IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.6991 of 2016 (O&M)
Date of Order: 25.09.2018

National Insurance Co. Ltd ....Appellant

Versus

Surjit Kaur and Ors ...Respondents

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

Present: Mr. Om Pal Sharma, Advocate for the appellant.

B.S.WALIA, J (ORAL)

[1] Appeal has been filed by the Insurance Company seeking reduction of compensation awarded on the ground that there was calculation error by the learned Motor Accidents Claims Tribunal, Tarn Taran (hereinafter referred to as "the Tribunal") while computing the compensation to be awarded inasmuch as the total income of the deceased was taken as ₹6647.75/- and after making 50% addition on account of future prospectus, the same was worked out as ₹9971.62/-. Thereafter, by making 50% deduction since deceased was bachelor, the remaining salary worked out to ₹4985/- but the learned Tribunal took the salary as Rs.6647.75/- per month. Respondents have already been proceeded ex parte vide order dated September 19, 2018.

[2] Learned counsel for the appellant contended that the plea as raised at the time of issuance of notice of motion regarding applying multiplier qua age of mother of the deceased was no longer being pressed by him in view of decision of Hon'ble Supreme Court in **National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009**. However, future prospects was to be awarded @ 40% and

not 50%.

[3] I have considered the submissions of learned counsel for the appellant and with his able assistance have gone over the record. Admittedly, the deceased was working as mason and was having monthly income of ₹6647.75/- per month. Addition of 50% of the aforesaid income was taken into account by the Tribunal for computing future prospects payable thereby raising total income to ₹9971.62/- whereas as per paragraph No. 61 (iv) of the decision of Hon'ble Supreme Court in **Pranay Sethi's case (supra)** where the deceased was self-employed and was below the age of 40 years or on a fixed salary, an addition of 40% of the established income of the deceased minus the tax component is to be taken into account for computing future prospectus. Paragraph No.61 (iv) of the decision in **Pranay Sethi's case (supra)** is reproduced hereinbelow:

> " *61. (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] Accordingly, addition of 40% of the income of the deceased is to be taken into account minus the tax component for computing future prospectus payable. In the light of the position noted above, 40% of the income of the deceased i.e. ₹6647.75/- per month works out to be ₹2659/-. The same when added to the monthly income of ₹6647.75/-, works out to

be ₹9308/-. After deducting 50% of the income of the deceased on account of his personal expenses the figure works out to ₹4654/-.

[5] In view of paragraph No.61 (vii) of the decision in Pranay Sethis case (Supra) age of the deceased is to be taken into account for applying the multiplier while as per paragraph No.42 of the decision in Sarla Verma's case (supra) multiplier of 18 is applicable where the deceased was between 21 to 25 years of age. Paragraph No.61(vii) of the decision of **Pranay Sethi's** case(supra) and paragraph No. 42 of the decision in **Sarla Verma's** case (Supra) which are relevant are reproduced as under :

> ***Paragraph No.61 (vii) of the decision of Pranay Sethi's case (supra)-*** *The age of the deceased should be the basis for applying the multiplier."*
>
> *Paragraph No. 42* of the decision in Sarla Verma's case (supra)-*"42. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."*

Accordingly, multiplier of 18 would be applicable while working out compensation payable on account of the deceased being 25 years old at the time of his death. Thus the compensation payable to the respondents-claimants work's out to ₹4654 x 12 x 18= ₹10,05,264/-.

[6] As regards compensation payable under conventional heads the learned Tribunal awarded a sum of ₹1,00,000/- on account of loss of love and affection and ₹25,000/- towards funeral expenses whereas no amount was awarded on account of loss of estate and loss of consortium as the deceased was unmarried. However, in terms of the decision in **Pranay Sethi's case (supra),** a sum of ₹15,000/- is payable towards loss of estate and a sum of ₹15,000/- on account of funeral expenses while ₹40,000/- is payable to each of the parents of the deceased towards loss of consortium under the heading of Filial Consortium, in the light of decision of Hon'ble the Supreme Court in **Magma General Insurance Company Ltd. Vs Nanu Ram Alias Chuhru Ram & Ors** in Civil Appeal No. 9581 of 2018 arising out of SLP (Civil) No. 3192 of 2018. Paragraph No.61 (viii) of the decision in **Pranay Sethi's case (supra)** and paragraph No.8.7 of the decision in **Magma General Insurance Company Ltd's case (supra)** is reproduced hereinbelow:

> ***61(viii)*** *Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."*

> ***"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.3 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."4 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 worldover 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 count5. 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 Rs. 40,000 each for loss of Filial Consortium."

[7] As regard payment of interest, while taking into account the facts of the present case, I am of the view that the rate of interest awarded was on the lower side which needs to be enhanced in the light of the decision of 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.

Accordingly, the rate of interest is enhanced from 6% per annum to 9% per annum.

[8] In view of the position as noted above, compensation payable to the respondents-claimants works out as under :-

Sr. No.	***Heads***	***Amount assessed by the Tribunal***	***Amount assessed by this Court***
1	Income	₹6647.75/-	₹6647.75/-
2	Future Prospects	50% of ₹6647.75/-= ₹3324	40 % of ₹6647.75/- = ₹2660/-
3	Total income assessed	₹9971.62/-	(₹6647.75/- + ₹2660/-) = ₹9308/-
4	Deduction (monthly of total income assessed towards personal expenses)	50% (₹9971) ₹4985	50% of ₹9308/-= ₹4654/-
5	Multiplier applied	18	18
6	Dependency	6647 x 12 x 18= ₹14,35,914/-	4654x12x18 ₹10,05,264/-
7	Loss of love and affection	₹100,000/-	Nil
8	Loss of estate	Nil	₹15000/-
9	Funeral expenses	₹25,000/-	₹15,000/-
10	Loss of consortium	Nil	40,000/- Mother 40,000/- Father
11	Total	₹15,60,914/-	₹11,15,264/-

[9] Accordingly, in view of the position as noted above, as against the compensation of ₹15,60,914/- awarded by the Tribunal, respondent No.1-Surjit Kaur is held entitled to compensation of ₹10,75,264/- while respondent No.2 is held entitled to award of ₹40,000/- on account of loss of filial consortium. The 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 qua the amount payable on account of future prospects in the light of decision in **Pranay Sethi's case (supra).**

[10] Accordingly, appeal is allowed by modifying Award dated 10.8.2016 passed by the learned Tribunal to the extent as noted above.

September 25, 2018 **(B.S.WALIA)**
manoj **JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No