

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

FAO No.4899 of 2015 (O&M)
Date of Decision: 03.10.2018

Minni Devi and others

...Appellants

Versus

Ramesh Kumar and others

....Respondents

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

Present: Mr. R.N. Lohan, Advocate for the appellants.

None for respondent Nos.1,2, 4 and 5.

Mr. Ajay Singla, Advocate for respondent No.3.

Mr. Suveer Diwan, Advocate for respondent No.6.

B.S.WALIA, J (Oral).

CM No.13060-CII of 2018

For the reasons as are mentioned in the application, the same
is allowed.

CM No.15039-40-CII of 2015

I have considered the reply to the application seeking
condonation of 368 days in refiling and 793 days in filing of the appeal.
Except for taking up the stand that the appellant has not enclosed strict
proof for seeking condonation of delay, there is no specific denial to the
averments made in the application. Accordingly for the reasons as are

mentioned in the applications, the same are allowed. Delay of 368 days in refiling and 793 days in filing of the appeal is condoned.

FAO No.4899 of 2015

1. Claim in the appeal by the widow, minor son and mother of the deceased is for enhancement of compensation awarded by the learned Motor Accidents Claims Tribunal, Jind (hereinafter referred to as 'the Tribunal') on account of death of Vijay Kumar in a motor vehicular accident on 16.10.2009. The Tribunal by taking into account the age of the deceased as 25 years, by treating him as casual workman and by taking into account the income of the deceased as ₹3600/- per month, by imposing cut of $1/3^{\text{rd}}$ on the income of the deceased towards his personal expenses and by applying multiplier of '16', in addition to grant of ₹10,000/- towards funeral, transportation and loss of consortium, awarded a lump sum compensation of ₹4,70,800/- along with interest @ 9% per annum from the date of institution of claim petition till final realization.

2. Learned counsel for the appellants contended that the appeal is liable to be allowed, award modified and compensation payable enhanced by applying correct multiplier of '18' in view of deceased being 25 years of age, as also by awarding future prospects @ 40% and lastly by awarding a sum of ₹15,000/- on account of funeral expenses, ₹15,000/- on account of loss of estate and ₹40,000/- to each of the appellants on account of loss of consortium. Learned counsel contended that the Tribunal erred in absolving the Insurance Company of liability on the ground that the offending truck was being plied without valid route permit as it is settled law that absence

of route permit is not a ground to absolve the Insurance Company from liability.

3. Respondent Nos.1 and 2 i.e. driver and owner of offending truck bearing registration No.RJ02-GA-1387 did not appear despite service. Liability was imposed by the Tribunal on the driver and owner of the offending truck and the Insurance Company was absolved of liability on account of the offending vehicle being driven by the driver without having a valid route permit.

4. Learned counsel for respondent No.3 has not controverted the claim of the appellants with regard to applicability of multiplier of '18', award of compensation of ₹1,10,000/- towards conventional heads as also with regard to the claim for award of future prospects, while respondent No.6 has reiterated the reasoning for the award. None is present for respondent Nos. 4 & 5.

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

6. Admittedly, the deceased was 25 years of age. As per paragraph No.21 of the decision in Sarla Verma Vs. Delhi Transport Corp. and another, 2009 (3) RCR (Civil) 77, multiplier of '18' is applicable where the deceased was 25 years of age. Relevant extract of decision in Sarla Verma's case (supra) is reproduced as under:-

“21. 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.”

7. Accordingly, since in the instant case, the deceased was 25 years of age, multiplier of ‘18’ is held to be applicable for computing the compensation payable.

8. The Tribunal treated the deceased as a casual workman and assessed his income as ₹6500/- per month as per minimum wages applicable for the relevant period. However, no amount was awarded towards future prospects, although as per paragraph No.61 (iv) of the decision of Hon’ble the Supreme Court in National Insurance Company Ltd. versus Pranay Sethi and others, 2017(4) RCR (Civil) 1009, where a deceased was self-employed and below 40 years of age as on the date of accident, 40% of the established income of the deceased less tax component is to be taken into account while computing the future prospects. 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.

