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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**FAO No.6372 of 2016 (O&M)
Date of Decision: 22.11.2018**

Maya Devi and others

Appellants

Versus

Satpal and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sumit Gupta, Advocate
for the appellants.

Mr. Sanjeev Kodan , Advocate
for the Insurance Company.

AVNEESH JHINGAN, J (Oral):

The award dated 25.05.2015 passed by Motor Accident Claims Tribunal, Sonipat [for brevity 'the Tribunal'] has been assailed in the appeal by legal heirs of Satbir seeking enhancement of compensation.

Widow, two major sons and one minor son are the appellants. Driver of vehicle bearing registration No.HR-67A-1790 [hereinafter referred to as 'offending vehicle']; owner of offending vehicle and insurer of offending vehicle i.e. HDFC ERGO General Insurance Company Ltd. have been arrayed as respondents No.1 to 3 respectively in the appeal.

The brief facts necessary for adjudication of the present appeal are that on 08.01.2014, Satbir was going to his house on foot. On his way, he was hit by a rashly and negligently driven offending vehicle. As a result of the accident, he suffered grievous injuries. He was shifted to Community Health Centre, Gohana from where he was referred to PGIMS, Rohtak. Thereafter, he was shifted to Ganga Ram Hospital, Delhi and subsequently to Fortis Hospital, Delhi, where he died on 13.01.2014. FIR No. 18, dated 01.02.2014 was registered at Police Station Gohana.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'] was filed. The Tribunal after considering the facts and appreciating the evidence adduced, held that accident was caused due to rash and negligent driving of the offending vehicle. The owner, driver and insurer of offending vehicle were held jointly and severally liable to pay the compensation. An amount of ₹11,92,500/- was awarded by the Tribunal. The said amount included ₹1,00,000/- for loss of consortium, ₹25,000/- for funeral expenses and ₹3,65,500/- towards reimbursement of medical expenses.

Heard learned counsel for the parties, perused the paper book and relevant documents produced.

Learned counsel for the appellants argued that no future prospects have been awarded and the amount awarded under the conventional heads is on the lower side.

Learned counsel for the insurer defended the award. He

argued that ₹1,00,000/- awarded towards loss of consortium is on the higher side.

The contention raised by learned counsel for the appellants deserves acceptance.

There is no challenge to the monthly income assessed, 1/4th deduction for self expenses and multiplier applied of 12, as deceased was 50 years old.

Having due regard to the decision of the Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others (2017) AIR (SC) 5157** and **Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480**, 10% future prospects on the amount awarded for loss of dependancy calculated by the Tribunal i.e. Rs.70,200/-, is awarded to the claimants.

As the quantum of compensation is being revisited, the amount awarded under the conventional heads is made in consonance with decision of the Supreme Court in **Pranay Sethi's** case (supra). The appellants are entitled to ₹15,000/- each for funeral expenses and loss of estate. ₹40,000/- is awarded to widow for loss of consortium.

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) has held that loss of consortium is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'. The order of

Supreme Court is quoted below:-

“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”.

In view of above quoted decision, ₹40,000/- is awarded to minor child for loss of parental consortium.

The award dated 25.05.2015 is modified to the extent

that amount awarded of ₹11,92,500/- by the Tribunal is enhanced by ₹55,200/-.

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

The appeal is allowed in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

November 22, 2018

pankaj baweja

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