

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 4400 of 2016 (O&M)
DECIDED ON: NOVEMBER 15, 2018

SHRIRAM GENERAL INSURANCE CO. LTD.

.....APPELLANT

VERSUS

KULJIT KAUR & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Punit Jain, Advocate
for the appellant.

Mr. Ashish Aggarwal, Advocate
for respondents No.1 to 4.

Mr. Sourabh Arora, Advocate
for respondents No.5 and 6.

AVNEESH JHINGAN, J (ORAL)

The insurer of truck bearing registration No. PB-31-H-9250 (hereinafter referred to as 'offending vehicle') has assailed the award dated 11.03.2016 passed by Motor Accident Claims Tribunal, Amritsar (for short 'the Tribunal').

2. The claimants have been arrayed as respondents No.1 to 4, owner and driver of the offending vehicle have been arrayed as respondents No.5 and 6, respectively in the appeal.

3. The brief facts necessary for adjudication of the present appeal are that on 28.08.2015, Palwinder Singh was going to Amritsar from his village, on his motorcycle bearing registration No. PB-02-BV-2128. He was accompanied by his brothers Kulwant Singh and Santokh Singh who were behind him on a separate motorcycle. When Palwinder Singh reached near turn of Gurjjarpura his motorcycle was struck by a rashly and negligently driven offending vehicle. As a result of the accident, Palwinder Singh suffered multiple injuries and died at the spot. FIR No. 118, dated 28.08.2015 was registered at Police Station Ajnala, on the statement of Kulwant Singh. Post mortem of the deceased was conducted at Civil Hospital, Ajnala.

4. The claimants filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for brevity, 'the Act') before the Tribunal for grant of compensation on account of death of Palwinder Singh.

5. The Tribunal after considering the facts and appreciating the evidence adduced, awarded a compensation to the tune of ₹15,52,160/- alongwith interest @6% per annum. The Tribunal held that the accident occurred due to rash and negligent driving of the offending vehicle. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The amount awarded includes ₹3,35,000/- awarded under the conventional heads i.e. funeral expenses, loss of estate, loss of consortium and loss of love and affection.

6. Heard learned counsel for the parties, perused the paper book and

relevant documents produced by learned counsel for the parties.

7. Learned counsel for the appellant-insurer contended that no proof of age of the deceased was produced by the claimants. The age of the deceased was taken by the Tribunal as 40 years relying upon post mortem report, hence, the Tribunal erred in awarding future prospects as 30%. As per the decision of the Supreme Court judgments rendered in the cases of National Insurance Co. Ltd. vs. Pranay Sethi and others; 2017 (4) RCR (Civil) 1009 and Hem Raj vs. Oriental Insurance Company Ltd ;2018 (2) PLR 480, 25% future prospects were to be awarded. The grievance is that the amount awarded under the conventional heads are on higher side and no amount should have been awarded for love and affection.

8. Vide order dated 24.10.2017, respondents No.1 to 4 were proceeded ex-parte. Today, Mr. Ashish Aggarwal, Advocate has put in appearance on behalf of respondents No.1 to 4 and filed his power of attorney. He argued that the deceased was survived by his widow, two minor children and mother. He contended that the amount should be awarded under the conventional heads as per the decision of Supreme Court in *Pranay Sethi's* case (supra).

9. There is no dispute between the parties with regard to ¼ deduction made for self expenses and application of multiplier of 15. Learned counsel for the parties have also not disputed the monthly income assessed by the Tribunal as ₹6935/-, relying upon the minimum wages prevalent in the State of Punjab at the time of accident.

10. Having due regard to the decision of the Supreme Court in aforesaid quoted cases, 25% future prospects are to be awarded instead of 30%. Claimants are also entitled to a sum of ₹15,000/- each, for funeral expenses and

for loss of estate. The widow of the deceased is entitled to ₹40,000/- for loss of consortium.

11. The Supreme Court in the case of **Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram & others; 2018 (4) RCR (Civil) 333;** has held 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. **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.”

12. In view of the decision of the Supreme Court, two minor children of the deceased are entitled to an amount of ₹40,000/- each for loss of parental consortium and mother of the deceased is also entitled to an amount of ₹40,000/- for loss of Filial Consortium.

13. In view of afore-said discussion, the compensation is recalculated as under:

	Head	Compensation awarded
(i)	Income	₹6,935/- per month as assessed by the Tribunal
(ii)	Future prospects at 25%	₹1733/- per month
(iii)	Total Income	₹8668/- per month
(iv)	Deduction of personal expenses	₹2167/- (i.e. 1/4 th of total income)
(v)	Multiplier	15 (as per age of deceased)
(vi)	Total Dependency	₹6501x12x15=₹11,70,180/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
(ix)	Loss of consortium	₹40,000/-
(x)	Parental Consortium to the minor children (40,000x2)	₹80,000/-
(xi)	Filial Consortium to the mother of the deceased	₹ 40,000/-
	Total Compensation awarded	₹13,60,180/-

14. The award dated 11.03.2016 is modified to the extent that amount awarded of ₹15,52,160/- is reduced to ₹13,60,180/-.
15. During the pendency of appeal, an interim order was passed that the compensation to the extent of ₹2,81,000/- shall not be disbursed to the claimants. Claimants shall be entitled to the balance amount of compensation alongwith interest as awarded by the Tribunal i.e. from the date of filing of claim petition till realization of the amount.
16. The appeal is partly allowed in the afore-said terms.

NOVEMBER 15, 2018
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No