

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

FAO No. 6029 of 2017

DECIDED ON: NOVEMBER 16, 2018

VIDHYA DEVI AND ANOTHER

.....APPELLANTS

VERSUS

AKRAM AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. C.S. Singhal, Advocate
for the appellants.

Mr. Punit Jain, Advocate
for respondent No.3-Insurance Company

AVNEESH JHINGAN, J (ORAL)

The widow and minor daughter of Sukh Ram (deceased) are in appeal against the award dated 13.07.2016 passed by Motor Accident Claims Tribunal, Ambala (for short 'the Tribunal'). The appeal has been filed for enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act').

2. The driver of Eicher Canter bearing registration No. HR-68-A-8979 (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. Parents of the deceased are perfunctory respondents in

the appeal.

3. The brief facts necessary for adjudication of the present appeal are that on 24.11.2015, Sukh Ram (deceased) was going on his motorcycle bearing registration No. HR-01-T-3799. When he reached near Kalpi Bus Stand his motorcycle was hit by a rashly and negligently driven offending vehicle. As a result of impact, he suffered multiple grievous and serious injuries including multiple fractures and head injury. He was shifted to PGI, Chandigarh where he succumbed to his injuries. FIR No. 268, dated 29.11.2015, under Sections 279 and 337 of the Indian Penal Code was registered at Police Station Mullana.

4. The legal heirs of Sukh Ram (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 ₹9,16,000/- 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. The amount awarded includes ₹ 1,00,000/- on account of loss of consortium to widow and ₹ 1,00,000/- each to widow, daughter and mother of the deceased, on account of loss of love and affection. The Tribunal also awarded an amount of ₹ 25,000/- on account of funeral expenses and an amount of ₹ 66,774/- was awarded on account of medical expenses incurred on the treatment of the deceased.

6. Heard learned counsel for the parties, perused the paper book and relevant documents produced by them.

7. The Tribunal assessed the monthly income of the deceased as

₹ 6000/- per month, relying upon the minimum wages prevalent at the time of accident in the State of Haryana. 1/3 deduction was made for self expenses, as the deceased was survived by 2-3 dependants and multiplier of 13 was applied.

8. Learned counsel for the appellants has raised only two issues; firstly, that no future prospects have been awarded; secondly that no amount has been awarded for loss of estate.

9. Learned counsel for the respondent-Insurance Company argued that the amount awarded by the Tribunal under various conventional heads are on higher side and no amount should have been awarded for loss of love and affection.

10. There is no dispute between the parties with regard to dependency calculated as ₹ 6,24,000/-.

11. The deceased was 46 years of age at the time of accident. 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 to be awarded. As the quantum of compensation is being revisited the compensation with regard to conventional heads are to be made strictly in consonance with the aforesaid judgments of Supreme Court.

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.***

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.”

14. In view of the decision of the Supreme Court, minor daughter of the deceased is entitled to an amount of ₹40,000/- for loss of parental consortium and parents of the deceased are also entitled to an amount of ₹40,000/- for loss of Filial Consortium.

15. 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	₹2500/- (i.e. 1/3 rd of total income)
(v)	Multiplier	13 (as per age of deceased)
(vi)	Total Dependency	₹5000x12x13=₹7,80,000/-
(vii)	Expenses incurred on treatment	₹66,774/-

(viii)	Funeral expenses	₹15,000/-
(ix)	Loss of estate	₹15,000/-
(x)	Loss of consortium	₹40,000/-
(xi)	Parental Consortium to the minor daughter	₹40,000/-
(xii)	Filial Consortium to the parents of the deceased	₹ 40,000/-
	Total Compensation awarded	₹9,96,774/-

15. The award dated 13.07.2016 is modified to the extent that amount awarded of ₹9,16,000/- is enhanced by ₹80,774/-. 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.

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

NOVEMBER 16, 2018
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*