IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM No.14631-CII of 2015 in/and
FAO No.4688 of 2015
Date of decision: 10.10.2018

Smt. Raj Rani and others …… Appellants

Versus

Dharam Pal and others ….. Respondents

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

Present: Mr. Sandeep Verma, Advocate for
Mr. Sukhdeep Parmar, Advocate for the appellants.

Mr. R.K. Chaudhary, Advocate for respondent No.1.

Service of respondent No.2 dispensed with vide order dated 26.04.2018.

Mr. Pardeep Goyal, Advocate for respondent No.3.

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B.S. WALIA, J. (ORAL)

CM No.14631-CII of 2015

For the reasons as are mentioned in the application, the same is allowed. Delay of 281 days in late filing of the appeal is condoned subject to all just exceptions.

FAO No.4688 of 2015

[1] Learned counsel for the appellants has filed Government of Haryana letter bearing No.IR-II/8273-397, dated 21.02.2012 issued by the

Labour Commissioner, Haryana in Court today. The same is taken on record as Mark-A.

[2] Heard learned counsel for the parties.

[3] The instant appeal has been filed by the widow, three daughters and one son of deceased Rajbir who died in a motor vehicular accident on 10.01.2012. It needs noticing here that out of three daughters, only one is minor; besides, even the son was minor as on the date of accident and none of the major daughters are married. The deceased was an agriculturist. The learned Motor Accidents Claims Tribunal, Panipat (hereinafter referred to as 'the Tribunal') by taking into account the notional income of the deceased as ₹ 4500/- per month; by making deduction of 1/4th of the income of the deceased towards his personal expenses; by applying multiplier of 14, worked out dependency and by awarding a sum of ₹ 20,000/- on account of loss of consortium and ₹ 5000/- on account of funeral expenses, awarded total compensation of ₹ 5,92,000/- along with interest @ 7.5% per annum with effect from the date of claim petition till date of realiztion.

[4] Learned counsel for the appellants has raised four-fold submissions for enhancement of compensation awarded. Learned counsel contends that the minimum wages for an unskilled labourer during January 2012 in the State of Haryana as per the aforementioned letter of Haryana Government, was ₹ 4847.17 per month i.e. ₹ 186.42 per day. Therefore, the income of the deceased was liable to be taken into account at ₹ 4847.17 per month (rounded off ₹ 4850/- per month) as against ₹ 4500/- per month assessed by the learned Tribunal.

Secondly, learned counsel contended that no future prospects were awarded though deceased being 41 years of age, the appellants were entitled to award of future prospects by taking into account 25% of the established income of the deceased minus the tax component for the purpose of working out the future prospects payable in accordance with Paragraph No.61 (iv) of the decision of Hon'ble the Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009.**

Learned counsel contended that in accordance with paragraph No.61 (viii) of the decision of Hon'ble the Supreme Court in Pranay Sethi's case (Supra), the appellants were entitled to loss of estate at ₹ 15,000/- which was not awarded by the Tribunal and the amount of ₹ 5000/- awarded on account of funeral expenses was liable to be enhanced to ₹ 15,000/- while in accordance with paragraph No.8.7 of the 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**, each of the five appellants were entitled to award of ₹ 40,000/- on account of loss of consortium.

Lastly, learned counsel contended that the rate of interest awarded was on the lower side and minimum of 9% ought to have been awarded in accordance with the decision in **Sube Singh and another v. Shyam Singh (Dead) and others, 2018 (2) RCR (Civil) 131**.

[5] Learned counsel appearing for respondent No.1 (i.e. driver) on the other hand contends that compensation awarded by the learned Tribunal is just and proper.

[6] Learned counsel appearing on behalf of respondent No.3-Insurance Company has not disputed the factual or legal position as noted above.

[7] I have considered the submissions of learned counsel for the appellants as well as learned counsel for respondent No.1 (i.e. driver) and respondent No.3 who have argued that the compensation awarded by the learned Tribunal is just and fair and does not warrant interference.

