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

(1) FAO No.4763 of 2016 (O&M)
Date of Decision : 25.09.2018

UNITED INDIA INSURANCE COMPANY LIMITED
....APPELLANT

VERSUS

MOHIT AND OTHERS
....RESPONDENTS

(2) FAO No.4769 of 2016 (O&M)

UNITED INDIA INSURANCE COMPANY LIMITED
....APPELLANT

VERSUS

HEMANT AND OTHERS
....RESPONDENTS

(3) FAO No.6864 of 2016 (O&M)

HEMANT AND OTHERS
....APPELLANTS

VERSUS

SACHIN MITTAL AND OTHERS
....RESPONDENTS

(4) FAO No.6979 of 2016 (O&M)

MOHIT AND OTHERS
....APPELLANTS

VERSUS

SACHIN MITTAL AND OTHERS
....RESPONDENTS

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

Present: Mr. Rajesh K. Sharma, Advocate for the appellants in FAO Nos.4763 & 4769 of 2016 and for respondent No.3 in FAO Nos.6864 & 6979 of 2016.

Mr. Sumit Gupta, Advocate for respondent Nos.1 to 3 in FAO No.4763 of 2016, for respondent Nos.1 to 7 in FAO No.4769 of 2016 and for the appellant(s) in FAO Nos.6864 & 6979 of 2016.

B.S. WALIA, JUDGE (ORAL).,

1. This order shall decide FAO Nos.4763 & 4769 of 2016 filed by the United India Insurance Company, seeking reduction of compensation awarded on account of death of housewife in both cases, while FAO Nos.6864 & 6979 of 2016 have been filed by the claimants/family members of the deceased-housewife, seeking enhancement of the compensation awarded.

2. The plea in FAO Nos.4763 & 4769 of 2016 is that contribution of the deceased housewife towards the family assessed at ₹6000/-per month is on the higher side and the same ought to be less in the light of decision dated *March 14, 2018* of a Co-ordinate Bench of this Court in *FAO No.1274 of 2014, in case* titled as '***Manphool and others*** *versus* ***Anil and others***' & *FAO No.5627 of 2014, decided on 07.12.2016 in case* titled as '***Brahmanand and others*** *versus* ***Rajesh Kumar and others***'. Secondly, that future prospects have been awarded whereas in view of the decision of a Co-ordinate Bench of this Court *in FAO No.3483 of 2013, decided on 26.02.2015* titled **'*Cholamandalam MS General Insurance Company Limited*** *versus* ***Lakhmi Chand and others*'** in case of assessment of notional contribution of a deceased housewife towards the family, future

prospects cannot be awarded. Lastly, that both the deceased-housewives were 42 years of age, therefore, multiplier of '14' was to be applied in view of decision of Hon'ble the Supreme Court in '***Sarla Verma and others*** *versus* ***Delhi Transport Corporation and another***', *2009(6) SCC 121*, whereas multiplier of '16' had been applied.

3. *Per contra* learned counsel for the claimant/appellants contended that the decision of this Court in *FAO No.5627 of 2014, decided on 07.12.2016, in case* titled '***Brahmanand and others*** *versus* ***Rajesh Kumar and others***' relied upon by learned counsel for appellant-Insurance Company was not applicable as in said case, the date of accident and death of the housewife was 15.04.2003 and the Tribunal had assessed the contribution of the deceased-wife @ ₹2000/- per month, whereas the High Court had taking into account the fact that even a domestic help round the clock may not be available at the cost of ₹6000/- per month, especially when a housewife had to perform multifarious duties and therefore had assessed the value of the services of the deceased housewife @ ₹ 6000/- per month. Likewise, the reliance on '*Manphool's case* *(supra)* was also not relevant since in the said case, the date of death of the deceased housewife was of the year 2011 and in the circumstances, the notional income of the deceased was assessed at ₹5200/- per month, whereas in the instant case, the deceased housewives died in the year 2015.

