IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.6460 of 2015 (O&M)
Date of Decision: 13.11.2018.

Satbir and another

...Appellants

Versus

Satbir Singh and others

....Respondents

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

Present: Mr. Kulwant Singh Dhanora, Advocate
for the appellants.

None for respondent Nos.1 to 4.

Mr. Eklavya Darshi, Advocate
for respondent No.5.

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<u>B.S.WALIA, J (Oral)</u>.

1. Appeal has been filed seeking enhancement of compensation on account of death of Mamit Devi, wife of appellant No.1 and mother of appellant No.2, in a motor vehicular accident on 18.03.2014.

2. The Motor Accidents Claims Tribunal Kaithal, (hereinafter referred to as 'the Tribunal') by taking into account the monthly contribution of the deceased housewife at ₹5,000/- and by applying multiplier of '16', fixed the dependency at ₹9,60,000/- and by awarding a sum of ₹20,000/- on account of last rites and transportation of dead body of the deceased besides ₹75,000/- to the husband on account of loss of consortium, awarded total compensation of ₹10,55,000/-.

3. The only submission of learned counsel for the appellants is that the notional monthly contribution of the deceased which was taken at ₹5,000/- by the learned Tribunal is on the lower side and the same ought to

have been taken at ₹9,000/-. Learned counsel has placed reliance upon the decision of this Court dated 15.01.2014, in FAO No.218 of 2014, in case titled as United India Insurance Company Ltd. vs. Sube Singh and others, in which the learned Motor Accidents Claims Tribunal, Kurukshetra, assessed the monthly contribution of the deceased house wife therein at ₹9,000/-. Insurance Company, therein, challenged the award on the ground that once notional income had been taken into account, deduction should also be made towards personal expenses of the deceased housewife. The aforementioned plea was rejected and the award passed by the learned MACT, Kurukshetra, in that case, was upheld by this Court. In other words, notional monthly contribution of the deceased housewife was fixed at ₹9000/- in respect of an accident which took place on 23.11.2012. Learned counsel for the appellants contends that the accident in the instant case is of 18.03.2014, therefore, if not on a higher scale, the monthly notional contribution of the deceased wife is liable to be taken at ₹9000/-. Learned counsel further contended that compensation under conventional head is also not appropriate.

4. Per contra, learned counsel for respondent No.5/Insurance Company has contended that the notional monthly contribution of ₹5000/- was correctly taken by the learned Tribunal and the same did not warrant any interference, besides deduction was liable to be made out of the notional monthly contribution towards personal expenses of the deceased house wife.

5. I have heard the submissions of learned counsel for the parties.

6. Admittedly the deceased was a housewife, who died at the age of 34/35 years in a motor vehicular accident on 18.03.2014. The first point in issue is as to whether the notional monthly contribution of the deceased housewife is to be taken at ₹5,000/- or ₹9,000/- and secondly whether deduction towards personal expenses of the deceased housewife is to be made or not. The matter has already been squarely dealt with by a Coordinate Bench in Sube Singh's case (supra), wherein in case of an accident and death of 23.11.2012, in the case of housewife, the notional contribution towards family was taken at ₹9,000/- per month and the plea for deduction towards personal expenses of the deceased housewife was rejected. Relevant extract of the decision in Sube Singh's case (supra) is reproduced as under:-

> 2. Briefly stated, the facts of the case are on 23.11.2012 Gurmailo Devi (since deceased) was returning to village Ban on motor cycle bearing no. HR-07S-1502 having being driven by Rajiv Kumar at a normal speed, after attending a marriage ceremony at Radaur. When they reached near Tikona turn on Saharanpur-Kurukshetra road, a truck bearing no. HR-58A-4787 came from the side of Yamuna Nagar i.e. from behind having been driven in a rash and negligent manner and struck against their motor cycle due to which they both fell down. Gurmailo Devi came under the wheel of the truck and died at the spot. The driver i.e. respondent No.1 in the claim petition namely Angrej Singh, fled from the spot after causing the accident. The Tribunal held him liable for causing the

accident. Since the deceased was a house wife, the Tribunal fixed her notional income at ₹9000/- per month which came to ₹1,08,000/- per annum. She was 40 year old at the time of accident, multiplier of 15 was applied and the total loss of income was assessed at ₹16, 20,000/-. Funeral expenses to the tune of ₹25,000/- were also awarded. Thus, in all the compensation awarded was ₹16,45,000/-.

