IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

XOBJS No. 262-CII of 2015 in/and
FAO No. 4836 of 2013
DECIDED ON: OCTOBER 26, 2018

UNITED INDIA INSURANCE CO. LTD

.....APPELLANT

VERSUS

MADAN SINGH BENIWAL & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Sanjiv Pabbi, Advocate
for the appellant-Company.

Mr. Barjinder Singh, Advocate
for respondents No.1 and 2 and Cross Objectors

*****

AVNEESH JHINGAN, J (ORAL)

The award dated 18.04.2013 passed by Motor Accident Claims Tribunal,Gurgaon (for short 'the Tribunal') is under challenge in appeal filed by United India Insurance Company Ltd. and by Cross Objections filed by the claimants.

2. The brief facts of the case are that on 16.11.2011, Rakshit was returning back to his home. On his way, he was hit by rashly and negligently driven TATA-407 bearing registration No. HR-46-B-2024 (hereinafter referred to as 'offending vehicle'). As a result of the impact of collision, he received grievous injuries, which proved fatal. He died on 26.11.2011. FIR No. 343, dated 16.11.2011, was registered at Police Station DLF Qutab Enclave,

Gurgaon.

3. The parents of the deceased filed a claim petition under Section 166 of Motor Vehicles Act, 1988 (for short 'the Act').

4. The Tribunal after considering the facts and appreciating the evidence adduced, awarded a compensation to the tune of ₹10,90,000/- alongwith interest @7.5% per annum. The amount awarded includes ₹10,000/- for the last rites of the deceased.

5. The Tribunal assessed the monthly income of the deceased as ₹10,000/- and 50% of his earnings was deducted for his personal expenses. The Tribunal applied the multiplier of 18.

6. The Insurer of the offending vehicle has filed the present appeal contending that the monthly earnings of the deceased assessed by the Tribunal is on higher side.

7. There are cross-objections filed by the claimants for the enhancement of compensation.

8. Learned counsel for the appellant-Insurance Company has argued that the deceased was only a student of Class XII, his age was 17 years 07 months and he was not earning anything, hence, the notional income of ₹15,000/- per annum as per Second Schedule to the Act should be adopted to award the compensation.

9. Learned counsel for the cross-objectors argued that no future prospects have been awarded and the amounts awarded under the conventional heads are on lower side.

10. Learned counsel for the cross-objector further argued that the deceased was a bright student. It was proved on record that he was participating

in extra curricular activities and was having an excellent academic record. He further contended that the deceased was pursuing the Non-Medical stream in order to fulfil his aspiration for becoming an Engineer.

11. No amount of monetary compensation is enough to compensate the parents for the death of their young kid. The Court is duty bound to award just and equitable compensation. In the absence of any evidence regarding the earnings of the deceased, the safest yardstick would be to rely upon the minimum wages prevalent at the time of accident. It would not be appropriate to equate a Class XII student with an un-skilled labourer. He was pursuing his Non-Medical stream, in such circumstances, his monthly earnings is taken as per the minimum wages given to the skilled labourer. Minimum wages for a skilled labourer were ₹5293 in the Month of November, 2011. Keeping in view his participation in extra curricular activities and the academic record, the monthly earnings of the deceased is assessed as ₹6000/- per month

12. There is no dispute between the parties with regard to the deduction made for self expenses and multiplier applied for by the Tribunal.

13. In view of the Apex Court judgments in the cases of ***National Insurance Co. Ltd. v. Pranay Sethi;*** ***2017 (4) RCR (Civil) 1009*** and ***Hem Raj vs. Oriental Insurance Company*** Ltd; 2018 (2) PLR 480, 40% future prospects are awarded. The, claimants are entitled to a sum of ₹15,000/- each, for funeral expenses and for loss of estate.

14. The Supreme Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram & others;*** ***2018 (4) RCR (Civil) 333;*** has held 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. ***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."

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. 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 ₹40,000/- each for loss of Filial Consortium."

15. In view of the law laid down by the Supreme Court, the parents of the deceased are entitled to an amount of ₹40,000/- for Filial Consortium.

16. In view of afore-said discussion, the compensation is recalculated as under:

	Head	**Compensation awarded**
(i)	Income	₹6,000/- per month
(ii)	Future prospects at 40%	₹2,400/- per month
(iii)	Total Income	₹8,400/- per month
(iv)	Deduction of personal expenses	₹4200/- (i.e. 1/2 of total income)
(v)	Multiplier	18 (as per age of deceased)
(vi)	Total Dependency	8400-4200x12x18=₹9,07,200/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
(ix)	Filial Consortium	₹40,000/-
	Total Compensation awarded	₹9,77,200/-

17. The award dated 18.04.2013 is partly modified to the extent that the amount awarded of ₹10,90,000/- is reduced to ₹9,70,200/-. During the pendency of present appeal only an amount of ₹3,00,000/- was disbursed to the claimants. Claimants shall be entitled to the balance amount alongwith interest @7.5% per annum from the date of filing of the claim petition till realization of amount.

18. The appeal as well as cross-objections are disposed off in the manner indicated above.

(AVNEESH JHINGAN)
JUDGE

OCTOBER 26, 2018
sham

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