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

FAO No. 5099 of 2017 (O&M)
DECIDED ON: NOVEMBER 16, 2018

NATIONAL INSURANCE CO. LTD.

.....APPELLANT

VERSUS

JASPINDER KAUR & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Paul S. Saini, Advocate
for the appellant.

Mr. Puneet Kumar Bansal, Advocate
for respondents No.1 to 3.

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<u>AVNEESH JHINGAN, J (ORAL)</u>

The insurer of bus bearing registration No. PB-02-CC-6155 (hereinafter referred to as 'offending vehicle') has assailed the award dated 17.01.2017 passed by Motor Accident Claims Tribunal, Ferozepur (for short 'the Tribunal').

2. The brief facts necessary for adjudication of the present appeal are that Jagsir Singh lost his life in a motor vehicular accident that took place on 19.04.2016. He was riding a motorcycle, when he was proceeding towards GT

road, Zira Near Dhillon Marriage Palace, his motorcycle was hit by a rashly and negligently driven offending vehicle. As a result of the accident, he suffered serious head injuries and was taken to Civil Hospital, Zira, but he died on way to hospital. FIR No. 43, dated 19.04.2016 was registered at Police Station, Ghall Khurd.

4. A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') was filed by Widow and two minor children of Jagsir Singh (deceased) before the Tribunal. Driver, owner and insurer of offending vehicle i.e. National Insurance Company were arrayed as respondents No.1 to 3 in the claim petition.

5. The Tribunal after considering the facts and appreciating the evidence adduced, awarded a compensation to the tune of ₹12,97,000/- alongwith an 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. The amount awarded included ₹1,00,000/- for loss of consortium to widow and ₹1,00,000/- each, to the minor children for loss of love and affection and ₹ 25,000/- towards last rites.

6. The claimants pleaded before the Tribunal that the deceased was working as driver of a School Van and was drawing a salary of ₹ 8,000/- per month. The claim was not substantiated by any documentary evidence, yet, the Tribunal assessed the monthly income of the deceased as ₹ 8,000/- per month. 1/3 deduction was made for self expenses and multiplier of 15 was applied taking the age of the deceased as 38 years as per post mortem report.

7. Heard learned counsel for the parties, perused the paper book and

relevant documents produced by them.

8. Learned counsel for the appellant contended that the Tribunal should have restricted to the minimum wages prevalent at the time of accident in the State of Punjab, i.e. ₹7200/- per month. He further contended that during investigation the insurance company was able to get the Aadhaar Card of the deceased and his date of birth was 10.01.1975, hence, multiplier of 14 was to be applied instead of multiplier of 15. His grievance is that amount awarded by the Tribunal under conventional heads are on higher side and no amount should have been awarded for love and affection.

9. Learned counsel for the claimants argued that no future prospects have been awarded by the Tribunal. Learned counsel was not able to dispute the date of birth of the deceased, as shown in the aadhaar card.

10. In cases where the claimants failed to adduce evidence with regard to the occupation of the deceased or regarding monthly income of the deceased, the safest yardstick would be to rely upon the minimum wages prevalent in the State of Punjab at the time of accident . The minimum wages for an unskilled labourer in the State of Punjab at the time of accident was ₹ 7210/- and for the purpose of calculation the same is rounded off to ₹7200/-. As per the decision of the Supreme Court judgments 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,** 25% future prospects are awarded as the deceased was 41 years of age at the time of accident as mentioned in aadhaar card.

11. There is no dispute between the parties with regard to 1/3 deduction made for self expenses. As per the age of the deceased, multiplier of 14 is to be

applied instead of 15.

12. 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.

13. 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.*
>
> *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.***
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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."*
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> *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."

14. In view of the decision of the Supreme Court, two minor children of the deceased are entitled to an amount of ₹40,000/- each for loss of parental consortium.

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

	Head	**Compensation awarded**
(i)	Income	₹7200/- per month
(ii)	Future prospects at 25%	₹1800/- per month
(iii)	Total Income	₹9000/- per month
(iv)	Deduction of personal expenses	₹3000/- (i.e. 1/3th of total income)
(v)	Multiplier	14 (as per age of deceased)
(vi)	Total Dependency	₹6000x12x14=₹10,08,000/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
(ix)	Loss of consortium	₹40,000/-
(x)	Parental Consortium to the minor children (40,000x2)	₹80,000/-
	Total Compensation awarded	₹11,58,000/-

15. The award dated 17.01.2017 is modified to the extent that amount awarded of ₹12,97,000/- is reduced to ₹11,58,000/-.

16. The claimants shall be entitled to interest @7.5% per annum from the date of filing of claim petition till realization of the amount awarded by this Court.

16. During the course of hearing it has been pointed out by learned counsel for the claimants that claimants have not received any amount till date. The appellant is directed to pay the afore-said amount within six weeks from today. In case of failure, claimants shall be entitled to interest @9% per annum from the date of filing of claim petition till its actual realization.

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

(AVNEESH JHINGAN)
JUDGE

NOVEMBER 16, 2018
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No