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

**FAO No.4156 of 2014 (O&M)
Date of Decision: 13.11.2018**

Sushma Devi and others

Appellants

Versus

Vikram Singh and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Chanderhas Yadav, Advocate
for the appellants.

Mr. Yogesh Gupta, Advocate
for respondent No.3.

AVNEESH JHINGAN, J (Oral):

The present appeal has been filed against award dated 20.09.2013 passed by the Motor Accident Claims Tribunal, Narnaul (for brevity 'the Tribunal').

The appellants are the widow, two minor children and parents of Rajveer (deceased). The driver of tempo bearing registration No. HR-66-7785 (hereinafter referred to as 'offending vehicle'); owner of offending vehicle and insurer of offending vehicle i.e. IFFCO TOKIO General Insurance Company Limited have been arrayed as respondents No.1 to 3. Grand mother and younger brother of the deceased have been arrayed as performa respondents in the appeal.

The facts necessary for adjudication of the present appeal are that on 25.01.2012, Rajveer was driving his motorcycle bearing registration No. HR-35G-2511. When he reached near village Mandi at Narnaul-Nangal Chaudhary Road, his motorcycle was hit by rashly and negligently driven offending vehicle. As a result of the impact, he suffered grievous injuries and died on the spot. FIR No.12 dated 25.01.2012 was registered at Police Station Sadar Narnaul. The legal heirs of the deceased filed claim petition under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act'). After considering the facts and appreciating the evidence adduced, the Tribunal awarded a sum of ₹71,44,496/- alongwith interest @ 7.5% per annum. The amount awarded included ₹10,000/- for loss of consortium and ₹10,000/- for funeral and last rites. The loss of dependancy was calculated by the Tribunal as ₹71,24,496/-. 1/4th deduction for self expenses was made as the deceased was survived by dependants ranging between 4 to 6 and multiplier of 17 was applied.

The only issue raised by learned counsel for the appellants is that the amount awarded under the conventional heads is on the lower side.

Learned counsel for the insurer argued that the amount under conventional heads should be awarded strictly in accordance with the decision of the Supreme Court in case of **National Insurance Company Limited Vs. Pranay Sethi and others (2017) AIR (SC) 5157.**

The contention raised by learned counsel for the appellants deserves acceptance. In view of decision of the Supreme Court in **Pranay Sethi's** case (supra), the appellants are entitled to ₹15,000/- each for funeral expenses and loss of estate and ₹40,000/- for loss of consortium to widow.

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 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 of the Supreme Court quoted above, ₹40,000/- each is awarded to two minor children towards loss of parental consortium and ₹40,000/- to mother of the deceased as loss of filial consortium.

The award dated 20.09.2013 is modified to the extent that the compensation of ₹71,44,496/- is enhanced by ₹1,70,000/-.

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 13, 2018

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