IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1886 of 2017
DECIDED ON: NOVEMBER 14, 2018

SMT. JANNATI AND OTHERS

.....APPELLANTS

VERSUS

RAJU LAL BARWA & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Ms. Reena, Advocate for
Mr. Saleen Ahmed, Advocate
for the appellants.

Mr. Lalit Garg, Advocate
for respondent No.3-Insurance Company

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AVNEESH JHINGAN, J (ORAL)

The legal heirs of Usman (deceased) are in appeal against the award dated 02.04.2016 passed by Motor Accident Claims Tribunal, Mewat (for short 'the Tribunal'). The appeal has been filed for enhancement of the compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act').

2. The appellants are widow and three minor children of the deceased. The driver of vehicle bearing registration No. RJ-14-GC-7646 (hereinafter referred to as 'offending vehicle'); owner of the offending vehicle and insurer of the offending vehicle, have been arrayed as respondents No.1 to 3 respectively

in the appeal.

3. The facts as emanating from the record are that on 04.06.2015, Usman-deceased alongwith Hanif was going to Ahmedabad from Sirohi in a vehicle bearing registration No. RJ-32-GA-7287, which was being driven by Hanif. When they crossed Ghatta, the said vehicle was hit by a rashly and negligently driven offending vehicle. As a result of the accident, Usman-deceased suffered injuries and died at the spot.

4. The legal heirs of Usman (deceased) filed a claim petition under Section 166 of the Act before the Tribunal.

5. The Tribunal after considering the facts and appreciating the evidence adduced, awarded a compensation to the tune of ₹10,37,600/- alongwith interest @7.5% per annum. The Tribunal held that the accident occurred due to rash and negligent driving of the offending vehicle. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

6. In the claim petition, it was pleaded that the deceased was a farmer and milk vendor and was earning ₹20,000/- per month. In the absence of any evidence adduced by the claimants with regard to the occupation of the deceased, the Tribunal while relying upon the minimum wages prevalent in the State of Haryana at the time of accident, assessed the income of the deceased as ₹6,000/- per month. The deceased was survived by his widow and three minor children. In consonance with the decision of Supreme Court rendered in the case of ***Smt. Sarla Verma and others vs. Delhi Transport Corporation and another; 2009 (3) RCR 77 (SC),*** 1/4 deduction for self expenses was made and multiplier of 13 was applied. 30% future prospects were awarded by the

Tribunal. The amount awarded by the Tribunal included ₹1,00,000/- for loss of consortium and ₹25,000/- was awarded on account of transportation of dead body and for last rites.

7. Learned counsel for the appellants argued that the income of the deceased assessed by the Tribunal is on lower side and no amount was awarded for loss of estate and amount awarded for loss of consortium is on lower side.

8. Learned counsel for the insurer argued that as the deceased was 47 years of age at the time of accident, Tribunal erred in awarding 30% future prospects instead of 25%. He further argued that the amounts awarded by the Tribunal for loss of consortium, transportation of body and last rites were on higher side.

9. No evidence was adduced by the claimants in support of their pleadings that the deceased was a farmer and milk vendor and was having a monthly income of ₹20,000/-. In such circumstances, safest yardstick would be to rely upon the minimum wages prevalent in the State of Haryana at the time of accident. The minimum wages at the time of accident in the State of Haryana for an unskilled labourer was ₹5812/-. The Tribunal rounded off the same and assessed the income of the deceased as ₹6000/- per month. There is no basis to enhance the monthly earning assessed by the Tribunal.

10. There is no dispute with regard to ¼ deduction for self expenses and multiplier of 13. As the quantum of compensation is being re-visited, it would be appropriate that the future prospects are to be awarded in consonance with the decision of Supreme Court in the cases 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.**

11. Having due regard to the decisions of Supreme Court, 25% future prospects are awarded. Claimants are also entitled to a sum of ₹15,000/- each, for funeral expenses and for loss of estate. The widow of the deceased is entitled to ₹40,000/- for loss of consortium.

12. The Supreme Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram & others;*** ***2018 (4) RCR (Civil) 333;*** has 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.*
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> *In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'.*
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> *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.***
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> *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."

13. In view of the decision quoted above, the minor children of the deceased are entitled to an amount of ₹40,000/- each for loss of parental consortium.

14. In view of afore-said discussion, the compensation is recalculated as under:

	Head	Compensation awarded
(i)	Income	₹6,000/- per month
(ii)	Future prospects at 25%	₹1500/- per month
(iii)	Total Income	₹7500/- per month
(iv)	Deduction of personal expenses	₹1875/- (i.e. 1/4th of total income)
(v)	Multiplier	13 (as per age of deceased)
(vi)	Total Dependency	₹5625x12x13=₹8,77,500/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
(ix)	Loss of consortium	₹40,000/-
(x)	Parental Consortium to the minor children (40,000x3)	₹1,20,000/-
	Total Compensation awarded	₹10,67,500/-

15. The award dated 02.04.2016 is modified to the extent that amount awarded of ₹10,37,600/- is enhanced to ₹10,67,500/-. The appellants shall be entitled to enhanced amount alongwith interest @7.5% per annum from the date of filing of the claim petition till realization of amount. It is, however, clarified that the compensation shall be disbursed in the same proportion, as has been held by the Tribunal.

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

(AVNEESH JHINGAN)
JUDGE

NOVEMBER 14, 2018
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No