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

CM No.16741-CII of 2014 in/and
FAO No.6124 of 2014 (O&M)
Date of Decision: 16.10.2018.

Raj Wati and others

...Appellants

Versus

Suresh Kumar and others

....Respondents

**CORAM : HON'BLE MR. JUSTICE B.S.WALIA**

Present: Mr. Diwan S. Adlakha, Advocate for the appellants.

None for respondent Nos.1 and 2.
Mr. R.K. Bashamboo, Advocate for respondent No.3.

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**B.S.WALIA, J (Oral).**

CM No.16740-CII of 2014

For the reasons as are mentioned in the application, the same is allowed. Delay of 19 days in refiling of the appeal is condoned subject to all just exceptions.

CM No.16741-CII of 2014

For the reasons as are mentioned in the application, the same is allowed. Delay of 39 days in late filing of the appeal is condoned subject to all just exceptions.

FAO No.6124 of 2014

1. Claim in the appeal is for enhancement of compensation awarded by the learned Motor Accidents Claims Tribunal, Yamuna Nagar at Jagadhari (hereinafter referred to as 'the Tribunal') on account of death of Balishwar, husband of appellant No.1 and father of appellant Nos.2 and 3, in a motor vehicular accident on 21.05.2010.

2. The Tribunal by taking into account the age of the deceased as 45½ years, by treating the deceased as labourer assessed his income at ₹4500/- per month, thereafter by imposing a cut of 1/3rd of the income of the deceased towards his personal expenses and by applying multiplier of '14' besides by awarding a sum of ₹5,000/- each towards loss of consortium, funeral expenses and loss of estate, awarded a total compensation of ₹5,19,000/- along with interest @ 7.5% per annum from the date of institution of claim petition till actual realization.

3. Learned counsel for the appellants has raised fourfold submissions to challenge the award to seek enhancement of the compensation awarded viz. that deduction in case of five dependents was to be made @ 1/4th of the income of the deceased towards his personal expenses, whereas the same had been made @ 1/3rd of the income of the deceased. Secondly, no amount had been awarded towards future prospects. Thirdly, the compensation awarded under conventional heads is inadequate. Lastly, the interest awarded by the Tribunal on the amount payable is on the lower side.

4. Per contra, learned counsel for respondent No.3 contended that the Tribunal had rightly declined the claim petition in respect of parents of the deceased on account of their being dead and no challenge having been made in respect thereto besides the interest awarded by the Tribunal was just and appropriate. He, however, has not disputed the entitlement of the appellants to award of future prospects as also award of appropriate compensation under conventional heads @ ₹40,000/- towards

loss of consortium to each of the appellants besides ₹15,000/- towards loss of estate and ₹15,000/- towards funeral expenses.

5. I have considered the submissions of learned counsel for the parties.

6. The Tribunal did not award any compensation to the parents of the deceased being dead and declined the claim petition on their behalf. There is no challenge qua aforementioned denial. Therefore, deduction made @ $1/3^{rd}$ of the income of the deceased towards his personal expenses having left behind three dependents is in terms of paragraph No.30 of the decision in Sarla Verma vs. Delhi Transport Corporation and another 2009(6) SCC 121, and does not call for any interference . Relevant extract of the decision in National Insurance Company Ltd. versus Pranay Sethi and others, 2017(4) RCR (Civil) 1009, is reproduced as under:-

> "30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

7. Since in this case, the deceased was self employed and between the age of 40 to 50 years, accordingly, 25% of established income of the deceased is to be taken into account while computing the future prospects in terms of paragraph No.61 (iv) of the decision in Pranay Sethi's case (supra). Relevant extract of the decision in Pranay Sethi's case (supra) is reproduced as under:-

> (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.

8. The appellants were awarded ₹5,000/- each towards loss of consortium, funeral expenses and loss of estate. However, as per paragraph No.61 (viii) of the decision in Pranay Sethi's case (supra), compensation of ₹40,000/-, ₹15,000/- and ₹15,000/- respectively is to be awarded on account of loss of consortium, funeral expenses and loss of estate. Relevant extract of the decision of Hon'ble the Supreme Court 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 ₹15,000/-, ₹40,000/- and ₹15,000/- respectively. The

aforesaid amounts should be enhanced at the rate of 10% in every three years."

9. After considering the decision rendered by the Constitutional Bench in Pranay Sethi's case (supra), Hon'ble the Supreme Court in a subsequent decision in Magma General Insurance Co. Ltd vs. Nanu Ram Alias Chuhru Ram, in Civil Appeal No.9581 of 2018, decided on 18 September, 2018, has held that "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'" and awarded ₹40,000/- to the father and sister of the deceased therein on account of loss of filial consortium. Paragraph 8.7 of the decision in Magma General Insurance Co. Ltd.'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.
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> 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, cooperation, 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 worldover 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.

10. Accordingly, appellant-widow of the deceased is entitled to loss of consortium @ ₹40,000/- while appellant No.2 and 3-sons of the deceased are entitled to loss of parental consortium @ ₹40,000/- each, besides ₹15,000/- on account of funeral expenses and ₹15,000/- on account of loss of estate.

11. As regard payment of interest, Hon'ble the Supreme Court in Sube Singh and another vs. Shyam Singh (dead) and others, 2018 AIR, SC 1195, in the background of the accident having taken place on 22.09.2009, enhanced the rate of interest payable from 6% to 9%. Since, in this case

accident took place on 21.05.2010, therefore, interest payable is enhanced from 7.5% to 9% per annum.

12. In the circumstances, the compensation payable to the appellants/claimants works out as under:

| Sr. No. | Head | Amount assessed by the Tribunal | Amount assessed by this Court |
|---|---|---|---|
| 1 | Income | ₹4500/- | ₹4500/- |
| 2 | Future Prospects | Nil | ₹1125/-(25% of ₹4500) |
| 3 | Total Income assessed | ₹4500/- | ₹1125/-+₹4500=₹5625/- |
| 4 | Multiplier applied | 14 | 14 |
| 5 | Deduction (towards personal expenses of the deceased) | 1/3rd ₹4500-₹1500=₹3,000/- | 1/3rd ₹5625-₹1875=₹3750/- |
| 6 | Annual dependency | ₹3000x12x14=₹5,04,000/- | ₹3750x12x14=₹6,30,000/- |
| 7 | Loss of Estate | ₹5,000/- | ₹15,000/- |
| 8 | Funeral Expenses | ₹5,000/- | ₹15,000/- |
| 9 | Loss of Consortium | ₹5,000/- | ₹1,20,000/- (i.e. ₹40,000/- to each of the appellants) |
| 10 | Interest | 7.5% per annum | 9% per annum |
| | Total | ₹5,19,000/- | ₹7,80,000/- |

13. Accordingly, as against the compensation of ₹5,19,000/- awarded by the Tribunal, the appellants/claimants are held entitled to award of compensation of ₹7,80,000/- along with interest @ 9 w.e.f. the date of filing of the claim petition till date of payment, less amount already paid. However, before payment of aforementioned amount, the widow and two children shall be paid ₹40,000/- each towards loss of consortium.

14. Needless to mention, the appellants would be entitled to the award of compensation in proportion to their shares determined by the

Tribunal. The Insurance Company shall make the payment to the appellants after making deduction of the tax liability towards future prospects, in accordance with the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra).

16. Accordingly, appeal is allowed and award dated 18.11.2013 is modified to the extent as noted above.

**(B.S.WALIA)**
**JUDGE**

**16.10.2018**
rajesh.k.khurana

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No