IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4404 of 2016(O&M)
Date of Decision: 02.11.2018

New India Assurance Co. Ltd. ... Appellant

Versus

Nanki & ors. ... Respondents

CORAM:- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ashwani Talwar, Advocate, and
Mr. Lalit Kumar, Advocate,
for the appellant.

Mr. Vikram Bali, Advocate,
for respondents No.1 to 6.

AVNEESH JHINGAN, J.(Oral)

1. The insurer of truck bearing registration No.HP-67-5035 (for brevity, 'offending vehicle') is in appeal against the award dated 15.03.2016 passed by Motor Accident Claims Tribunal, Panchkula (hereinafter referred to as 'the Tribunal').

2. The claimants have been arrayed as respondents No.1 to 6 in this appeal. Driver and owner of the offending vehicle are respondents No.7 and 8.

3. The brief facts emanating from the record are that on 08.03.2014, Fateh Mohammad, aged 34 years, along with Khalil (pillion rider) was going from Devi Nagar to Village Ambwala on his motorcycle bearing registration No.HR-49C-6936. When he reached at a toll plaza near village Bir Ghaggar, the offending vehicle, which was being driven rashly and negligently, came from behind and tried to change its lane. While doing so, it came in front of his motorcycle and suddenly applied emergency brakes to avoid collision. In the meantime, motorcycle collided with the rear portion of the truck. As a

result of the impact, Fateh Mohammad suffered grievous injuries and died at the spot. FIR No.69, dated 09.03.2014 was registered at Police Station Chandimandir, District Panchkula.

4. The widow, three minor children and parents of the deceased filed a claim petition under Section 166 of Motor Vehicles Act, 1988 (for brevity, 'the Act').

5. The Tribunal, after considering the facts and after appreciating the evidence produced, held that the accident occurred due to rash and negligent driving of the offending vehicle. The driver, owner and insurer of offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded a sum of ₹21,49,560/- along with interest @ 7% per annum. The amount awarded included ₹25,000/- for funeral expenses, ₹1.00 lac for loss of consortium and ₹1.00 lac for loss of care and guidance. The income of the deceased was assessed as ₹8910/- per month. 50% future prospects were awarded. $1/4^{th}$ deduction was made for self expenses and multiplier of 16 was applied.

6. No dispute has been raised with regard to the deduction for self expenses and multiplier applied of 16.

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

8. Learned counsel for the appellant argued that the claimants have failed to substantiate the monthly earning of the deceased. The Tribunal presuming that he was a professional driver, relied upon minimum wages of the skilled labourer, but wrongly assessed the income as ₹8910/- per month. He argued that the Tribunal erred in awarding 50% future prospects. The grievance raised is that the amount awarded under conventional heads are on

the higher side. No amount shall be awarded for loss of love and affection.

9. Learned counsel for the claimants could not dispute the fact that at the time of accident, in the State of Haryana, minimum wages even for a highly skilled labourer were ₹6200/- per month. He argued that the Tribunal while awarding compensation under the conventional heads had taken into consideration the fact that the deceased was survived by a young widow, three minor children and old mother.

10. The contentions raised by learned counsel for the appellant that the the Tribunal erred in assessing the monthly income of the deceased as ₹8910/- deserve acceptance. In cases, where the claimants failed to prove monthly income of the deceased the safest yardstick is to rely upon minimum wages prevalent at the time of accident. The Tribunal relied upon minimum wages, but erroneously assessed the income of the deceased as ₹8910/- instead of ₹6200/- per month.

11. The deceased was 34 years of age. Having due regard to the decision of the Supreme Court in the case of ***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,*** 40% future prospects are awarded. The claimants are entitled to ₹15,000/- for loss of estate and ₹15,000/- for funeral expenses and ₹40,000/- is awarded on account of loss of consortium to the widow of the deceased.

12. The Supreme Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram & Ors., 2018(4) R.C.R. (Civil) 333***, after considering the decision of 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 relevant portion of the Supreme Court decision (supra) is reproduced below:-

> "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.***
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> *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 deathof 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."

13. Having due regard to the decision of Supreme Court, ₹40,000/- is awarded for loss of consortium to the mother under the head of filial consortium and ₹40,000/- each is awarded to three minor children for loss of parental consortium.

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

Monthly income	₹6200/-
40% future prospects	₹2480/-
Total income	₹8680/-
1/4 deduction for self expenses	₹2170/-
Annual Dependency (6510x12)	₹78120/-
Applying multiplier of 16 (78120x16)	₹12,49,920/-
Funeral expenses	₹15,000/-
Loss of estate	₹15,000/-
Loss of consortium to widow	₹40,000/-
Loss of consortium to three minor children at ₹40,000/- each (40000x3)	₹1,20,000/-
Loss of Filial consortium to mother	₹40,000/-
Total	₹14,79,920/-

15. The award dated 15.03.2016 is modified to the extent that the amount awarded by the Tribunal of ₹21,49,560/- is reduced to a sum of ₹14,79,920/-.

16. In view of above, the appeal is partly allowed.

02.11.2018 **(AVNEESH JHINGAN)**
monika **JUDGE**

Whether speaking/reasoned *Yes*
Whether reportable *Yes*