IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-8757-2014
Date of decision: 11.10.2018

Gurmeet Kaur & ors. .... Appellants

Versus

Jaspal Singh & ors. .... Respondents

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

Present: Mr. Vivek Suri, Advocate
for the appellants.

Mr. B.S.Tonque, Advocate
for respondent No.3.

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B.S.Walia, J.(Oral)

1. Appeal has been filed by the widow and two minor children of deceased Baljinder Singh who died in a motor vehicular accident on 09.12.2013. Prayer is for enhancement of compensation of ₹ 6,70,000/- awarded along with interest @ 7.5% per annum.

2. As per the claim petition, deceased was a mechanic of submersible motors and was earning ₹ 20,000/- per month. His age was claimed to be 39 years. However, the learned Motor Accidents Claims Tribunal, Patiala (hereinafter referred to as 'the Tribunal') assessed the income of the deceased at ₹ 4,500/- per month being unskilled labourer and by imposing deduction of 1/3rd of income towards personal expenses and by applying multiplier of 15, arrived at dependancy of ₹ 5,40,000/-. By

adding ₹ 1 lakh on account of loss of consortium, ₹ 10,000/- per child for loss of love and affection and ₹ 10,000/- on account of last rites, total sum of ₹ 6,70,000/- was awarded as compensation.

3. Learned counsel for the appellants/claimants has raised four-fold arguments while praying for enhancement of compensation. Learned Counsel contends that even if it be assumed for the sake of argument that the deceased was a unskilled labourer, still the daily wages payable to an unskilled labourer in the State of Punjab, as per notification issued by Department of Labour, Govt. of Punjab for the relevant period was ₹ 240/- per day, which worked out to be ₹ 6247/-per month. Copy of the notification produced by learned counsel for the respondent-insurance company is taken on record. Accordingly, as against the income of ₹ 4,500/- assessed by the learned Tribunal, income of the deceased is taken at ₹ 6,247.75 (rounded off to ₹ 6,250/-) per month. No amount was awarded towards future prospects whereas as per paragraph 61 (iv) of the decision in **National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009**, where the deceased was self employed and less than 40 years of age, then 40% of the established income of the deceased minus the tax component is to be taken into account for computing future prospects payable. Since no evidence was led by the appellants with regard to the age of the deceased and the postmortem report mentions that the deceased was about 40 years of age, therefore, the age of the deceased is taken as below 40 years. Accordingly in terms of paragraph 61(iv) of the decision in *Pranay Sethi's case(supra)*, 40% of the established income of the deceased minus the tax component is taken into account for computing

the future prospects. Paragraph No.61 (iv) of the decision in **Pranay Sethi's case (supra)** is reproduced hereinbelow:

" (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."

4. As regards compensation payable on account of conventional heads, the learned Tribunal awarded a sum of ₹ 1,00,000/- on account of loss of consortium to appellant No.1 and ₹ 10,000/- each to appellant Nos.2 and 3 on account of loss of love and affection and ₹ 10,000/- towards funeral expenses whereas as per paragraph No. 61(viii) of the decision in Pranay Sethi's case(supra) ₹ 15,000/- is payable on account of loss of estate, ₹ 15,000/- on account of funeral expenses besides ₹ 40,000/- on account of loss of spousal consortium to appellant No. 1 besides like amount to appellant Nos. 2 & 3 on account of loss of parental consortium in view of the decision in ***Magma General Insurance Company Ltd. vs Nanu Ram @ Chuhru Ram & others*** dated *18.09.2018* in *Civil Appeal No.9581 of 2018* arising out of *SLP (Civil) No.3192 of 2018*. However, no sum is payable on account of loss of love and affection.

5. Paragraph No.61 (viii) of the decision in Pranay Sethi's case & paragraph No. 8.7 of the decision in **'*Magma General Insurance Company Limited*** **case (supra)** is reproduced as under:-

Paragraph No.61 (viii)-Pranay Sethi's case :

"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.”

Paragraph No. 8.7-'*Magma General Insurance Company Limited* case :

“ 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, cooperation, 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."

In the light of the position as noted above it is held that no amount is admissible on account of loss of love and affection. However, the appellants are held entitled to award of ₹ 40,000/- each on account of loss of spousal/parental consortium besides ₹ 15,000/- on account of loss of estate and ₹ 15,000/- on account of funereal expenses.

6. Lastly, learned counsel for the appellants has contended that interest has been awarded @ 7.5% per annum whereas the same should be

9 %. Hon'ble the Supreme Court in ***Sube Singh and another vs Shyam Singh(dead) and others, Civil Appeal No.7176 of 2015 decided on 09.02.2018*** *awarded* interest @ 9% per annum with effect from the date of filing of claim petition till its realization. Accordingly, in view of the aforesaid decision, the appellants are also held entitled to award of interest @ 9 % p.a. w.e.f. the date of claim petition till date of payment.

7. In the light of position as noted above, the appellants are held entitled to compensation as under:

Sr. No	***Heads***	***Heads Amount assessed by Tribunal***	***Amount assessed by this Court***
1	Income	₹ 4,500/-	₹ 6,250/-
2	Future Prospects	Nil	40% of ₹ 6,250 = ₹2500/-
3	Total income assessed	₹ 4,500/-	(₹ 6,250/- + ₹2500/-) = ₹ 8750/-
4	Deduction (monthly of total income assessed towards personal expenses)	1/3rd of ₹ 4,500/- = ₹ 1500/-	1/3rd of ₹ 8750/- = ₹ 2,917/-
5	Multiplier	15	15
6	Dependency	₹ 3,000 x 12 x 15= ₹ 5, 40,000/-	₹ 5,833 x 12 x 15=₹ 10,49,940/-
7	Loss of consortium	₹ 1,00,000/-	₹ 1,20,000/- (₹40,000/- to each appellant)
8	Loss of love and affection	₹20,000/- (₹10,000/- each)	Nil
9	Loss of estate	Nil	₹ 15,000/-
10	Funeral Expenses	₹ 10,000/-	₹ 15,000/-
11	Total	₹ 6,70,000/-	₹ 11,99,940/-
12	Interest	@ 7.5%	@ 9%

8. Accordingly, in view of the position as noted above, as against the compensation of ₹ 6,70,000/- awarded by the Tribunal, the appellants are held entitled to compensation of ₹ 11,99,940/- to be apportioned in the

manner indicated by the Tribunal. Compensation amount shall be payable along with interest @ 9% per annum with effect from the date of claim petition till date of payment, less payment, if any, made earlier. Needless to mention, the Insurance Company shall deduct tax liability if any qua the amount payable on account of future prospects in the light of decision in **Pranay Sethi's case (supra).**

9. Accordingly, appeal is allowed by modifying Award dated 11.08.2014 passed by the learned Tribunal to the extent as noted above.

11.10.2018 **(B.S.WALIA)**
sonia **JUDGE**

Whether speaking/non-speaking? Yes/No
Whether reportable? Yes/No