[8] The appeal is of the year 2015 while the accident took place on 10.01.2012, therefore, I am not inclined to adjourn the matter. Having considered the arguments of learned counsel for the appellant and respondent No.1, it emerges that as per the said Haryana Government's letter issued by the Labour Commissioner, Haryana, in January 2012, the minimum wages for an unskilled labourer was ₹ 4847.17 per month (rounded off ₹ 4850/- per month) i.e. ₹ 186.42 per day.

[9] In the instant appeal, the deceased was an agriculturist, owned some land; besides, used to take some land on lease and cultivate the same. The Tribunal while holding that no revenue record was produced to indicate that the deceased owned any agriculture land or cultivated land on lease, took into account that even a daily-wager was able to earn around ₹ 4500/- per month. Thus although, the minimum wages of an unskilled labourer is ₹ 4847.17 per month (rounded off ₹ 4850/- per month), yet I feel that the assessment of notional income of the deceased at ₹ 4500/- per month by the Tribunal does not warrant any interference, since it can reasonably be presumed that the deceased would not have got work on all days of a month.

[10] Admittedly, the deceased was self-employed and 41 years of age at the time of his death, therefore, in accordance with Paragraph No.61 (iv) of the decision of Hon'ble the Supreme Court in Pranay Sethi's case (Supra), an addition of 25% of the established income of the deceased minus the tax component is to be taken into account for working out future

prospects. 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.*

[11] Likewise, in terms of Paragraph No.61 (viii) of the decision of Hon'ble the Supreme Court in Pranay Sethi's case (Supra), the appellants are entitled to ₹ 15,000/- on account of loss of estate, ₹ 15,000/- for 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."*

Besides, appellants who are wife and four children of deceased-Rajbir would be held entitled to award of compensation of ₹ 40,000/- each on account of loss of consortium in view of decision of Hon'ble the Supreme Court in **Magma General Insurance's case (Supra)**. 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."

[12] Likewise, as against award of interest of 7.5% per annum in view of the decision in Sube Singh's case (Supra), the appellants are held entitled to award of interest @ 9% per annum.

[13] 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 the Court
1.	Income	₹ 4500/-	₹ 4500/-
2.	Future Prospects	NIL	25% of ₹ 4500/- = ₹ 1125/-
3.	Total Income assessed	₹ 4500/-	(₹ 4500/- + ₹ 1125/-) = ₹ 5625/-
4.	Multiplier applied	14	14
5.	Deduction (towards personal expenses of deceased)	1/4th of ₹ 4500/- = ₹ 1125/-	1/4th of ₹ 5625/- = ₹ 1406/-
6.	Dependency (Annual)	(₹ 4500/- - ₹ 1125/-) = ₹ 3375/ (per month) ₹ 3375/- x 12 = ₹ 40,500/-	(₹ 5625/- - ₹ 1406/-) = ₹ 4219/- (per month) ₹ 4219/- x 12 = ₹ 50,628/-
7.	Compensation Awarded	₹ 40,500/- x 14 = ₹ 5,67,000/-	₹ 50,628/- x 14 = ₹ 7,08,792/-
8.	Loss of Consortium	₹ 20,000/-	₹ 2,00,000/- (₹ 40,000/- payable to each of the appellants)
9.	Loss of Estate	NIL	₹ 15,000/-
10.	Funeral Expenses	₹ 5,000/-	₹ 15,000/-
11.	Interest	7.5%	9%
	TOTAL	₹ 5,92,000/-	**₹ 9,38,792/-**

[14] Accordingly, as against compensation of ₹ 5,92,000/- awarded by the Tribunal, the appellants/claimants are held entitled to compensation of ₹ 9,38,792/- along with interest @ 9 % per annum with effect from the date of claim petition till date of payment, less payment, if any, made earlier.

[15] Needless to mention, payment on account of future prospects shall be made after deducting the tax liability if any in accordance with the decision in Pranay Sethi's case (supra).

[16] Accordingly, appeal is allowed by modifying Award dated 01.04.2014 passed by the learned Tribunal to the extent as noted above.

(B.S. Walia)
Judge

10.10.2018
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1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.