreme Court in '***Magma General Insurance Company Limited*** *versus* ***Nanu Ram alias Chuhru Ram and others'*** in *Civil Appeal No.9581 of 2018, arising out of SLP (Civil) No.3192 of 2018.*

[6] I have considered the submissions of learned counsel for the parties and am of the view that the appeal as well as cross-objections are liable to be partly allowed. Admittedly, deceased was 25 years of age and was self employed. As per Paragraph No.61(iv) of the decision of Hon'ble the Supreme Court in '***National Insurance Company Limited*** *versus* ***Pranay Sethi and others'***, *2017(4) RCR (Civil) 1009,* where the deceased is self employed or on fixed salary and is less than 40 years of age then 40% of the established income of the deceased minus the tax component is to be taken into account for the purpose of computing the future prospects. Paragraph No.61(iv) of the decision of *Pranay Sethi's* case (supra) case is reproduced as under:-

> *"61 (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."*

[7] Further as per Paragraph No.61(viii) of the decision in *Pranay Sethi's* case (supra), compensation towards funeral expenses is to be awarded @ Rs.15,000/-, likewise, towards loss of estate. Accordingly, sum of Rs.25,000/- awarded towards funeral expenses is reduced to Rs.15,000/-,

while Rs.50,000/- awarded towards loss of estate is reduced to Rs.15,000/-. No amount is payable on account of loss of love and affection, nor is the income of the deceased liable to be enhanced in view of the categorical stand of PW2-Ajay Kumar, employee of Autopace Private Limited, where the deceased Sarwan Kumar was working as Driver, who proved his appointment letter as Ex.P-8 and deposed that deceased was having monthly income of Rs.6,000/-. Although as per Paragraph No.61 (viii) of the decision in *Pranay Sethi's* case (supra), loss of consortium is to be awarded @ Rs.40,000/-, yet as per subsequent decision of Hon'ble the Supreme Court in '*Magma General Insurance Company Limited*' case (supra), Hon'ble the Supreme Court, while considering the decision in *Pranay Sethi's* case (supra) has held that the parents are entitled to Rs.40,000/- on account of loss of filial consortium. Paragraph No.8.7 of the decision in '***Magma General Insurance Company Limited***' case (supra) is reproduced 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'.*
>
> *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.*

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."

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.

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, the respondent/claimant Nos.1 & 2 are held entitled to award of Rs.40,000/- each on account of loss of filial consortium. Deduction made @ 50% does not warrant interference in the absence of it having been established that the father of the deceased was dependent upon the income of the deceased. Accordingly, compensation shall be payable only to the mother of the deceased. However, compensation on account of loss of filial consortium will be payable to each of the parents.

[9] No change is liable to be made on account of applicability of multiplier of '18' since it is the age of the deceased, which is to be taken into account and as per the decision of Hon'ble the Supreme Court in Paragraph No.42 in *Sarla Verma's case* (supra) for the age group 21-25, multiplier of '18' is applicable while as per paragraph No.61(vii) of the decision in *Pranay Sethi's* case (supra), it is the age of the deceased, which is to be taken into account for the purpose of working out the multiplier.

[10] As regards, question of payment of interest, Hon'ble the Supreme Court in '*Magma General Insurance Company Limited's* case (supra) has awarded interest @ 12% per annum in the case of accident of the year 2013. Accident in the instant case is of the year 2012. Accordingly, in view of the decision in '*Magma General Insurance Company Limited*' case (supra), interest payable is enhanced from 6% per annum to 12% per annum.

[11] Accordingly, in the light of the position as noted above, the appeal of the appellant-Insurance Company as also the cross-objections are partly allowed and the respondents/cross-objectors are held entitled to the following compensation:-

Particulars	Assessed by the Tribunal (Rs.)	Re-assessed (Rs.)
Income assessed	6000	6000
Future Prospects	50% of 6000=3000	40% of 6000=2400
Total Income	9000	8400
Deduction *qua* dependency 50% of total income	4500	4200
Net Income	4500	4200
Multiplier	18	18
Annual Income	4500x12x18=9,72,000	4200x12x18=9,07,200
Add Conventional Heads		
(i) Funeral Expenses	25,000	15,000
(ii) Loss of Estate	50,000	15,000
(iii) Loss of filial Consortium	NIL	40,000 to Appellant No.1 (Mother) 40,000 to Appellant No.2 (Father)
Total Compensation	10,47,000	10,17,200
Interest	6%	12%

[12] Accordingly, in the light of the position as noted above, the appeal/cross-objections are **partly allowed**. Respondent-cross objector-mother is held entitled to award of compensation of Rs.9,77,200/- alongwith interest @ 12% per annum with effect from the date of the claim petition till date of payment on the enhanced amount, less payment, if any already made as against compensation of Rs.10,47,000/- awarded along with interest @ 6% per annum w.e.f. date of claim petition till date of payment. Needful to mention, the Insurance Company shall deduct tax liability *qua* future prospects in accordance with the decision in *Pranay Sethi's* case (supra). Respondent/Cross Objector No.2 i.e. father of the deceased shall be entitled to award of Rs.40,000/- towards loss of filial consortium along with interest @ 12% per annum with effect from the date of claim petition till date of payment.

[13] Accordingly, appeal as well as cross-objections are partly allowed to the extent noted above and the award dated 31.10.2014 is modified accordingly.

[14] Since the main appeal has been decided, therefore, pending miscellaneous application(s) are also disposed of.

(B.S. WALIA)
JUDGE

October 06, 2018
rajneesh

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