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

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**FAO No.6308 of 2017 (O&M)**
**Date of Decision: 19.11.2018**

Arsheeda and others

Appellants

Versus

Arshad and others

Respondents

**CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present: Mr. Ashish Gupta, Advocate for the appellants.

Mr. Lalit Garg, Advocate for the Insurance Company.

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**AVNEESH JHINGAN, J (Oral):**

The award dated 07.04.2017 passed by the Motor Accident Claims Tribunal, Mewat (for brevity 'the Tribunal') has been assailed by legal heirs of Tassib @ Mohammed Taasib (deceased).

The driver of car bearing registration No. RJ-05CB-0741 (hereinafter referred to as 'offending vehicle'); owner of offending vehicle and insurer of offending vehicle i.e. United India Insurance Co. Ltd. have been arrayed as respondents No.1 to 3 respectively in the appeal.

The facts as pleaded are that on 10.07.2016, Tassib alongwith Tufel and Suhel was going back from village Bukharka. Near the turn of village Bukharaka, when they were waiting for some conveyance at about 04:00 P.M., a rashly and negligently driven offending vehicle hit Tassib. As a result of the accident, he suffered injuries. He was taken to the hospital at Mandhikhera from where he was referred to S.H.K.M. Nalhar, there Tassib died due to the injuries sustained in the accident. FIR No.126, dated 10.07.2016 was registered at Police Station Nagina.

A claim petition under Section 166 of the Act was filed by widow, minor daughter and parents of the deceased. The Tribunal after considering the facts and appreciating the evidence adduced, held that accident occurred due to rash and negligent driving of the offending vehicle. The insurer of offending vehicle was held liable to pay the compensation. The Tribunal awarded a sum of ₹20,45,000/- alongwith interest @ 7.5% per annum. The said amount included ₹4,25,000/- under various conventional heads. The claimants claimed that the deceased was a student and was pursuing his degree of Bachelor of Technology from Maharshi Dayanand University, Rohtak. The Tribunal assessed the monthly income of the deceased as per minimum wages prevalent in the State, treating the deceased under the category of highly skilled labourer. The amount was rounded off and income was assessed as ₹10,000/- per month. $1/4^{th}$ deduction for self expenses was made and multiplier of 18 was applied.

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

Learned counsel for the appellants contended that future prospects have not been awarded.

Learned counsel for the insurer contended that Tribunal erred in making 1/4th deduction for self expenses. His grievance is that the amount awarded the conventional heads is on the higher side and no amount for love and affection should be granted.

The contention raised by learned counsel for the appellants deserves acceptance.

As the deceased was 22 years old, in such scenario, having due regard to the decisions of Supreme Court in case ***National Insurance Company Limited Vs. Pranay Sethi and others (2017) AIR (SC) 5157*** and ***Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480,*** 40% future prospects are awarded.

Since the quantum of compensation is being revisited, therefore, deduction made for self expenses is made in consonance with the decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21.*** Deceased was survived by three dependants i.e. widow, minor daughter and mother, hence, 1/3rd deduction for self expenses is to be made.

In view of decision of the Supreme Court in Pranay Sethi's case (supra), claimants are entitled to ₹15,000/- each for funeral expenses and loss of estate. ₹40,000/- is awarded to widow for loss of consortium.

The Supreme Court in ***Magma General Insurance Co.***

***Ltd. vs. Nanu Ram alias Chuhru Ram & Ors., 2018(4) R.C.R. (Civil) 333*****,** considering the decision of the Constitution Bench of the Supreme Court in ***Pranay Sethi's case*** (supra) has held that loss of consortium is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'. The Supreme Court held:-

> *"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'.*
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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. vs. 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 the 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 Vehicle 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 sisters of the deceased, an amount of ₹40,000/- each for loss of Filial Consortium".*

In view of decision quoted above, ₹40,000/- is awarded to minor daughter for loss of parental consortium and ₹40,000/- to the parents for loss of filial consortium.

In view of above discussion, the compensation is re-calculated as under:-

| **Particulars** | ***Amount (in ₹)*** |
|---|---|
| Monthly income of the deceased assessed | 10,000/- |
| 40 % Future Prospects | 4,000/- |
| Sub Total | 14,000/- |
| 1/3rd deduction for self expenses | (-) 4,667/- |
| Monthly Dependancy | 9,333/- |
| Annual Dependancy | 1,11,996/- |
| Applying multiplier of 18 | **20,15,928/-** |
| Funeral Expenses | **15,000/-** |
| Loss of Estate | **15,000/-** |
| Loss of consortium to widow | **40,000/-** |
| Loss of parental consortium to minor daughter | **40,000/-** |
| Loss of filial consortium to the parents | **40,000/-** |
| Grand Total | **21,65,928/-** |

The award dated 07.04.2017 is modified to the extent that amount awarded of ₹20,45,000/- by the Tribunal is enhanced to ₹21,65,928/-. The amount awarded for loss of consortium to widow, minor daughter and parents shall be disbursed to the concerned persons and the balance compensation shall be disbursed to the claimants in the same proportion as was held by the Tribunal.

The claimants shall be entitled to enhanced amount alongwith interest @ 7.5% per annum from the date of filing the claim petition till the realization of the amount.

The appeal is partly allowed in the manner indicated above.

**[AVNEESH JHINGAN]**
**JUDGE**

**November 19, 2018**
*pankaj baweja*

1. Whether speaking/ reasoned : Yes/ No

2. Whether reportable : Yes/ No