IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-6860-2016 (O&M)
Date of decision: 11.10.2018

New India Assurance Co. Ltd. .... Appellant

Versus

Kanta & ors. .... Respondents

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

Present: Mr. Suvir Dewan, Advocate
for the appellant.

Mr. Vinod K. Kanwal, Advocate for
Mr. Ashit Malik, Advocate
for respondent Nos.1 and 2.

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B.S.Walia, J.(Oral)

CM-23883-CII-2016

For the reasons as are mentioned in the application, same is allowed. Delay of 7 days in late filing of the appeal is condoned.

Main case

1. Appeal has been filed by the insurance company challenging the award of compensation of ₹ 15,31,000/- along with interest @ 9% per annum to the respondents-claimants by the learned Motor Accidents Claims Tribunal, Kurukshetra (hereinafter referred to as 'Tribunal') on account of death of Prem Kishore in a motor vehicular accident, at the age of 19 years on 01.10.2015.

2. The Tribunal took the notional income of the deceased at

₹ 8,000/- per month and by making addition of 50% of the income of the deceased towards future prospects and deducting 50% towards personal expenses awarding ₹ 1,00,000/- on account of loss of love and affection to each of respondent /claimant parents, ₹ 25,000/- on account of funeral expenses and ₹ 10,000/- on account of transportation charges, awarded total compensation of ₹ 15,31,000/- to respondents/claimants Nos. 1 & 2.

3. Learned counsel for the appellant has raised a two-fold argument viz., that in view of decision of this Court in ***FAO No.607 of 1998*** in case titled as ***Sunehra and another vs. Sat Parkash Sharma & others*** *(decided on 03.02.2014)* as well as decision of Hon'ble the Supreme Court in **National Insurance Company Limited vs Pranay Sethi and others, 2017(4) RCR (Civil) 1009,** future prospects are payable only in the case of persons, who are working or are self-employed whereas in this case, no evidence was led by the respondents that the deceased was working. He, however, very fairly contended that although no future prospects were payable yet at the same time, no deduction was to be made out of the notional income of the deceased in view of the decision in *Sunehra and another's case(supra).* Admittedly, as per *Sunehra and another's case (supra)* relied upon by learned counsel for the appellant, in the case of notional income, future prospects are not payable. Relevant extract of the said decision is reproduced herein under :

> *"In my opinion, one important factor is that the judgments cited by counsel for the State of Haryana are later than the decision in R.K.Malik's case(supra). More importantly, it is one thing to grant notional benefit for future prospects when the income is proven but where the income is also notional (as in the case of a student or*

> *a house wife), it may not be prudent to award a further benefit of notional future prospects. It may also be noticed that in cases of notional income, Courts do not make any deduction for personal expenses. On this account also, I do not deem it appropriate to grant any future prospects."*

4. Accordingly, in the light of above-said decision, plea of the appellant is accepted and it is held that respondents-claimants Nos. 1 & 2 are not entitled to award of any future prospects. However, at the same time it is also held that no deduction shall be made out of the notional income of the deceased towards his personal expenses.

5. The learned Tribunal awarded a sum of ₹ 1,00,000/- to each of the respondents/claimants on account of loss of love and affection and ₹ 25,000/- towards funeral expenses and ₹ 10,000/- towards transportation charges 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/- is payable on account of loss of filial consortium to each of the parents i.e. respondent Nos. 1 & 2 in view of the decision in ***Magma General Insurance Company Ltd. vs. Nanu Ram @ Chuhru Ram & others*** dated of *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 or transportation charges.

6. 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.
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> 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."

Accordingly, plea of the appellant is accepted and it is held that no amount is admissible on account of loss of love and affection or for that matter on account of transportation charges. However, respondent Nos. 1 & 2 are held entitled to award of ₹ 40,000/- each on account of loss of filial consortium besides ₹ 15,000/- on account of loss of estate and ₹ 15,000/-

on account of funeral expenses.

7. Accordingly, in the light of position as noted above, the appeal is allowed, award is modified and the respondents are held entitled to the compensation as under :

Sr. No	***Heads***	***Heads Amount assessed by Tribunal***	***Amount assessed by this Court***
1	Notional Income	₹ 8,000/-	₹ 8,000/-
2	Future Prospects	50.00% of ₹ 8,000/- i.e. ₹ 4,000/-.	Nil
3	Total income assessed	₹ 12,000/-	₹ 8,000/-
4	Deduction (monthly of total income assessed towards personal expenses)	50% of ₹ 12,000/- = ₹ 6,000/-	Nil = ₹ 8,000/-
5	Multiplier	18	18
6	Dependency	₹ 6,000 x 12 x 18	₹ 8,000 x 12 x 18 = 17,28,000/-
7	Loss of filial consortium	Nil	₹ 80,000/- (₹ 40,000/- each to respondents No.1 and 2)
8	Loss of love and affection	₹2,00,000/- (₹1,00,000/- each to respondent Nos. 1 & 2)	Nil
9	Loss of estate	Nil	₹ 15,000/-
10	Funeral Expenses	₹ 25,000/-	₹ 15,000/-
11	Transportation Charges	₹ 10,000/-	Nil
12	Total	₹ 15,31,000/-	₹ 18,38,000/-
13	Interest	@ 9%	@ 9%

8. Accordingly, in view of the position as noted above, although the appeal is accepted qua the points urged by learned counsel for the appellant, yet in net result as against the compensation of ₹ 15,31,000/- awarded by the Tribunal, respondent Nos. 1 & 2 are held entitled to

compensation of ₹ 18,38,000/- to be paid in the manner determined by the Tribunal. The amount of compensation as determined above 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.

9. Accordingly, appeal is allowed by modifying Award dated 19.07.2016. 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