IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.9832 of 2014(O&M)
Date of Decision: 30.10.2018

Kamlesh and another

.......Appellants

Versus

Krishan Kumar and others

........Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present:- Mr. Arun Singal, Advocate
for the appellants.

Mr.Ravinder Arora, Advocate and
Mr.Neeraj Khanna, Advocate
for respondent No.3.

AVNEESH JHINGAN J.(ORAL)

The unfortunate parents, who lost their son in a motor vehicular accident are in appeal against the award dated 03.04.2014 passed by Motor Accident Claims Tribunal, Panipat (for short 'the Tribunal') in MACT Case No.89 of 2012.

2. The driver of the canter bearing registration No. HR-46B-3385 (hereinafter referred to as 'offending vehicle'); owner of the offending vehicle and insurer of the offending vehicle i.e. Oriental Insurance Company Ltd. have been arrayed as respondents No.1 to 3 respectively, in the appeal.

3. Brief facts emanating from the record are that on 18.06.2012,

Satish and his brother Satyawan were going towards Village Kaith (Panipat) from their fields on motorcycle bearing registration No.HR-11D-3908, which was being driven by Satish. When they reached near the petrol pump in Village Kaith, Satyawan got down from the motorcycle on berm of the road and Satish went to petrol pump for refueling his motorcycle. When Satish was coming back, a rashly and negligently driven offending vehicle, hit him. As a result of the accident, he suffered injuries and died at the spot. FIR No.93 dated 18.06.2012 was lodged.

4. Parents of the deceased filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'). The Tribunal after considering the facts and on appreciating the evidence adduced, held that the accident occurred due to rash and negligent driving of the offending vehicle. The driver, owner and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The age of the deceased was 25 years at the time of the accident. His income was assessed as ₹4500/- per month. ½ deduction was made for self expenses and multiplier of 14 was applied considering the age of mother of deceased. The Tribunal awarded compensation to the tune of ₹4,98,000/- alongwith interest @ 7.5% per annum. The amount awarded included ₹10,000/-each for transportation and funeral and last rites and ₹1,00,000/- for loss of love and affection.

5. Heard learned counsel for the parties and perused the paper-book and the relevant documents.

6. Learned counsel for the appellants contended that the deceased was working as a driver and was earning ₹8,000/- per month.

He contended that Sunil Dutt Sharma (PW4) filed an affidavit stating that the deceased was working with him and was drawing salary of ₹8,000/- per month. He further contended that no future prospects have been awarded and the amounts awarded under conventional heads are on the lower side. The grievance is that Tribunal wrongly applied multiplier considering age of mother of the deceased.

7. Learned counsel for the insurer argued that the claimants failed to substantiate monthly earning of the deceased and no cogent proof was produced to show that PW4 was paying Rs.8,000/- per month to the deceased. He further argued that the Tribunal erred in awarding Rs.1,00,000/-for loss of love and affection.

8. There is no dispute with regard to the fact that the age of the deceased was 25 years at the time of the accident and with regard to ½ deduction made by Tribunal for self expenses.

9. The contention raised by the learned counsel for the appellants that monthly income assessed by the Tribunal is on the lower side, deserves acceptance. PW4 tendered an affidavit by stating that the deceased was working as a driver with him, albeit in his cross-examination he stated that he had no documentary proof to substantiate that ₹8,000/- per month was being paid to the deceased. In such circumstances, the safest yardstick is to assess the earning of the deceased, as a semi-skilled labourer. In State of Haryana at the time of the accident minimum monthly wages of a semi-skilled labourer was ₹4,977/-. For the calculation purposes, the same is taken as ₹5000/-. Having due regard to the decision of the Supreme Court in case of **National Insurance Co.Ltd.**

Vs. Pranay Sethi and others; 2017 (4) RCR (Civil) 1009 and **Hem Raj Vs. Oriental Insurance Company Ltd. 2018(2) PLR 480**, 40% future prospects are awarded. Claimants are also entitled to Rs.15,000/-each for funeral expenses and loss of estate.

10. As per the decision of the Supreme Court in Pranay Sethi's case (supra) no amount for loss of love and affection is to be awarded. The Supreme Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram & others; 2018 (4) RCR (Civil) 333;*** after considering the decision of Constitutional Bench in ***Pranay Sethi's*** case (supra), held as under:

> ***"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. v. 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 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."*

11. In view of the decision of the Supreme Court, claimants/appellants are entitled to ₹40,000/- for loss of Filial Consortium.

12. The Tribunal erred in applying the multiplier of 14 considering the age of the mother of the deceased. The issue is no longer res integra that the multiplier is to be applied considering the age of the deceased. The Supreme Court in the case of ***Sube Singh and another vs. Shyam Singh (Dead) and others; 2018 (3) SCC 18;*** has held as under:

> *"On the basis of the finding recorded by the Tribunal and affirmed by the High Court, it is evident that the deceased was 23 years of age on the date of accident i.e 22.09.2009. He was unmarried and his parents who filed the petition for compensation were in the age group of 40 to 45 years. The High Court, relying on the decision in the case of Ashvinbhai Jayantilal Modi (supra), held that multiplier 14 will be applicable in the present case, keeping in mind the age of the parents of the deceased. The legal position, however, is no more res integra. In the case of Munna lal Jain (supra) decided by a three Judge Bench of this Court, it is held that multiplier should depend on the age of the deceased and not on the age of the dependants."*

13. In consonance with the decision of the Supreme Court and keeping in view the fact that the deceased was 25 years of age at the time of the accident, a multiplier of 18 is to be applied.

14. In view of the above discussion, the compensation is recalculated as

under:-

	Head	Compensation Awarded
(i)	Monthly Income	₹5000/- per month
(ii)	40% Future prospects	₹2000/-
(iii)	Total Income	₹7000/-
(iv)	½ Deduction of personal expenses	₹3500/-
(v)	Multiplier (as per age of deceased)	18
(vi)	Loss of income (₹7000-3500x12x18)	₹7,56,000/-
(vii)	Funeral expenses	₹15000
(viii)	Loss of Estate	₹15000
(ix)	Filial Consortium	₹40,000
(viii)	Total compensation awarded	₹8,26,000/-

15 The award dated 03.04.2014 is modified to the extent that amount awarded of Rs.4,98,000/- is enhanced to Rs.8,26,000/-. The claimants shall be entitled to enhanced amount alongwith interest @ 7.5 % per annum from the date of filing of claim petition till realization of the amount.

16 The appeal is partly allowed in the afore-said terms.

(AVNEESH JHINGAN)
JUDGE

October 30, 2018
shweta

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No