IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.783 of 2014
Date of decision: 15.11.2018

Vimal and others .... Appellants

Versus

Anil and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Ajay Shekhawat, Advocate
for the appellants.

Mr. Vikram Lakhlan, Advocate for
Mr. Saurabh Dalal, Advocate
for respondents No.1 and 2.

Mr. Rajesh K.Sharma, Advocate
for respondent No.3-Insurance Company.

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Avneesh Jhingan, J. (Oral)

The widow, two minor children and father of Raj Pal are in appeal against award dated 16.08.2013 passed by Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as 'the Tribunal) seeking enhancement of compensation.

The driver of truck bearing registration No.HR-14E-0832 (for brevity, 'offending vehicle'); owner of offending vehicle and insurer of offending vehicle i.e. United India Insurance Company Ltd. have been arrayed as respondents No.1 to 3 respectively in the appeal.

Raj Pal, aged 47 years, lost his life in a motor vehicular accident that had took place on 02.06.2012 at about 8.00 p.m. He was going on his motorcycle bearing registration No.HR-12K-1392. When he reached near Tiles Cement Factory at village Sunderpur, his motorcycle struck against the offending vehicle, which was parked in the middle of the road without giving any signal or indicator and even the radium strip was also not affixed on the truck. As a result of the impact, he died on the spot. FIR No.178 dated 03.06.2012 was registered at Police Station Sadar Rohtak.

The legal heirs of the deceased filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for brevity, 'the Act').

The Tribunal, after considering the facts and on appreciating the evidence produced, held that the accident occurred due to contributory negligence in the ratio of 50:50. So far as 50% contributory part of the offending vehicle was concerned, the owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal calculated the compensation as ₹11,85,000/- along with interest @ 6% per annum. The claimants were held entitled to an amount of ₹ 5,90,000/- plus ₹5,000/- for loss of consortium to the widow.

The deceased was aged 47 years. He was drawing a pension of ₹7485/- per month and was earning a salary of ₹7,000/- per month from Uttar Haryana Bijli Vitran Nigam Limited. It came on record that he was working on contract basis as Meter Reader. Appreciating the facts and evidence, the income of the deceased was assessed as ₹10,000/- per month. The Tribunal applied a multiplier of 13. The deceased was survived by four dependents, therefore, 1/4th deduction for self expenses was made. The

Tribunal awarded ₹10,000/- for expenses of last rites and transportation and ₹5,000/- for loss of consortium.

There is no dispute with regard to income assessed, 1/4th deduction for self expenses and applying the multiplier of 13.

Heard learned counsel for the parties and perused the paper book and the record.

Learned counsel for the appellants contended that no future prospects have been awarded. The amounts awarded under the conventional heads are on the lower side. He argued that no amount has been awarded for loss of estate.

Learned counsel for the Insurance Company defended the award and argued that the amounts awarded under the conventional heads should be awarded strictly in accordance with the decision of the Supreme Court in ***National Insurance Company Ltd. vs. Pranay Sethi and Ors., 2017 AIR (SC) 5157.*** He argued that he was not entitled to future prospects as he was only working on contract basis and he was to serve upto 53 years.

The contentions raised by learned counsel for the appellants deserve acceptance.

In consonance with the decision of the Supreme Court in ***Pranay Sethi's case (supra)***, 25% future prospects are to be awarded. In addition to it, the claimants are entitled to ₹15,000/- each for funeral expenses and for loss of estate and ₹40,000/- is awarded to widow for loss of consortium.

The contention raised by learned counsel for the insurer that the deceased was to serve only upto 53 years of age, no future prospects should be awarded, lacks merit. The deceased was an able-bodied person and his ability to work was established by the fact that he was having another employment inspite having being a retiree. In such circumstances, it cannot be said that no future prospects are to be awarded.

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 the 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 Supreme Court held :-

> "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.*
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> *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, 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."

Having due regard to the decision quoted above, ₹40,000/-each is awarded to two minor children for loss of parental consortium.

As there is no dispute with regard to loss of dependency calculated by the Tribunal i.e. ₹11,70,000/-, hence, 25% of the said amount is awarded as future prospects i.e. ₹2,92,500/-. The conventional heads of ₹1,50,000/- is awarded under the conventional heads as discussed above, the net result is that the conventional heads are enhanced by ₹1,35,000/-.

50% of amount awarded as future prospects shall be deducted on account of 50:50 contributory negligence. While taking a sympathetic view, no amount shall be deducted from enhanced amount awarded under the conventional heads on account of contributory negligence.

The claimants are entitled to following enhancement :-

50% Future prospects	(₹2,92,500/2)= ₹1,46,250/-
Enhanced amount of conventional heads	₹1,35,000/-
Total	₹2,81,250/-

The award dated 16.08.2013 is modified to the extent that the amount awarded of ₹5,95,000/- is enhanced by ₹2,81,250/- along with interest @ 7.5% per annum from the date of filing the claim petition till the realisation of the amount.

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

15.11.2018
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1.Whether the order is speaking/reasoned: Yes/No
2.Whether the order is reportable : Yes/No