

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.658 of 2017(O&M)

Date of Decision: 02.11.2018

New India Assurance Co. Ltd.

... Appellant

Versus

Akbari & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE AVNEESH JHINGAN

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

Mr. Arjun Attri, Advocate,
for respondents No.1 to 7.

AVNEESH JHINGAN, J.(Oral)

1. The insurer of truck bearing registration No.HR-38R-3809 (for brevity, 'offending vehicle') is in appeal against the award dated 08.11.2016 passed by Motor Accident Claims Tribunal, Mewat (hereinafter referred to as 'the Tribunal').

2. The claimants have been arrayed as respondents No.1 to 7 in appeal. Driver and owner of the offending vehicle are respondents No.8 and 9.

3. The brief facts emanating from the record are that on 14.12.2014, Jaikam, aged 41 years, along with his son Sufiyan was coming from Village Kosi Klan and going to Village Kot while driving Tata 407 bearing registration No.HR-55C-4211. When they reached near Village Sonad, rashly and negligently driven offending vehicle struck their vehicle, as a result of the accident, Jaikam suffered multiple injuries and died on the spot.

FIR No.660, dated 14.12.2014 was registered.

4. The mother, widow and five minor children of the deceased filed a claim petition under Section 166 of Motor Vehicles Act, 1988 (for brevity, 'the Act'). The driver and owner of the offending vehicle and the New India Assurance Company Ltd. were arrayed as respondents No.1 to 3 respectively in the claim petition.

5. The Tribunal, after considering the facts and appreciating the evidence produced, held that the accident occurred due to rash and negligent driving of the offending vehicle. The driver, owner and insurer of offending vehicle were held jointly and severally liable to pay compensation. The Tribunal awarded a sum of ₹20,43,000/- along with interest @ 7.5% per annum. The amount awarded included ₹7,50,000/- under various conventional heads.

6. The parties have not disputed the fact that the deceased was a professional driver and his age was 41 years. There is no dispute raised with regard to 1/5th deduction made for self expenses and multiplier applied of 14

7. I have heard learned counsel for the parties and perused the paper-book and record.

8. Learned counsel for the appellant argued that the claimants have failed to substantiate the monthly earning of the deceased. The Tribunal rightly relied upon the minimum wages, but took a wrong figure of ₹7,400/- per month. He argued that at the time of accident in State of Haryana even for a skilled labour the wages were ₹6332/-. He further argued that the Tribunal erred in awarding 30% future prospects. The grievance raised is that the amount awarded under conventional heads are on the higher side.

9. Learned counsel for the claimants defended the award and argued that the Tribunal while awarding amount under the conventional

heads had considered the fact that the deceased was survived by his wife, five minor children and old mother. But, he could not raise any serious dispute with regard to minimum wages prevalent for a skilled labour at the time of accident.

10. The contentions raised by learned counsel for the appellant challenging the monthly income assessed by the Tribunal deserve acceptance. The deceased was driver by profession. Even if he is considered as a skilled labour, the minimum wages were ₹6332/- for calculation purposes, these are rounded off to ₹6300/- per month.

11. Having due regard to the decision of the Supreme Court in the case of *National Insurance Company Ltd. vs. Pranay Sethi and Ors., 2017 AIR (SC) 5157* and *Hem Raj Vs. Oriental Insurance Company Ltd., 2018(2) PLR 480*, 25% future prospects are awarded. Further, a sum of ₹15,000/- each is awarded for loss of estate and funeral expenses and ₹40,000/- is awarded on account of loss of consortium to the widow of the deceased.

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

“8.7 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, 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 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.”

13. Having due regard to the decision of Supreme Court, ₹40,000/- is awarded for loss of consortium to the mother under the head of filial consortium and ₹40,000/- each is awarded to five minor children.

14. In view of the above discussion, the compensation is recalculated as under :-

Monthly income	₹6300/-
25% future prospects	₹1575/-
Total income	₹7875/-
1/5 deduction for self expenses	₹1575/-
Annual Dependency (6300x12)	₹75,600/-
Applying multiplier of 14 (75600x14)	₹10,58,400/-
Funeral expenses	₹15,000/-
Loss of estate	₹15,000/-
Loss of consortium to widow	₹40,000/-
Loss of consortium to five minor children at ₹40,000/- each (40000x5)	₹2,00,000/-
Loss of Filial consortium to mother	₹40,000/-
Total	₹13,68,400/-

15. The award dated 08.11.2016 is modified to the extent that the amount awarded by the Tribunal of ₹20,42,928/- is reduced to a sum of ₹13,68,400/-. While admitting the appeal, recovery beyond ₹13,00,000/- was stayed by this Court. The claimants would be entitled to the balance amount along with interest at the rate as awarded by the Tribunal.

16. In view of above, the appeal is partly allowed.

02.11.2018
monika

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Whether reportable

Yes

Yes