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

FAO No.1037 of 2018
Date of Decision: 29.10.2018.

Anju and others

...Appellants

Versus

Narender Singh and others

....Respondents

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

Present: Mr. Lalit Kumar, Advocate for
Mr. Johan Kumar, Advocate for the appellants.

Mr. Nihal S. Chaudhary, Advocate for
Mr. Rajender Sarout, Advocate
for respondent Nos.1 and 2.

Mr. Lalit Garg, Advocate
for respondent No.3.

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B.S.WALIA, J (Oral).

1. Appeal has been filed by the widow, two minor children and parents of deceased, Anil Kumar, who died in a motor vehicular accident on 05.12.2015.

2. The learned Motor Accidents Claims Tribunal, Palwal (hereinafter referred to as 'the Tribunal') awarded total compensation of ₹11,98,500/- by taking into account the age of the deceased as '25' years, income as ₹6,000/- per month, multiplier of '18', by imposing a cut of $1/4^{th}$ of the income of the deceased towards his personal expenses, besides awarding ₹1,00,000/- on account of loss of consortium, ₹20,000/- on account of funeral expenses, ₹50,000/- on account of loss of estate besides ₹56,500/- on account of medical expenses.

3. Learned counsel for the appellants contended that the appeal is liable to be allowed, award modified and compensation awarded enhanced by grant of compensation on account of future prospects in accordance with the decision of Hon'ble the Supreme Court in National Insurance Company Ltd. versus Pranay Sethi and others, 2017(4) RCR (Civil) 1009, besides compensation for loss of consortium is liable to be awarded in view of the pronouncement of Hon'ble the Supreme Court in Magma General Insurance Co. Ltd vs, Nanu Ram Alias Chuhru Ram, in Civil Appeal No.9581 of 2018, decided on 18 September, 2018,.

4. Per contra, learned counsel for respondent No.3/Insurance Company contended that ₹20,000/- awarded on account of funeral expenses and ₹50,000/- on account of loss of estate is liable to be scaled down to ₹15,000/- under each head besides ₹1,00,000/- awarded on account of loss of consortium is also liable to be scaled down to ₹40,000/-.

5. I have heard learned counsel for the parties and considered their submission.

6. Admittedly the deceased was 25 years of age. His income was assessed at ₹6,000/- per month and on account of five dependants, deduction of 1/4th of the income of the deceased was made towards his personal expenses. In terms of paragraph No.61 (iv) of the decision of Hon'ble the Supreme Court in Pranay Sethi's case (Supra), where the deceased was self employed and below the age of 40 years, an addition of 40% of the established income minus tax component is to be taken into account for computing the future prospects. Relevant extract of the decision in Pranay Sethi's case (supra) is reproduced as under:-

> 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.

7. Since, in the instant case, the deceased was self employed, was below 40 years of age, therefore, 40% of the established income of the deceased minus the tax component is to be taken into account for computing the future prospects payable.

8. Secondly, as per paragraph No.61 (viii) of the decision in Pranay Sethi's case (supra), compensation of ₹15,000/- is payable on account of loss of estate and funeral expenses respectively. As regards the claim for award of loss consortium, Hon'ble the Supreme Court in Magma General Insurance Co. Ltd.'s case (supra), has held that "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'". Relevant extract of the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra) Paragraph 8.7 of the decision in Magma General Insurance Co. Ltd.'s case (supra) is reproduced as under:-

> 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.”

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 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 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.

9. In the light of the position noted above the appellants are held entitled to award of compensation of ₹15,000/- on account of loss of estate and ₹15,000/- on account of funeral expense. Likewise, the widow of the deceased i.e. appellant No.1 is held entitled to ₹40,000/- on account of loss of spousal consortium, while two minor children i.e. appellant Nos.2 and 3 are held entitled to ₹40,000/- each on account of loss of parental consortium.

10. In the circumstances, the compensation payable to the appellants/claimants works out as under:

Sr. No.	**Head**	**Amount assessed by the Tribunal**	**Amount assessed by this Court**
1	Income	₹6000/-	₹6000/-
2	Future Prospects	Nil	(40% of ₹6000)= ₹2400/-
3	Total Income assessed	₹6000/-	(₹6000+ ₹2400) = ₹8400/-
4	Multiplier applied	18	18
5	Deduction (towards personal expenses of the deceased)	1/4th of ₹6000/= ₹1500/-	1/4th of ₹8400/=₹2100 =₹6300/-
	Monthly dependency	₹6000/- ₹1500/=₹4500/-	₹8400/-₹2100=₹6300/-
6	Dependency	₹4500x12x18=₹9,72,000/-	₹6300x12x18=₹13,60,800/-
7.	Funeral expenses	₹20000/-	₹15,000/-
8.	Loss of Estate	₹50,000/-	₹15,000/-
9.	Loss of Spousal Consortium	₹1,00,000/-	₹40,000/-

Sr. No.	Head	Amount assessed by the Tribunal	Amount assessed by this Court
	Loss of parental Consortium@₹40,000/- to each child of deceased.	Nil	₹80,000/-
10.	Medical expenses	₹56,500/-	₹56,500/-
	Total	₹11,98,500/-	₹15,67,300/-

11. Accordingly, as against the compensation of ₹11,98,500/- awarded by the Tribunal, the appellants/claimants are held entitled to award of compensation of ₹15,67,300/- along with interest @ 7.5% per annum w.e.f. the date of filing of the claim petition till date of payment, less amount if any already paid. However before payment of aforementioned amount, the widow and two minor children shall be paid ₹40,000/- each towards loss of consortium before apportionment of compensation in proportion to their shares as determined by the Tribunal. Further, the Insurance Company shall make the payment to the appellants after making deduction of the tax liability towards future prospects, in accordance with the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra).

12. Accordingly, appeal is allowed and award dated 06.09.2017 is modified to the extent as noted above.

(B.S.WALIA)
JUDGE

29.10.2018
rajesh.k.khurana

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No