IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.6345 of 2015
Date of decision: 24.09.2018

Raj Bala and others …… Appellants

Versus

Balraj and another ….. Respondents

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

Present: Mr. M.S. Randhawa, Advocate for the appellants.

Ms. Vandana Malhotra, Advocate for respondent No.2-Insurance Company.

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B.S. WALIA, J. (ORAL)

[1] Appeal has been filed by the mother, father and minor brother of Deepak who died in a motor vehicular accident on 17.02.2014. Learned Motor Accidents Claims Tribunal, Narnaul (hereinafter referred to as 'the Tribunal") by taking into account the age of the deceased as 21 years and by treating the deceased as skilled labourer assessed his monthly income as ₹ 4800 per month and by applying multiplier of 18 and making deduction of 50% of the income of the deceased towards his personal expenses, awarded compensation of ₹ 5,18,400/-. Thereafter, by giving additional sum of ₹ 15,000/- on account of funeral expenses and transportation charges, total compensation of ₹ 5,33,400/- (rounded off to ₹ 5,33,500/-) was awarded.

[2] Learned counsel for the appellants contended that compensation paid was liable to be enhanced on the ground that no future prospects had

been awarded despite entitlement, besides, appropriate amount had not been awarded under conventional heads.

[3] Learned counsel for respondent No.2-Insurance Company has not disputed the claim on the aforementioned points.

[4] I have heard learned counsel for the parties.

[5] Admittedly, deceased was 21 years of age. Although dependency was worked out at ₹ 2400/- per month, yet no amount was taken into account for computing future prospects payable. As per paragraph No.61 (iv) of the decision in **National Insurance Company Limited v. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009**, where deceased is self-employed and less than 40 years of age, 40% of the established income minus tax component is to be taken into account for the purpose of computing future prospects. Paragraph No.61 (iv) of the decision in Pranay Sethi's case (supra) is reproduced as under:-

> "*61 (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.*

Since in the instant case, the deceased was admittedly 21 years of age and self-employed, 40% of the established income of the deceased less tax component has to be taken into account for computing future prospects.

[5] Likewise, only sum of ₹ 15,000/- was awarded on account of funeral expenses and transportation charges, whereas in terms of paragraph No.61 (viii) of the decision in Pranay Sethi's case (supra), the appellants are entitled to ₹ 15,000/- on account of loss of estate, ₹ 15,000/- for funeral expenses while in terms of paragraph No.8.7 of the decision of Hon'ble the Supreme Court in **Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram and others, decided on 18.09.2018 in Civil Appeal No.9518 of 2018 (arising out of SLP (Civil) No.3192 of 2018)**, the mother, father and minor brother of the deceased are entitled to ₹ 40,000/- each towards loss of consortium.

Paragraph No.61 (viii) of the decision in Pranay Sethi'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 Rs.15,000/-, Rs.40,000/- and Rs. 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's case (supra) is reproduced 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.

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 Rs.40,000/- each for loss of Filial Consortium."

In the light of aforementioned decision, appellant Nos.1 and 2 i.e. mother and father of the deceased are held entitled to amount of ₹ 40,000/- each on account of loss of filial consortium.

[6] In view of the position as noted above, compensation payable works out as under:-

Sr. No.	Heads	Amount assessed by the Tribunal	Amount assessed by the Court
1.	Income	₹ 4800/-	₹ 4800/-
2.	Future Prospects	NIL	40% of ₹ 4800/- = ₹ 1920/-
3.	Total Income assessed	₹ 4800/-	(₹ 4800/- + ₹ 1920/-) = ₹ 6720/-
4.	Multiplier applied	18	18
5.	Deduction (towards personal expenses of deceased)	50% of ₹ 4800/- = ₹ 2400/-	50% of ₹ 6720/- = ₹ 3360
6.	Dependency (Annual)	(₹ 4800/- - ₹ 2400/-) = ₹ 2400/ (per month) ₹ 2400/- x 12 = ₹ 28,800/-	(₹ 6720/- - ₹ 3360/-) = ₹ 3360/- (per month) ₹ 3360/- x 12 = ₹ 40,320/-

7.	Compensation Awarded	₹ 28,800/- x 18 = ₹ 5,18,400/-	₹ 40,320/- x 18 = ₹ 7,25,760/-
8.	Loss of Filial Consortium	NIL	₹ 40,000/- (Mother) ₹ 40,000/- (Father) Total = **(₹ 80,000/-)**
9.	Loss of Estate	NIL	₹ 15,000/-
10.	Funeral Expenses	₹ 15,000/-	₹ 15,000/-
11.	Interest	9%	9%
	TOTAL	₹ 5,33,400/- **(rounded off ₹ 5,33,500/-)**	**₹ 8,35,760/-**

[10] Accordingly, as against compensation of ₹ 5,33,500/- awarded by the Tribunal, the claimants-appellants are held entitled to compensation of ₹ 8,35,760/- along with interest @ 9 % per annum with effect from the date of claim petition till date of payment, less payment, if any, made earlier.

[11] Needless to mention, payment on account of future prospects shall be made after deducting the tax liability if any in accordance with the decision in Pranay Sethi's case (supra).

[12] Accordingly, appeal is allowed by modifying Award dated 02.03.2015 passed by the learned Tribunal to the extent as noted above.

(B.S. Walia)
Judge

24.09.2018
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1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.