4. I have considered the submissions of learned counsel for the parties and am of the view that the contribution of a housewife towards the family is to be by taking into account various aspects. Besides, in *Manphool's case* (supra), the year of death was 2011, while in the instant case, the year of death is 2015. In the circumstances, I deem it appropriate to assess the

contribution of the deceased housewife towards the family at ₹ 9,000/- per month in the light of decision of a Co-ordinate Bench of this Court in *FAO No.218 of 2014, decided on 15.01.2014 in case* titled as '*United India Insurance Company Limited* *versus* *Sube Singh and others*', wherein the date of death of the housewife was 23.11.2012.

5. As regards, the plea of learned counsel for the appellant-Insurance Company that in the case of assessment of notional income of the deceased, future prospects are not to be awarded, reference can be made to the decision of a Co-ordinate Bench of this Court in *Cholamandalam's case* (supra). Relevant extract of the same is reproduced as under:-

> " If we are taking the notional income for a housewife then no amount should be added for future prospects. The Hon'ble Supreme Court in Arun Kumar Aggarwal and another vs. National Insurance Company and others, 2010(3) PLR (SC) 418 did not award anything for future prospects where a housewife had died. Similarly in Krishan Gopal vs. Lala, 2013(4) RCR (Civil) 276 a child had died and two Judges Bench of the Hon'ble Supreme Court while awarding compensation did not take anything for future prospects. In my opinion when the claimants are unable to prove that the deceased was earning and notional income is taken into account for calculating the loss, then benefit for future prospects should not be added. It is one thing to count income for future prospects when the income is proven but where the income is notional as in the case of a student or a housewife, it may not be appropriate to award further benefit of notional future prospects, particularly when in the cases of

notional income the Courts are not making any deduction for personal expenses."

6. Accordingly, in the light of aforementioned decision, award of the learned Motor Accidents Claims Tribunal, Palwal, is modified to the extent that the respondents/claimants would not be entitled to future prospects nor would any deduction be made towards the personal expenses of the deceased.

7. As regards, the claim for reduction on account of wrong application of multiplier, it needs mentioning that deceased-Ganga Devi was admittedly 42 years of age. As per the decision of Hon'ble the Supreme Court in '*Sarla Verma's case* (supra), in case of age group of 41 to 45, multiplier of '14' is applicable. Relevant extract of the decision in *Sarla Verma's* case (supra) is reproduced as under:-

> "42. 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."

As regards, the claim of the appellant-Insurance Company for reduction of multiplier of 16 applied in the case of Sheela Devi from 16 to 14, it needs noticing that the 'Tribunal' by taking into account the age of the deceased as 35 on the basis of Postmortem Report (Ex. P-2) had applied the multiplier of '16', whereas learned counsel for the appellant-Insurance Company has sought applying of multiplier of '14' on the ground that none else than the claimants themselves had stated in the claim petition that deceased-Sheela Devi was 42 years of age. The 'Tribunal' by taking into account the fact that no concrete evidence had been led by the claimants with regard to the age of deceased-Sheela Devi took into account the age as appearing in the Postmortem Report (Ex. P-2) and on the said basis, applied the multiplier of '16'.

8. I find no reason to disagree with the findings of the learned 'Tribunal' for applying the multiplier of '16' in view of the categorical evidence before me of the deceased being 35 years of age on the basis of Postmortem Report (Ex. P-2).

9. As regards, the award of compensation learned counsel for the respondents/claimants contended that in view of paragraph No.61 (viii) of the decision in Pranay Sethi's case the respondents/claimants were entitled to ₹15,000/- on account of loss of estate and ₹ 15,000/- towards funeral expenses under conventional heads as against ₹ 10,000/- awarded by the Tribunal besides the appellant-husband and each of the appellants children were entitled to spousal consortium/parental consortium @ ₹ 40,000/- in accordance with the decision of Hon'ble the Supreme Court in case titled as 'Magma General Insurance Company Limited versus Nanu Ram alias Chuhru Ram and others.

Paragraph No.61 (viii) of the decision in Pranay Sethi's case & paragraph No. 8.7 of the decision in '*Magma General Insurance Company Limited* case (supra) is reproduced as under:-

Paragraph No.61 (viii) of the decision in Pranay Sethi's case :

"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."

Paragraph No. 8.7 of the decision in '*Magma General Insurance Company Limited* case :

" 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."

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 ₹ 40,000 each for loss of Filial Consortium."

