(104) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.4288 of 2015
Date of decision: 25.10.2018

Bimla and another .... Appellants

Versus

Narinder and others .... Respondents

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

Present: Mr. Sushil Bhardwaj, Advocate for the appellants.

None for respondent No.1.

Mr. V. Ramswaroop, Advocate for respondent No.3-
Insurance Company.

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B.S. Walia, J. (Oral),

[1] Appeal has been filed by the parents of deceased Sachin who died at the age of 17 years in a motor vehicular accident on 03.11.2013. The learned Motor Accidents Claims Tribunal, Karnal (hereinafter referred to as 'the Tribunal') by treating the deceased as unskilled labourer assessed notional income as ₹ 6500/- per month and by imposing 50% deduction on account of personal expenses of the deceased as he was unmarried, worked out dependency at ₹ 3250/- per month. Thereafter, by applying multiplier of 18, assessed dependency at ₹ 7,02,000/-, whereafter by awarding a sum of ₹ 1,00,000/- on account of loss of love and affection and ₹ 25,000/- towards funeral expenses, awarded compensation of ₹ 8,27,000/- along with interest

@ 9% per annum with effect from the date of claim petition till date of payment.

[2] Prayer in the appeal is for modification of award and for enhancement of compensation on the ground that no amount had been awarded on account of future prospects despite entitlement; besides, although no amount was payable on account of loss of love and affection, yet a corresponding award had to be made on account of loss of consortium @ ₹ 40,000/- to each of the parents of the deceased, desides, ₹ 15,000/- each on account of loss of estate and funeral expenses.

[3] Per contra, learned counsel for respondent No.3-Insurance Company contended that the compensation awarded was just and reasonable and did not warrant interference.

[4] I have considered the submissions of learned counsel for the parties.

[5] Admittedly, the deceased was 17 years of age at the time of his death on 03.11.2013. Notional income of the deceased was assessed at ₹ 6500/- per month as unskilled labourer and by applying deduction of 50% of the income of the deceased towards his personal expenses, monthly dependency of ₹ 3,250/- and total dependency of ₹ 7,02,000/- was worked out by applying multiplier of 18.

[6] As per paragraph No.61 (iv) of the decision in **National Insurance Company Limited v. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009**, where the deceased was self-employed and less than 40 years of age, then in that eventuality 40% of the established income of the deceased minus the tax component is to be taken into account for the

purpose of computing future prospects payable. Paragraph No.61 (iv) of the decision in Pranay Sethi's case (supra) 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."*

Since in the instant case, the deceased admittedly was treated as self-employed and was less than 40 years of age, therefore, 40% of the established income of the deceased less tax component will have to be taken into account for computing future prospects.

[7] As regards conventional heads, a sum of ₹ 1,00,000/- was paid on account of loss of love and affection. As per the decision in Pranay Sethi's case (Supra), the said amount is not payable as there is no head of loss of love and affection. Accordingly, no compensation shall be payable on account of loss of love and affection.

[8] Likewise, as against ₹ 25,000/- awarded on account of funeral expenses, appellants are only entitled to ₹ 15,000/- and on account of loss of estate, they are also entitled to ₹ 15,000/-. Relevant extract of the decision in Pranay Sethi's case (supra) is reproduced as under:-

> **Paragraph No.61 (viii) of the decision in Pranay Sethi's case (supra).**
>
> *"61 (viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and*

> *Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."*

Besides, appellants who are the parents of the deceased-son would be entitled to award of compensation of ₹ 40,000/- each on account of loss of filial consortium in view of decision of Hon'ble the Supreme Court in **Magma General Insurance Co. Ltd. v. Nanu Ram Alias Chuhru Ram and others decided on 18.09.2018 in Civil Appeal No.9518 of 2018**. Relevant extract of the decision in Magma General Insurance's 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, 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 Rs.40,000/- each for loss of Filial Consortium."

[9] In view of the position as noted above, compensation payable works out as under :-

Sr. No.	Heads	Amount assessed by the Tribunal.	Amount assessed by this Court.
1.	Income	₹ 6500/-	₹ 6500/- (No Change)
2.	Future Prospects	NIL	40 % of ₹ 6500 = ₹ 2600/-
3.	Total Income assessed	₹ 6500/-	(₹ 6500 + ₹ 2600) = ₹ 9100/-
4.	Multiplier applied	18	18
5.	Deduction (towards personal expenses of deceased)	50% of ₹ 6500/- = ₹ 3250/-	50% of ₹ 9100/-) = ₹ 4550/-
6.	Dependency (Annually)	₹3250 x 12 = ₹39,000/-	₹ 4550 x 12 = ₹ 54,600/-
7.	Compensation Awarded	₹ 39,000 x 18 = ₹ 7,02,000/-	₹ 54,600 x 18 = ₹ 9,82,800/-
8.	Loss of Love and Affection	₹ 1,00,000/-	NIL
9.	Loss of Estate	NIL	₹ 15,000/-
10.	Funeral Expenses	₹ 25,000/-	₹ 15,000/-
11.	Loss of Consortium	NIL	₹ 40,000/- (Mother) ₹ 40,000/- (Father)
	Total	₹ 8,27,000/-	**₹ 10,92,800/-**

[10] Accordingly, as against compensation of ₹ 8,27,000/- awarded by the Tribunal, the claimants-appellant/mother is held entitled to compensation of ₹ 10,52,800/-, while the appellant-father is held entitled to award of ₹ 40,000/- on account of loss of filial consortium only. Along with

interest @ 9 % per annum with effect from the date of claim petition till date of payment, less payment, if any, made earlier.

[11] Accordingly, appeal is allowed by modifying Award dated 23.01.2015 passed by the learned Tribunal to the extent as noted above.

(B.S. Walia)
Judge

25.10.2018
amit

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