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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2700 of 2018 (O&M)
Date of decision : 10.10.2018

ORIENTAL INSURANCE COMPANY

....APPELLANT

V/S

KAMALJIT KAUR AND OTHERS

....RESPONDENTS

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

Present: Mr. Ashok Mathur, Advocate for the appellant.

Mr. Sunil Kumar, Advocate for respondent No.1.

B.S. WALIA, JUDGE (ORAL)

[1] Appeal has been filed on the ground that compensation awarded is excess on account of miscalculation by the learned Tribunal. Loss of consortium is not payable to the sister of the deceased and secondly that in terms of paragraph No.61 (iii) of the decision in '***National Insurance Company Limited*** *versus* ***Pranay Sethi and others'***, 2017(4) RCR (Civil) 1009, on account of the deceased being self employed and less than 40 years of age, future prospects was to be computed @ of 40% and not 50%.

[2] Mr. Sunil Kumar, learned counsel appearing on behalf of respondent No.1 has not been able to controvert the plea with regard to miscalculations as well as for reduction of future prospects to 40% in view of

law settled by Hon'ble the Supreme Court in ***Pranay Sethis***' case (supra) but as regard the grant of loss of consortium, learned counsel states that the respondent is entitled to award of Rs.40,000/- in accordance with the decision in '***Magma General Insurance Company Limited*** *versus* ***Nanu Ram alias Chuhru Ram and others'*** in *Civil Appeal No.9581 of 2018, arising out of SLP (Civil) No.3192 of 2018.*

[3] I have considered the submission of learned counsel. In terms of paragraph No.61(iv) of the decision in *Pranay Sethi's* case (supra), where deceased is self employed and less than 40 years of age, 40% of the established income of the deceased minus the tax component is to be taken into account for computing the future prospects. Relevant extract of Paragraph No.61(iv) 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."*

[4] Since, in this case, the deceased was admittedly self employed and was less than 40 years of age, therefore, 40% of the established income of the deceased minus the tax component is to be taken into account for working out future prospects.

[5] Secondly, as per paragraph No.8.7 of the decision in ***Magma's*** *case (supra)*, Rs.40,000/- was awarded on account of loss of consortium to the sister of the deceased. Relevant extract of the same is reproduced 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.*
>
> *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 Rs. 40,000 each for loss of Filial Consortium. "

[6] In *Magma General Insurance Company Limited's case (supra),* loss of filial consortium was awarded by Hon'ble the Supreme Court in exercise of its powers under Article 142 of the Constitution of India.

However, the said power is not exercisable by the High Court. Accordingly, respondent No.1 is not entitled to any compensation on account of loss of consortium. Accordingly, in the light of the position as noted above, the appeal is **allowed**, award is modified and as against compensation of Rs.14,69,000/- awarded alongwith interest @ 9% per annum w.e.f. the date of claim petition till date of payment, respondent No.1 is held entitled to award of compensation of Rs.9,70,800/- as per details mentioned below.

[7] The amount of compensation to which the respondent No.1/claimant shall be entitled works out as under:-

Particulars	**Assessed by the Tribunal (Rs.)**	**Re-assessed (Rs.)**
Monthly Income	7000	7000
Add: Future Prospects	50% i.e. 3500	40% i.e. 2800
Total Income	7000	9800
Income after deduction of 50% personal living expenses.	3500	4900 (50% of 9800)
Net Income	3500	4900
Multiplier	16	16
Dependency	3500x12x16=13,44,000	4900x12x16=9,40,800
Add:		
(i) Funeral Expenses	25,000	15,000
(ii) Loss of Consortium	1,00,000	Nil
Loss of Estate	Nil	15,000
Total Compensation	14,69,000	9,70,800

[8] While working out the calculations, it has been noticed that the calculations made by the learned 'Tribunal' at page No.18 in Paragraph No.19 of the Award are not factually correct and as against entitlement of Rs.10,08,000/-, the 'Tribunal' has reflected payment of Rs.13,44,000/-. (Income assessed Rs.7000/- + 50% of the established income as future prospects less

deduction for personal expenses i.e. Rs.7000 + 3500 – 5250 = 5250 x 12 x 16 which works out to Rs.10,08,000/-). Learned counsel for the parties are in agreement that the calculations have been incorrectly made and the same need to be modified.

[9] Accordingly, against the compensation of Rs.14,69,000/- (11,33,000/- (as per correct calculations) as awarded by the 'Tribunal', Rs.9,70,800/- is payable alongwith interest @ 9% per annum. Needless to mention that Insurance Company would deduct the tax liability *qua* the future prospects before making payment of compensation in accordance with the decision in ***Pranay Sethi's*** case *(surpa)*.

[10] Resultantly, the present appeal is **partly allowed**, award dated 18.01.2018 passed by MACT, Jalandhar is modified to the extent as noted above.

(B.S. WALIA)
JUDGE

October 10, 2018
rajneesh

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