9. Since, in the instant case, the deceased was self employed, was less than 40 years of age, 40% of the established income of the deceased less tax component shall be taken into account for computing the future prospects payable.

10. The appellants were awarded ₹10,000/- towards funeral expenses, transportation expenses and loss of consortium. However, as per paragraph No.61 (viii) of the decision in Pranay Sethi's case (supra), compensation of ₹15,000/- is to be awarded on account of loss of estate and funeral expenses respectively while in terms of paragraph No.8.7 of the 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, filial consortium @ ₹40,000/- each is payable to the widow and son of the deceased. No loss of consortium is payable to the mother of the deceased since he was married. Relevant extract of the decision in Pranay Sethi's case (supra) as well as in Magma General Insurance Co. Ltd.'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."

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, cooperation, affection, and aid of the other in every conjugal relation."⁴ 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 count⁵. 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.

11. Accordingly, in terms of decision in Pranay Sethi’s case and Magma General Insurance Company Ltd.’s case (supra), the appellants are held entitled to award of compensation of ₹15,000/- on account of loss of estate and ₹15,000/- on account of funeral expenses besides ₹40,000/- to the widow and equal amount to the son of the deceased on account of loss of spousal/parental consortium respectively.

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	₹3600/-	₹3600/-
2	Future Prospects	Nil	₹1440 (40% of ₹3600/-)
3	Total Income assessed	₹3600/-	(₹3600 + ₹1440) = ₹5040/-
4	Deduction (towards personal expenses of the deceased)	$\frac{1}{3}^{\text{rd}}$ ₹3600-₹1200=₹2400/-	$\frac{1}{3}^{\text{rd}}$ ₹5040-₹1680=₹3360/-
5	Multiplier applied	16	18
6	Annual dependency	₹2400x12x16=4,60,800	₹3360x12x18=₹7,25,760/-
7.	Funeral expenses, transportation and consortium	₹10,000/- (Consolidated)	₹80,000/- (Loss of consortium i.e. ₹40,000/- to the widow and like amount to the son of the deceased) Funeral Expenses =₹15,000/-
8.	Loss of Estate	Nil.	₹15,000/-
	Total	₹4,70,800/-	₹8,35,760/-

13. Accordingly, as against the compensation of ₹4,70,800/- awarded by the Tribunal, the appellants/claimants are held entitled to award of compensation of ₹8,35,760/- along with interest @ 9 w.e.f. the

date of filing of the claim petition till date of payment, less amount already paid. However, it is made clear that interest, for period of delay in filing/refiling of the appeal, shall not be counted for the purpose of award of interest.

14. As regards the liability to pay compensation, the Tribunal imposed liability on the driver and owner of the offending truck on account of non-availability of valid route permit at the time of accident. However, the findings returned by the learned Tribunal qua this aspect are contrary to the law laid down by Hon'ble the Supreme Court in Amrit Paul Singh and another vs. Tata AIG General Insurance Company Ltd. and others, 2018 (3) RCR (Civil) 131, wherein, Hon'ble the Supreme Court has held that the insurer is entitled to recover the compensation from the owner and the driver in case of non-availability of route permit. Relevant extract of the decision in Amrit Paul Singh's case (supra) is reproduced as under:-

23. In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of the accident did not have a permit. The appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had temporary permit or any other kind of permit. The exceptions that have been carved out under Section 66 of the Act, needless to emphasise, are to be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a public place without a permit is a fundamental statutory infraction. We are

disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in Swaran Singh (supra) and Lakhmi Chand (supra) in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of the "Tripitaka", that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore, the tribunal as well as the High Court had directed the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in Swaran Singh (supra) and other cases pertaining to pay and recover principle.

Accordingly, in view of the decision of Hon'ble the Supreme Court, the Insurance Company i.e. respondent No.3 is directed to make the payment of compensation to the appellants. However, the Insurance Company shall be entitled to effect recovery from the driver and owner of

the offending truck i.e. respondent Nos.1 and 2, after making payment of compensation awarded.

15. Needless to mention, the appellants would be entitled to the award of compensation in the manner as well as proportion qua respective shares as 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 is modified to the extent as noted above.

(B.S.WALIA)
JUDGE

03.10.2018.
rajesh.k.khurana

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