

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 5439 of 2013

DECIDED ON: NOVEMBER 12, 2018

KIRAN WADHERA & ANR

.....APPELLANTS

VERSUS

RAGHVIR SINGH & ANR

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Rajeev Dev Sharma, Advocate
for the appellants.

Mr. A.K. Kansal, Advocate for
Mr. R.K. Bansal, Advocate
for respondent No.1.

Mr. Ashwani Talwar, Advocate
for respondent No.2.

AVNEESH JHINGAN, J (ORAL)

The widow and minor son of Amit Wadhera-deceased are in appeal against the award dated 05.08.2013 passed by Motor Accident Claims Tribunal, Pathankot (for short 'the Tribunal'). The appeal has been filed for enhancement of the compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act').

2. The owner-cum-driver of bolero car bearing registration No. PB-11-AV-8788 (hereinafter referred to as 'offending vehicle') and insurer of the

offending vehicle, have been arrayed as respondents No.1 and 2 respectively in the appeal.

3. The facts as emanating from the record are that on 24.06.2012, the deceased aged 33 years was coming back from Patiala to Bathinda on his Maruti Alto Car bearing registration No. PB-18-D-7171. When he reached near Village Badhbar, a rashly and negligently driven offending vehicle dashed into his car. As a result of impact, he died on the spot. FIR No. 44, dated 25.06.2012, under Sections 304-A, 427 and 279 of the Indian Penal Code was got registered.

4. The claim petition under Section 166 of Motor Vehicles Act, 1988 (for short 'the Act') was filed.

5. The Tribunal after considering the facts and appreciating the evidence adduced, awarded a compensation to the tune of ₹44,83,100/- alongwith interest @9% per annum. The amount awarded includes ₹9500/- for general damages. The Tribunal held that the accident occurred due to rash and negligent driving of the offending vehicle. The owner-cum-driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

6. The deceased was working as Branch Manager with ICICI Bank, Pathankot. The monthly earning of the deceased was proved as ₹35,026/- per month. 1/3rd deduction for self expenses was made. The age of the deceased was taken as 33 years, hence, multiplier of 16 was applied.

7. Heard learned counsel for the parties.

8. Learned counsel for the appellants argued that no future prospects have been awarded by the Tribunal and the amounts awarded under the

conventional heads are on lower side. No other issue has been raised.

9. Learned counsel for the insurer argued that the amount awarded under the conventional heads should be enhanced strictly in accordance with the law laid down by the Supreme Court in **National Insurance Co. Ltd. vs. Pranay Sethi and others; 2017 (4) RCR (Civil) 1009.**

10. The deceased was 33 years of age at the time of accident and was having a permanent job. Having due regard to the decision of Supreme Court in **Parnay Sethi's case (supra)**, 50% future prospects are to be awarded. Claimants are also entitled to a sum of ₹15,000/- each, for funeral expenses and for loss of estate. The widow of the deceased is entitled to ₹40,000/- for loss of consortium.

11. 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.”

11. In view of the decision quoted above, the minor son of the deceased is entitled to an amount of ₹40,000/- for loss of Parental Consortium.
12. Since there is no dispute between the parties with regard to loss of dependency i.e. ₹44,73,600/-, 50% of the said amount is awarded for future prospects i.e. ₹22,36,800/-.
13. As per the above discussion amount awarded under the conventional heads is enhanced from ₹9500/- to ₹1,10,000/-
14. The award dated 05.08.2013 is modified to the extent that amount awarded of ₹44,83,100/- is enhanced by ₹23,37,300/-. The appellants are entitled to enhanced amount alongwith interest @7.5% per annum from the date of filing of the claim petition till realization of amount.
15. The appeal is allowed in the afore-said terms.

NOVEMBER 12, 2018
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(AVNEESH JHINGAN)
JUDGE

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