

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 3296 of 2015

DECIDED ON: NOVEMBER 16, 2018

BALRAJ AND ANOTHER

.....APPELLANTS

VERSUS

GURCHARAN SINGH & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Keshav Pratap Singh, Advocate
for the appellants.

Mr. Vishal Kashyap, AAG, Haryana.

Mr. Raj Kumar Bashamboo, Advocate
for respondent No.5-Insurance Company.

AVNEESH JHINGAN, J (ORAL)

The present appeal has been filed by the husband and minor son of Suresh Kumari (deceased) against the award dated 20.10.2014 passed by Motor Accident Claims Tribunal, Kaithal (for brevity 'the Tribunal').

2. The brief facts necessary for the adjudication of the present appeal are that on 24.06.2013 Balraj alongwith his wife Suresh Kumari (deceased) and minor son was coming from patiala to his village Narad, on motorcycle bearing registration No. HR-08-G-1036. When they reached bus stand of village

Balbera on Patiala-Cheeka road, Balraj stopped his motorcycle on a kacha portion of the road near a fruit rehri. In the meantime, his motorcycle was hit by a bus bearing registration No. HR-64-1777 (hereinafter referred to as 'offending vehicle') being driven by its driver in a rash and negligent manner. As a result of impact, Suresh Kumari fell down from the motorcycle and came under the wheels of the offending vehicle. She was shifted to Rajindra Hospital, Patiala where she succumbed to her injuries. FIR No. 99, dated 26.04.2013, under Sections 279, 304-A of the Indian Penal Code was registered at Police Station Sadar, Patiala.

4. A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') was filed by husband and minor son of the deceased before the Tribunal.

5. The Tribunal after considering the facts and appreciating the evidence adduced, awarded a compensation to the tune of ₹11,15,000/- alongwith an interest @7.5% per annum. The Tribunal held that the accident occurred due to rash and negligent driving of the offending vehicle. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The amount awarded includes ₹75,000/-, for loss of consortium to the husband of the deceased and an amount of ₹20,000/- for funeral expenses.

6. Heard learned counsel for the parties, perused the paper book and relevant documents produced by them.

7. Learned counsel for the appellants contended that the amount awarded under the conventional heads is on lower side.

8. Learned counsel for the respondent-Insurance Company argued that the amounts awarded by the Tribunal for funeral expenses and for loss of

consortium are on higher side.

9. There is no dispute between the parties regarding loss of dependency calculated by the Tribunal. The only issue involved in the present appeal is with regard to the amount awarded under the conventional heads. As per the decision of the Supreme Court judgments rendered in the cases of **National Insurance Co. Ltd. vs. Pranay Sethi and others;** 2017 (4) RCR (Civil) 1009 and **Hem Raj vs. Oriental Insurance Company Ltd ;**2018 (2) PLR 480, claimants are entitled to a sum of ₹15,000/- each, for funeral expenses and for loss of estate. The husband of the deceased is entitled to ₹40,000/- for loss of consortium.

10. 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 of the Supreme Court, minor son of the deceased is entitled to an amount of ₹40,000/- for loss of parental consortium.

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

	Head	Compensation awarded
(i)	Income	₹5000/- per month
(ii)	Multiplier	17 (as per age of deceased)
(vi)	Total Dependency	₹5000x12x17=₹10,20,000/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
(ix)	Loss of consortium	₹40,000/-
(x)	Parental Consortium to the minor son	₹40,000/-
	Total Compensation awarded	₹11,30,000/-

13. The award dated 20.10.2014 is modified to the extent that amount awarded of ₹11,15,000/- is enhanced by ₹15,000/-. The claimants shall be entitled to interest @7.5% per annum on the enhanced amount from the date of filing of claim petition till realization of amount.

14. The appeal is partly allowed in the afore-said terms.

NOVEMBER 16, 2018
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(AVNEESH JHINGAN)
JUDGE

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