3. Learned counsel for the appellant has argued that even while noticing that the income of a skilled worker in 2012 was approximately ₹8000/- the Tribunal has wrongly assessed the income of the deceased as ₹9000/-. As per him once the notional income had been taken a deduction had to be made for personal expenses. This argument is flawed. In Lata Wadhwa and others v. State of Bihar and others reported as 2001 (4) RCR(Civil) 673 (where the accident had taken place in 1981) the Hon'ble Supreme Court evaluated the contribution of a house wife at ₹3000/-per month. The accident in the present case took place after 23 years. In my considered opinion to tag a house wife as a 'skilled worker' alone does not do complete justice to her multifarious role as a home manager. Keeping in view the lapse of 23 years between the accident in the case of Lata Wadhwa and the present accident and my conclusion that a house wife is something more than a mere skilled worker it would not be unreasonable to estimate the contribution of the deceased in the present case

at a higher figure. On the whole I see no reason for reducing the quantum.

7. Since, in the instant case, the accident is of 18.03.2014, therefore, I am of the view that the notional monthly contribution of the deceased housewife towards family is to be taken at ₹9,000/-, besides no deduction is to be made towards personal expenses of the deceased.

8. The appellants were awarded ₹20,000/- towards expenses for last rites and transportation of dead body besides appellant No.1-husband was also granted ₹75,000/- on account of loss of consortium. However, as per paragraph No.61 (viii) of the decision in National Insurance Company Ltd. versus Pranay Sethi and others, 2017(4) RCR (Civil) 1009, compensation of ₹15,000/-, ₹40,000/- and ₹15,000/- respectively is to be awarded on account of loss of estate, loss of consortium and funeral expenses. Paragraph 61 (viii) of the decision in Pranay Seth'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 ₹15,000/-, ₹40,000/- and ₹15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

9. After considering the decision rendered by the Constitution Bench in Pranay Sethi's case (supra), Hon'ble the Supreme Court in a subsequent decision in Magma General Insurance Co. Ltd vs, Nanu Ram Alias Chuhru Ram, in Civil Appeal No.9581 of 2018, decided on 18 September, 2018, has held that "consortium" is a compendious term which

encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'" and awarded ₹40,000/- to the father and sister of the deceased therein on account of loss of consortium. Paragraph 8.7 of the decision in Magma General Insurance Co. Ltd.'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.
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> With respect to a spouse, it would include sexual relations with the deceased spouse.3 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."4 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 Rs. 40,000 each for loss of Filial Consortium.

10. Accordingly, the appellants are entitled to ₹15,000/- on account of funeral expenses, ₹15,000/- on account of loss of estate ₹40,000/- each on account of loss of consortium.

11. In the circumstances, the compensation payable to the appellants/claimants works out as under:

Sr. No.	**Head**	**Amount assessed by the Tribunal**	**Amount assessed by this Court**
1	Monthly Contribution towards family	₹5000/-	₹9000/-
2	Future Prospects	Nil	Nil
3	Total Income assessed	₹5000/-	₹9000/-
4	Multiplier applied	16	16
5	Deduction (towards personal expenses of the deceased)	Nil	Nil
6	Annual dependency	₹5000x12x16=₹9,60,000/-	₹9000x12x16=₹17,28,000/-
7.	Funeral expenses	₹20000/- (Consolidated towards last rites and transportation)	₹15,000/- (funeral expenses)
8.	Loss of Estate	Nil	₹15,000/-
9.	Loss of spousal / parental consortium respectively.	Rs.75,000/- to husband (appellant No.1)	₹80,000/- i.e. ₹40,000/- to each of the appellants
	Total	₹10,55,000/-	₹18,38,000/-

12. Accordingly, as against the compensation of ₹10,55,000/- awarded by the Tribunal, the appellants/claimants are held entitled to award of compensation of ₹18,38,000/- along with interest @ 7.5 per annum w.e.f. the date of filing of the claim petition till date of payment, less amount if any already paid. Needless to mention, the appellants would be entitled to the award of compensation in proportion to their shares determined by the Tribunal after first making payment of ₹40,000/- towards loss of consortium to the appellants.

13. Accordingly, appeal is allowed and award dated 10.02.2015, is modified to the extent as noted above.

(B.S.WALIA)
JUDGE

13.11.2018
rajesh.k.khurana

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