

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.868 of 2013 (O&M)
Date of decision: 25.10.2018

Birmati and others

.... Appellants

Versus

Vinod Kumar and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Manoj Sharma, Advocate
for the appellants.

None for the respondents.

Avneesh Jhingan, J. (Oral)

The present appeal has been filed against award dated 07.11.2012 passed by Motor Accidents Claims Tribunal, Jind (hereinafter referred to as 'the Tribunal').

2. The legal heirs of Wazir are in appeal for enhancement of compensation awarded by the Tribunal. The driver-cum-owner of the car bearing registration No.HR-40B-0900 (for brevity, 'offending vehicle'); the insurer of offending vehicle i.e. National Insurance Company Ltd. have been arrayed as respondents No.1 and 2 respectively in the appeal.

3. The facts emanating from the record are that on 15.02.2012, Wazir along with his co-villager Rajinder was returning to his village from

Narwana on a motorcycle bearing registration No.HR-23E-4972. Near Dhakal Chowk, the motorcycle was struck by a rashly and negligently driven offending vehicle. As a result of the accident, both the driver and pillion rider of the motorcycle suffered injuries. They were shifted to General Hospital, Narwana, where Wazir was declared dead. FIR No.30 dated 15.02.2012 was registered at Police Station Sadar, Narwana.

4. The Tribunal, after considering the facts and on appreciating the evidence produced, held that the accident occurred due to rash and negligent driving of the offending vehicle. The driver-cum-owner and insurer of offending vehicle were held jointly and severally liable to pay the compensation. The income of the deceased was assessed as ₹4500/- per month. The Tribunal awarded a sum of ₹4,78,000- along with interest @ 9% per annum. The amount awarded included ₹10,000/- for transportation, last rites and loss of consortium.

5. Learned counsel for the appellants argued that the deceased was 45 years of age and the Tribunal erred in applying the multiplier of 13 instead of 14. He argued that the deceased was survived by widow, one minor son, three major children including two daughters and old mother, consequently, 1/4th deduction for self expenses should have been made instead of 1/3rd. His grievance is that the amounts awarded under the conventional heads are on the lower side and no future prospects have been awarded. No other issue has been raised.

6. None has put in appearance today for Insurance Company

inspite of service.

7. I have heard learned counsel for the appellants and perused the paper-book.

8. There is no dispute with regard to the monthly income assessed by the Tribunal. The age of the deceased was claimed as 45 years and even as per post-mortem report, his age was 45 years, albeit there was no cogent evidence for the date of birth of the deceased. In absence of any evidence to the contrary, the age of the deceased is taken as 45 years and the compensation is awarded by applying the multiplier of 14. The deceased was survived by more than four dependents and as per the decision of the Supreme Court in **Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121**, 1/4th deduction for self expenses is to be made.

9. In consonance with the decision of the Supreme Court in **National Insurance Company Ltd. vs. Pranay Sethi and Ors., 2017 AIR (SC) 5157** and **Hem Raj vs. Oriental Insurance Company Ltd., 2018(2) PLR (480)**, 25% future prospects are to be added as deceased was in age group of 40-50 years. The claimants are entitled to ₹15,000/- each for funeral expenses and for loss of estate and ₹40,000/- is awarded to widow for loss of consortium.

10. The Hon'ble Supreme Court in **Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram & Ors., 2018(4) R.C.R. (Civil) 333**, considering the decision of the Constitution Bench in **Pranay Sethi's case**

(supra) held that loss of consortium is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'. The Supreme Court held :-

“8.7 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. Having due regard to the decision quoted above, ₹40,000/- is awarded to the mother as filial consortium and ₹40,000/-is awarded to the minor child for loss of parental consortium.

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

Monthly income	₹4,500/-
25% future prospects	₹1125/-
Total income	₹5625/-
1/4 th deduction for self expenses	₹1406/-
Dependency	₹4219/-
Applying multiplier of 14	₹7,08,792/-
Funeral expenses	₹15,000/-
Loss of estate	₹15,000/-
Loss of consortium to wife	₹40,000/-
Filial consortium to mother	₹40,000/-
Parental consortium to minor child	₹40,000/-
Total	₹8,58,792/-

13. The award dated 07.11.2012 is modified to the extent that the amount awarded by the Tribunal of ₹4,78,000/-is enhanced to ₹ 8,58,792 /-.

14. The claimants shall be entitled to enhanced amount along with interest @ 7.5% per annum from the date of filing the claim petition till the realisation of the amount.

15. It is, however, clarified that enhanced amount shall be disbursed in same ratio as was held by the Tribunal.

16. The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

25.10.2018
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1. Whether the order is speaking/reasoned: Yes/No
2. Whether the order is reportable : Yes/No