211(1)

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

****

FAO No.863 of 2014
Date of Decision: 01.11.2018

Sheela Devi and others

Appellants

Versus

Rampal and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ajit Kumar Sharma, Advocate for
Mr. R.D. Yadav, Advocate
for the appellants.

Mr. Subhash Goyal, Advocate
for respondent No.3-Insurance Company.

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AVNEESH JHINGAN, J (Oral) :

The claimants have filed the present appeal against the award dated 23.08.2013 passed by the Motor Accident Claims Tribunal, Rewari (for brevity 'the Tribunal').

2. The widow of Surender @ Sunder; two minor children and mother of the deceased are the appellants. The driver of Maruti Car bearing registration No. HR-36J-6587 (hereinafter referred to as 'the offending vehicle'); the owner of the offending vehicle and insurer of the offending vehicle i.e. ICICI Lombard General Insurance Company have been arrayed as respondents No.1 to 3, respectively in this appeal.

3. The brief facts emanating from the record are that on

11.01.2011 at about 01:30 A.M., Ompal @ Monu and Surender @ Sunder were going on a motorcycle bearing registration No.HR-36K-6364. When they reached near Railway Station near village Palhawas, their motorcycle was hit by a rashly and negligently driven offending vehicle. As a result of the impact, both the occupants of the motorcycle fell down, sustained fatal injuries and died at the spot. FIR No. 04, dated 11.01.2011 was registered at Police Station Rohrai.

4. The legal heirs of the claimant filed this appeal under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'). The Tribunal after considering the facts and appreciating the evidence adduced, held that the accident occurred due to rash and negligent driving of the offending vehicle. The owner, driver and the insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

5. The Tribunal assessed the monthly income of the deceased as ₹5000/- per month, relying upon the minimum wages prevalent at the time of accident. 1/3rd deduction for self expenses was made and multiplier of 16 was applied. An amount of ₹6,75,000/- was awarded alongwith interest @ 6% per annum. The amount awarded included ₹35,000/- awarded towards conventional heads.

6. Learned counsel for the appellants contended that no future prospects have been awarded. 1/3rd deduction for self-expenses has wrongly been made as deceased was survived by four

dependants. Lastly, it was argued that the amount awarded under conventional heads is on the lower side. No other issue has been raised.

7. Learned counsel for the Insurer defended the award and contended that the compensation under conventional heads should be awarded strictly in accordance with the decision of Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others (2017) AIR (SC) 5157.***

8. The contention made by learned counsel for the appellants deserves acceptance.

9. In view of decisions of Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others (2017) AIR (SC) 5157*** and in ***Hem Raj Vs. Oriental Insurance Company Ltd. 2018(2) PLR 480,*** 40% future prospects are awarded as the deceased was below 40 years. The appellants would be entitled to ₹15,000/- each for funeral expenses and loss of estate and ₹40,000/- is awarded to widow for loss of consortium.

10. Keeping in view the fact that deceased was survived by four dependants, ¼th deduction for self expenses is made in the terms of decision of Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21.***

11. The Supreme Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram & Ors., 2018(4) R.C.R. (Civil) 333,*** considering the decision of the Constitution Bench of the Supreme Court in ***Pranay Sethi's case*** (supra) it has been held that

loss of consortium is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'. The relevant portion of the decision is:~

> *"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.* ***Rajesh and Ors. vs. Rajbir Singh and Ors. (2013)9 SCC 54.***
>
> *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 the 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 Vehicle 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 sisters of the deceased, an amount of ₹40,000/- each for loss of Filial Consortium".*

12. In view of decision, ₹40,000/- each is awarded to two minor children for parental consortium and ₹40,000/- is awarded to the mother of deceased for loss of filial consortium.

13. In view of above discussion, compensation is recalculated below:-

Particulars	***Amount (in ₹)***
Monthly income of the deceased assessed	5,000/-
40% Future Prospects	2,000/-
Sub Total	7,000/-
1/4th deduction for self expenses	1,750/-
Monthly Dependancy	5,250/-
Annual Dependancy	63,000/-
Applying multiplier of 16	**10,08,000/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Loss of consortium to widow	**40,000/-**
Loss of parental consortium to two minor children [40,000/- x 2]	**80,000/-**
Loss of consortium to the mother	**40,000/-**
Grand Total	**11,98,000/-**

14. The award dated 23.08.2013 is modified to the extent that the amount awarded by the Tribunal of ₹6,75,000/- is enhanced to ₹11,98,000/-. The enhanced amount shall be disbursed in the same proportion to the claimants as was decided by the Tribunal.

15. The claimants shall be entitled to enhancement of compensation alongwith interest @ 7.5% per annum from the date of filing of the claim petition till the date of realization of the amount.

16. The appeal is partly allowed in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

November 01, 2018
pankaj baweja

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