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

**FAO No. 4103 of 2018
DECIDED ON: NOVEMBER 15, 2018**

REETIKA AND OTHERS

.....APPELLANTS

VERSUS

RAJESH KUMAR & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Ms. Amrita Nagpal, Advocate
for the appellants.

Mr. Lalit Garg, Advocate
for respondent No.3-Insurance Company

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AVNEESH JHINGAN, J (ORAL)

The widow, three minor children and mother of Dalbir Singh (deceased) are in appeal against the award dated 02.11.2016 passed by Motor Accident Claims Tribunal, Panipat (for short 'the Tribunal'). The appeal has been filed for enhancement of the compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act').

2. The driver of Tanker bearing registration No. HR-55-Q-7648 (hereinafter referred to as 'offending vehicle'); owner of the offending vehicle and insurer (National Insurance Company Ltd.) of the offending vehicle, have been arrayed as respondents No.1 to 3 respectively in the appeal.

3. The facts as emanating from the record are that on 19.06.2015, Dalbir Singh (deceased) alongwith Rahul and Satender Pal @ Bitta, owner of canter bearing registration No. PB-11-AX-9407 proceeded towards Punjab from Delhi in the canter. When they reached near police line, Panipat, the canter developed a mechanical fault and stopped. Dalbir Singh (deceased) and Rahul went underneath the canter for checking the fault. In the meantime, a rashly and negligently driven offending vehicle hit the canter from behind. As a result of impact, both sustained injuries and died at the spot. FIR No. 696, dated 19.06.2015, under Sections 279 and 304-A of the Indian Penal Code was registered against unknown driver in Police Station Chandni Bagh, Panipat.

4. The legal heirs of Dalbir Singh (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, held that the accident occurred due to rash and negligent driving of the offending vehicle and awarded a compensation to the tune of ₹11,67,500/- alongwith interest @7.5% per annum. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

6. In the claim petition, it was pleaded that the deceased was working as a driver with one Satender Pal @ Bitta and he was getting salary of ₹15,000/- per month. Satender Pal @ Bitta deposed before the Tribunal that he had employed Dalbir Singh (deceased) as a driver and was paying him ₹15,000/-per month as salary but he failed to produce any evidence on record with regard to the employment of Dalbir Singh (deceased) and the salary being paid by him.

Even, he never produced the registration certification of canter to show that the same was owned by him. The Tribunal disbelieved his statement and assessed the monthly income of the deceased as ₹5,000/- per month. The deceased was survived by his widow, three minor children and mother. In consonance with the decision of the Supreme Court in the case of ***Smt. Sarla Verma and others vs. Delhi Transport Corporation and another;*** ***2009 (3) RCR 77 (SC),*** 1/4 deduction for self expenses was made; multiplier of 17 was applied and 50% future prospects were awarded by the Tribunal. The amount awarded by the Tribunal included ₹10,000/- for loss of consortium and ₹10,000/- for transportation and last rites.

7. Learned counsel for the appellants contended that the Tribunal erred in assessing the monthly income of the deceased as ₹5,000/-, as he was working as a driver with Satender Pal @ Bitta. He further contended that the amount awarded under the conventional heads are on lower side.

8. Learned counsel for the respondent-Insurance Company argued that the Tribunal erred in awarding 50% future prospects. As per the decisions of the Supreme Court 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,** 40% future prospects were to be awarded. He further argued that the amounts awarded by the Tribunal under the conventional heads should be awarded strictly as per decision in ***Pranay Sethi's case (supra).***

9. The claimants failed to substantiate the claim that the deceased was working as a driver. Even, his driving licence was not produced before the

Tribunal. The evidence led with regard to the employment of the deceased and his monthly income was not worth reliance. In such circumstances, safest yardstick would be to rely upon the minimum wages prevalent in the State of Haryana at the time of accident. The minimum wages for an unskilled labourer was ₹5942/- per month. For calculation, it is rounded off to ₹ 6,000/- per month.

10. There is no dispute with regard to ¼ deduction for self expenses and multiplier of 17 applied. As the quantum of compensation is being re-visited, it would be appropriate that the future prospects are to be awarded in consonance with the decision of the Supreme Court in **Parnay Sethi's case (supra).**

11. Having due regard to the decisions of the Supreme Court, 40% future prospects are awarded. 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.

12. 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."

13. In view of the decision quoted above, three minor children of the deceased are entitled to an amount of ₹40,000/- each for loss of parental consortium and mother of the deceased is entitled to an amount of ₹40,000/- for loss of Filial Consortium.

14. 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 40%	₹2400/- per month
(iii)	Total Income	₹8400/- per month
(iv)	Deduction of personal expenses	₹2100/- (i.e. $1/4^{th}$ of total income)
(v)	Multiplier	17 (as per age of deceased)
(vi)	Total Dependency	₹6300x12x17=₹12,85,200/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
(ix)	Loss of consortium	₹40,000/-
(x)	Parental Consortium to the minor children (40,000x3)	₹1,20,000/-
(xi)	Filial Consortium to the mother of the deceased	₹ 40,000/-
	Total Compensation awarded	₹15,15,200/-

15. The award dated 02.11.2016 is modified to the extent that amount awarded of ₹11,67,500/- is enhanced to ₹15,15,200/-. 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. The appellants/claimants are held entitled to the compensation amount in the same proportion as held by the Tribunal.

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

(AVNEESH JHINGAN)
JUDGE

NOVEMBER 15, 2018
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No