IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 8170 of 2014
DECIDED ON: OCTOBER 29, 2018

INDU DHIMAN @ INDERJIT DHIMAN & OTHERS

.....APPELLANTS

VERSUS

SHIV KUMAR & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Deepak Bhardwaj, Advocate
for the appellants.

Mr. Rajbir Singh, Advocate for
Mr. Sanjeev Goyal, Advocate
for the respondent-Insurance Co.

Mr. Ayuwan Singh, AAG, Haryana.

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AVNEESH JHINGAN, J (ORAL)

The present appeal has been filed against the award dated 04.03.2014 passed by Motor Accident Claims Tribunal, Patiala (for brevity 'the Tribunal'). The Appellants are the legal heirs of the deceased-Harminder Singh Dhiman. Driver of offending bus bearing registration No. HR-58-9022; Haryana Roadways, Yamuna Nagar Depot and ICICI Lombard General Insurance Co. Ltd. have been arrayed as respondents No.1 to 3 in the present appeal.

3. The brief facts of the case are that on 16.12.2010, Harminder Singh Dhiman alongwith his uncle Barinder Kumar were going to visit their relative at Mandi Gobindgarh. Harminder Singh Dhiman was crossing the G.T. Road, at that time he was struck by rashly and negligently driven offending vehicle. As a result of the accident, he was crushed beneath the tyre of offending vehicle. He was taken to Civil Hospital, Fatehgarh Sahib where he was declared brought dead. FIR No. 170, dated 16.12.2010 was got registered at Police Station Sirhind, District Fatehgarh Sahib.

3. The parents and two minor brother and sister of the deceased filed a claim petition under Section 166 of Motor Vehicles Act, 1988 (for short 'the Act').

4. In the claim proceedings, the date of birth of the deceased was proved as 17.11.1992. It was brought on record that he was pursuing diploma in Mechnical Engineering at RIMT College, Mandi Gobindgarh. It was claimed that he was working with M/s Babu Ram, Ashok Kumar, Nabha Gate Patiala and getting salary of ₹7500/- per month but the claimants failed to substantiate the monthly earning of the deceased. The Tribunal took the notional income of the deceased as ₹15,000/- per annum. The Tribunal applied the multiplier of 18.

5. The Tribunal after considering the facts and appreciating the evidence adduced, awarded a compensation to the tune of ₹4,30,000/- alongwith interest @6% per annum. The amount awarded includes ₹5,000/- for funeral expenses, ₹5000/- for loss of estate, ₹7500/- was awarded towards future prospects and ₹75000/- for pain, suffering and loss of expectancy of life.

6. The learned counsel for the appellants argued that the Tribunal erred in assessing the notional income of the deceased as ₹15,000/- per annum and the

amounts awarded under the conventional heads are on lower side.

7. Learned counsel for the respondents contended that the claimants/appellants failed to substantiate the monthly income of the deceased, hence, the Tribunal had rightly assessed the notional income of the deceased as ₹15,000/-.

8. It would be pertinent to note in the present case that the deceased was 18 years. It was proved that he was pursuing a three years diploma in Mechanical Engineering from RIMT, College, Mandi Gobindgarh and it was pleaded that he was already working, albeit, the said claim was not substantiated. In such circumstances, the Tribunal erred in considering the notional income of the deceased. In the cases where the claimants failed to prove the monthly earning of the deceased, the safest yardstick would be to rely upon the minimum wages prevalent at the time of accident. It would not be appropriate to equate a student who was pursuing diploma in Mechanical Engineering with an un-skilled labourer. The monthly earnings as per the minimum wages given to the skilled labourer are to be taken for awarding compensation in December, 2010. Minimum wages for a skilled labourer were ₹4867/-. Keeping in view the participation of deceased in extra curricular activities and the academic record, the monthly earnings of the deceased is assessed as ₹5000/- per month.

9. In view of the Apex Court judgments in the cases of ***National Insurance Co. Ltd. v. Pranay Sethi;* 2017 (4) RCR (Civil) 1009** and ***Hem Raj vs. Oriental Insurance Company*** Ltd; 2018 (2) PLR 480, 40% future prospects are awarded.

10. The claimants are entitled to a sum of ₹15,000/- each, for funeral

expenses and for loss of estate. The deceased was unmarried and 50% deduction for his personal expenses has to be made. Keeping in view the age of the deceased, multiplier of 18 is to be applied.

11. The Supreme Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram & others;*** ***2018 (4) RCR (Civil) 333;*** has held 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.*
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> *In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'.*
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> *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."*
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> *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."

12. In view of the decision quoted above, the parents of the deceased are entitled to an amount of ₹40,000/- under the head of Filial Consortium and minor brother and sister are also awarded an amount of ₹40,000/- under the head of Filial Consortium.

13. In view of the aforesaid discussion, the compensation is recalculated as under:

	Head	**Compensation awarded**
(i)	Income	₹5,000/- per month
(ii)	Future prospects at 40%	₹2,000/- per month
(iii)	Total Income	₹7,000/- per month
(iv)	Deduction for personal expenses (7000/2=3500)	₹3500/- (i.e. 1/2 of total income)
(v)	Multiplier	18 (as per age of deceased)
(vi)	Total Dependency	(7000-3500)x12x18=₹7,56,000/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
(ix)	Filial Consortium for parents	₹40,000/-
(x)	Filial Consortium for minor brother and sister	₹40,000/-
	Total Compensation awarded	₹8,66,000/-

17. The award dated 04.03.2014 is modified to the extent that amount awarded by the Tribunal to the tune of ₹4,30,000/- is enhanced to ₹8,66,000/-. The appellants shall be entitled to enhanced amount alongwith interest @7.5% per annum from the date of filing of the claim petition till realization of amount. The appellants shall share the compensation, as already directed by the Tribunal.

18. The appeal is partly allowed in the afore-said terms.

(AVNEESH JHINGAN)
JUDGE

OCTOBER 29, 2018
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No