IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.4310 of 2015
Date of decision: 25.09.2018

Ravinder Kaur …… Appellant

Versus

Mohan Singh and others ….. Respondents

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

Present: Mr. G.S. Sirphikhi, Advocate for the appellant.

Mr. Paul S. Saini, Advocate and Mr. Vipul, Advocate for respondent No.3/Insurance Company.

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B.S. WALIA, J. (ORAL)

[1] Appeal has been filed seeking enhancement of compensation of ₹ 2,82,000/- awarded by the learned Motor Accidents Claims Tribunal, Amritsar (hereinafter referred to as 'the Tribunal') to the appellant on account of death of her daughter aged 15 years 10 months in a motor vehicular accident on 26.12.2013.

[2] The deceased Gagandeep Kaur was a student and had passed matriculation though it has not come on record as to in which class she was studying. The learned Tribunal by taking into account deceased's monthly contribution to the family as ₹ 1500/- worked out annual dependency of ₹ 18,000/- and on the aforesaid basis by applying the multiplier of 14 and by taking into account the age of the mother of the deceased, awarded

compensation of ₹ 2,82,000/- including ₹ 25,000/- on account of funeral expenses and ₹ 5000/- on account of loss of estate.

[3] Learned counsel for the appellant has relied upon a decision of a Co-ordinate Bench in **Nachhatar Singh and others v. Jagga Singh and others, 2016 (2) PLR 718** wherein the notional income of the deceased – student aged 15 years studying in 10th class, was assessed at ₹ 35,000/- per month and a multiplier of 18 was applied for working out the compensation payable.

[4] Per contra, learned counsel for the respondent/Insurance Company has referred to the decision of Hon'ble the Supreme Court in **Kishan Gopal and another v. Lala and others, 2014 (1) SCC 244** wherein in a case pertaining to a student aged 10 years, Hon'ble the Supreme Court took into account the notional income of the deceased at ₹ 30,000/- per annum though the deceased in the said case was helping his parents. In taking the notional income of the deceased at ₹ 30,000/- per annum, Hon'ble the Supreme Court while relying on its decision in **Lata Wadhwa and others v. State of Bihar and others, 2001 (8) SCC 197** took into account that the accident was of the year 1994 and the value of rupees has come down drastically as the notional income of non-earning members prior to the date of accident was ₹ 15,000/- per annum.

The decision of Hon'ble the Supreme Court in Kishan Gopal's case (Supra) is of 26.08.2013 whereas in the instant case, award was passed on 08.12.2014. Accordingly, I am of the view that ₹ 35,000/- per annum can be taken as notional income of the deceased.

[5] Admittedly, in the instant case the deceased was 15 years 10 months old. Accordingly, in terms of paragraph No.42 of the decision of

Hon'ble the Supreme Court in **Sarla Verma v. Delhi Transport Corporation, 2009 ACJ 1298** multiplier of 18 would be applicable instead of 14. Relevant extract of the decision in **Sarla Verma's** case (supra) is reproduced as under:-

> *"42. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."*

[6] Likewise, as against ₹ 25,000/- awarded on account of funeral expenses and ₹ 5000/- on account of loss of estate, the appellant in terms of paragraph No.61 (viii) of the decision in **National Insurance Company Limited v. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009** would be entitled to award of compensation of ₹ 15,000/- on account of loss of estate and ₹ 15,000/- towards funeral expenses. Paragraph No.61 (viii) of the decision in Pranay Sethi's case (supra) is reproduced as under:-

> *"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."*

[7] Besides, appellant who is mother of the deceased-daughter would be entitled to award of compensation of ₹ 40,000/- 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."

Accordingly, as against sum of Rs.30,000/- awarded on account of conventional heads, the appellant would be held entitled to award of ₹ 70,000/-.

[8] Accordingly, in the light of the position as noted above, as against compensation of ₹ 2,82,000/-, appellant is held entitled to compensation of ₹ 7,00,000 (i.e. ₹ 35,000/- x 18 + ₹ 70,000/-) along with interest @ 7.5 % per annum with effect from the date of claim petition till date of payment, less payment, if any, made earlier.

[9] Accordingly, appeal is allowed by modifying Award dated 08.12.2014 passed by the learned Tribunal to the extent as noted above.

(B.S. Walia)
Judge

25.09.2018
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1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.