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

**FAO No.3064 of 2003
Date of Decision:11.02.2019**

Smt. Sushila Devi and others. ....Appellants

VERSUS

Karan Kumar and others. ...Respondents

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

Present: Mr. Naren Pratap Singh, Advocate for the appellants.
Mr. Abhishek Goyal, Advocate for Mr. Pardeep Goyal,
Advocate for respondent No.3-Insurance Company.

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B.S. WALIA, JUDGE (ORAL)

1. Appeal has been filed by the mother, widow and five minor children of Satpal, who died in a motor vehicular accident on 25.11.2000. The learned Motor Accidents Claims Tribunal, Gurugram (hereinafter referred to as 'the Tribunal), in the absence of any evidence having been led by the appellants with regard to the age of the deceased, assessed the age of the deceased as 35 years on the basis of postmortem report, applied multiplier of 16 and by making deduction of 1/3rd of the income of the deceased towards his personal expenses, besides, by awarding ₹5,000/- on account of loss of consortium, ₹5,000/- on account of funeral expenses, awarded total compensation of ₹2,66,800/-.

3. Learned counsel for the appellants contends that the appeal isliable to be allowed, award modified, compensation payable enhanced by taking into account 40% of the established income of the deceased towards future prospects while computing compensation besides, by awarding appropriate compensation under the conventional heads towards funeral expenses, loss of spousal/parental consortium and loss of estate respectively.

4. Per contra, learned counsel for the respondent-Insurance Company contends that the compensation awarded to the appellants was in accordance with law and does not warrant interference.

5. I have considered the submissions of learned counsel for the parties.

6. Admittedly, the deceased was 35 years of age and was alleged to be working as a clerk in a brick kiln. In the absence of any record having been produced with regard to the salary being received by the deceased, his income was treated as ₹2100/- per month as per the notification issued under the Minimum Wages Act, 1948 as in the case of an unskilled labourer. As per decision of Hon'ble the Supreme Court in paragraph No.14 in **Sarla Verma Vs. Delhi Transport Corp. and another, 2009 (3) RCR (Civil) 77**, where the number of dependent family members is more than 6 then deduction towards personal expenses is to be made @ 1/5th of the income of the deceased. Since in the instant case the deceased left behind 7 dependents, therefore, instead of 1/3rd of the income of the deceased 1/5th of the income of the deceased is to be deducted towards his personal expenses while computing the compensation payable.

7. In view of paragraph No.61(iv) of the decision of Hon'ble the Supreme Court in **National Insurance Company Limited vs Pranay Sethi and others-2017(4) RCR (Civil) 1009,** since the deceased was below 40 years of age and on a fixed salary, an addition of 40% of the established income minus the tax component is to be made towards future prospects while computing the compensation payable.

8. Likewise, in view of paragraph No.61(viii) of the decision in **Pranay Sethi's** case (supra), a sum of ₹15,000/- is payable on account of funeral expenses, while like amount is payable on account of loss of estate and ₹40,000/- is payable on account of loss of spousal consortium. However, as

per subsequent decision of Hon'ble the Supreme Court in **Magma General Insurance Co. Ltd vs, Nanu Ram Alias Chuhru Ram, 2018(4) RCR (Civil) 333**, children of the deceased are also entitled to compensation on account of loss of parental consortium. Since in the instant case, the claim is by the widow and five minor children of the deceased, the appellant-widow shall be entitled to ₹40,000/- on account of loss of spousal consortium while each of the five children shall be entitled to ₹40,000/- on account of loss of parental consortium, total ₹2,40,000/-.

9. Faced with the aforementioned position, learned counsel for the respondent insurance company contends that in view of the subsequent decision of Hon'ble the Supreme Court in **Vimla Devi and others vs National Insurance Company Ltd. and others 2019 (1) RCR (Civil) 86**, award of compensation on account of loss of spousal and parental consortium in the case of widow and two minor children was restricted to ₹ 1,00,000/-, therefore, in the instant case also the same be restricted ₹ 1,00,000/-. In the light of position as noted above, compensation on account of loss of spousal and parental consortium to the widow and five children of the deceased is restricted to ₹ 1,00,000/- in view of the decision in Vimla Devi's case (supra).

10. In the light of the position as noted above, the appellants are held entitled to the following compensation:

Sr. No.	**Head**	**Amount assessed by Tribunal in ₹**	**Amount assessed by this Court in ₹**
1	Monthly Income	2100/-	2100/-
2	Future prospects	Nil	40%=840/- 2100+840=2940/-
3	Deduction towards personal expenses of deceased.	$1/3^{rd}$ =700/-	$1/5^{th}$ =588/-
4	Multiplier applied	16	16

5	Compensation awarded	1400x12x16=2,68,800/-(wrongly calculated as 2,56,800/-)	2352x12x16=4,51,584/-
6	Loss of consortium	5000/-	40,000/- to widow and 40,000/- to each of five children i.e. 2,40,000/- however, in view of Vimla Devi's case (supra), the loss of spousal and parental consortium is restricted to 1,00,000/-
7	Funeral expenses	5000/-	15000/-
8	Loss of estate	Nil	15,000/-
9	Total	2,78,800/-(wrongly calculated as 2,66,800/-)	5,81,584/-

11. Accordingly, in the light of the position as noted above, as against compensation of ₹2,78,800/- awarded by the learned Tribunal along with interest @ 9% per annum with effect from the date of claim petition till date of payment, the appellants are held entitled to award of compensation of ₹5,81,584/- along with interest @ 9% per annum with effect from the date of claim petition till date of payment less amount, if any, already paid.

12. Needless to mention, tax liability, if any, qua future prospects shall be deducted in accordance with the decision in **Pranay Sethi's** case (supra). Besides, apportionment of compensation amongst the appellants shall be made in accordance with the ratio stipulated by the Tribunal after first making payment of compensation on account of loss of spousal/parental consortium to the widow and children of the deceased.

13. Accordingly, appeal is allowed. Award dated 30.04.2003 passed by the learned MACT, Gurugram is modified to the extent as noted above.

(B.S. WALIA)
JUDGE

February 11, 2019
ps

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