10. Accordingly, in the light of the decision of Hon'ble the Supreme Court in '*Magma's case (supra)*, the respondents-husband in each of the cases is held entitled to loss of spousal consortium @ ₹ 40,000/-, while each of the children of the deceased are held entitled to compensation on account of loss of parental consortium @ ₹ 40,000/-.

11. In the light of the position as noted above, FAO Nos.4763 and 4769 of 2016 are allowed to the extent of disentitlement of the respondents/claimants to receive future prospects, while FAO Nos.6864 & 6979 of 2016 are allowed to the extent of assessment of notional income/contribution of the deceased housewife towards the family in both cases at ₹ 9,000/- per month. However, no deduction shall be made towards the personal expenses of the deceased in view of the decision in Cholamandalam's case (Supra). Besides, the appellants/claimants are also held entitled to ₹ 15,000/- in each case on account of loss of estate and ₹ 15,000/- towards funeral expenses besides ₹40,000/- to each of the appellants/claimants on account of loss of spousal/parental consortium respectively.

12. That in the light of the position as noted above, the appellants/claimants in FAO No. 6864/2016 are held entitled to the following compensation :

Sr. No.	Heads	Amount assessed by the Tribunal	Amount assessed by the Court
1.	Income	₹ 6000/-	₹9000/- .
2.	Future Prospects	30%	Nil
3.	Total Income assessed	₹ 7800/-	₹9000/-
4	Deduction	$1/3^{rd}$	Nil
5	Multiplier applied	14	14
6	Dependency (Annual)	(₹5200 x12x14= ₹8,73,600/-	₹ 9000/- x 12 x 14=₹15,12,000/-
7	Funeral expenses Loss of estate Loss of parental/ spousal consortium.	₹10,000/- ₹10,000/- ₹10,000/-	₹15,000/- ₹15,000/- ₹40,000/- (Son) ₹40,000/- (Son) ₹40,000/- (Husband)
8	Interest	9%	9%
	TOTAL	₹9,03,600/-	₹16,62,000/-

Likewise, appellants/claimants in FAO No. 6979/2016 are held entitled to the following compensation :

Sr. No.	Heads	Amount assessed by the Tribunal	Amount assessed by the Court
1.	Income	₹ 6000/-	₹9000/- .
2.	Future Prospects	30%	Nil
3.	Total Income assessed	₹ 7800/-	₹9000/-
4	Deduction	$1/5^{th}$	Nil
5	Multiplier applied	16	16
6	Dependency (Annual)	(₹6240x12x16 = ₹11,98,080/-	₹ 9000/- x 12 x 16=₹17,28,000/-
7	Funeral expenses Loss of estate Loss of Loss of parental/ spousal consortium.	₹10,000/- ₹10,000/- ₹10,000/-	₹15,000/- ₹15,000/- ₹40,000/- (Son) ₹40,000/- (Son) ₹40,000/- (Son) ₹40,000/- (Daughter) ₹40,000/- (Daughter) ₹40,000/- (Daughter) ₹40,000/- (Husband)
8	Interest	9%	9%
	TOTAL	**₹12,28,080/-**	**₹20,38,000/-**

13. Accordingly, in the light of the position as noted above, the appellant-claimants in FAO No.6864 of 2016 are held entitled to award of compensation of ₹ 16,62,000/- as against ₹ 9,03,600/- awarded by the Tribunal, while claimants in FAO No.6979 of 2016 are held entitled to award of compensation of **₹20,38,000/-** against **₹12,28,080/-** awarded by the Tribunal along with interest @ 9% per annum w.e.f. the date of claim petition till date of payment. However, before payment of aforementioned amount, the husband and minor children shall be paid ₹ 40,000/- each towards loss of consortium before apportionment of compensation. Needless to mention, apportionment of compensation shall be made in accordance with the manner stipulated by the 'Tribunal'.

14. Accordingly, FAO No.4763 of 2016,FAO No.4769 of 2016, FAO No.6864 of 2016 & FAO No.6979 of 2016 are allowed in the manner indicated above by modifying the award to the extent as noted above.

(B.S. WALIA)
JUDGE

September 25, 2018
rajneesh

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