IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 24.07.2019

1. **FAO No.4745 of 2014 (O&M)**

Smt. Savitri and others

….Appellants

Versus

Mahabir and others

….Respondents

2. **FAO No.5582 of 2014 (O&M)**

Shri Ram General Insurance Company Limited.

….Appellants

Versus

Smt. Savitri and others

….Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sandeep Kumar Yadav, Advocate,
for the appellants (in FAO-4745 of 2014)
and for respondent Nos.1 to 6 (in FAO-5582-2014).

Mr. Rajbir Singh, Advocate,
for respondent No.3-Insurance Company (in FAO-4745-2014)
and for the appellant (in FAO-5582-2014).

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RITU BAHRI J. (Oral)

This judgment shall dispose of two appeals i.e. FAO No.4745 of 2014 and FAO No.5582 of 2014 together as common questions of law and facts are involved in both the appeals being arisen out of one award. For reference, facts are taken from FAO No.4745 of 2014.

FAO No.4745 of 2014 has been filed by the claimant-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Narnaul (hereinafter referred to as 'the Tribunal') vide award dated 01.04.2014, on account of death of Vinod Kumar in a motor vehicular accident which took place on 09.12.2012. Appellant No.1 is widow, appellant Nos. 2 to 4 are children and appellant Nos.5 & 6 are parents of deceased-Vinod Kumar.

On the other hand, FAO No.5582 of 2014 has been filed by appellant-Shri Ram General Insurance Company Limited for setting aside of the aforesaid award. It has been stated that the compensation assessed by the Tribunal is on the higher side.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 09.12.2012, at about 8.30 P.M., after closing his shop, Vinod Kumar (since deceased) along with Ramesh was gong to Hanuman Mandir, village Raghunathpura, for worship on a motorcycle bearing registration No. HR-35-B-4670. One Prem Chand was behind them. At about 8.30 P.M., when they reached near Ice Factor, one Truck bearing registration No. HR-69-A-7196 being driven by respondent No.1-Mahabir in a rash and negligent manner, came from the side of Village Raghunathpura and struck against the motorcycle, as a result of which, Vinod Kumar and Ramesh received injuries. Unfortunately, Vinod Kumar died at the spot. With regard to the accident, FIR No.522 dated 10.12.2012, under Sections 279/337/304-A/427 IPC was registered at Police Station, City Narnaul. Consequently, the claimant-appellants filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had taken place on account of rash and negligent driving of offending vehicle by respondent No.1 (driver) as a result of which Vinod Kumar has died and thus, returned finding on issue no.1 in favour of the claimants. This finding was rightly given on the basis of the deposition of Ramesh (PW-1), who was an eye witness of the accident. Further, the claimants have proved on record copy of FIR Ex.P21, postmortem report of Vinod Kumar Ex.P22 and certified copy of charge sheet as Ex.P30.

Deceased-Vinod Kumar was self employed and his income was assessed by the Tribunal as Rs.2,39,997/- per annum. In this income, 50% increase was made on account of future prospects. By doing so, total income of the deceased came to Rs.3,59,996/-. After deducting the income tax, net amount came to Rs.3,43,516/- per annum. Out of this income, 1/4th amount was deducted towards personal expenses of the deceased. Remaining income came to Rs.2,57,637/- per annum (3,43,516 – 85,879). Deceased was 34 years of age at the time of accident/death. Accordingly, multiplier of 16 was applied by the Tribunal. After applying the multiplier of 16, dependency of claimants (widow, minor children and parents) came to Rs.41,22,192/- (2,57,637 x 16). In addition to it, Rs.10,000/- were awarded to claimant No.1-widow on account of loss of consortium and Rs.10,000/- as funeral expenses. Hence, appellant-claimants were found entitled to total compensation of Rs.41,42,192/- along with interest @ 7.5% per annum from the date of filing of the petition till realization. Feeling dissatisfied with the impugned award, the Insurance Company as well as claimant-appellants have preferred separate appeals, which are being disposed of together.

Learned counsel for Insurance Company-respondent No.3 has argued that since the deceased was self employed person, only 40% future prospects should have been given instead of 50% as per ***National Insurance Company Limited Vs. Pranay Sethi and others*,** Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017). He has further argued that compensation under the conventional heads cannot be revised as per the judgment passed by Hon'ble the Supreme Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram & Ors.,*** 2018 (4) RCR (Civil) 333 because a Five Judge Bench of the Hon'ble Supreme Court in ***Pranay Sethi's*** case (supra) has already laid down that consortium of Rs.40,000/- has to be given to the claimant(s) and in no circumstances, this amount can be given to the children or parents of the deceased. He further argued that payment of compensation under the conventional heads was considered by Hon'ble the Supreme Court in ***Sarla Verma and others vs. Delhi Transport Corporation and another***, 2009 (3) RCR (Civil) Page 77. In that case, Rs.10,000/- were awarded towards loss of consortium, Rs.5000/- as loss of estate and Rs.5000/- towards funeral expenses. Benefit of consortium was never extended to the children, parents, brothers or sisters of the deceased. Decision given in the aforesaid case has been followed by the Hon'ble Supreme Court in ***Pranay Sethi's*** case (supra) and hence, the benefit of consortium cannot be extended on the basis of decision given in ***Magma General's*** case (supra). Learned counsel for the Insurance Company has referred to the judgment passed in ***Central Board of Dawoodi Bohra Community and another vs. State of Maharashtra and another,*** 2005 (2) SCC 673, whereby a Constitution Bench of Hon'ble the Supreme Court has held that law laid down by the Supreme Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength. Learned counsel for the Insurance Company has further referred to the judgments passed by Co-ordinate Benches of this Court in ***New India Assurance Co. Ltd. vs. Kamlesh and others,*** FAO-7415-2016 (decided on 24.01.2019) and ***Smt. Bala @ Rajbala and others vs. Sumer Singh and others,*** FAO-5570-2014 (decided on 11.10.2018).

Learned counsel for the appellants, on the other hand, has referred a number of judgments given by Co-ordinate Benches of this Court, wherein decision given in ***Magma General's*** case (supra) has been followed and the consortium has been given to the parents and children as well. He has stated that 'consortium' is the benefit that one person, especially a spouse, is entitled to receive from another, including companionship, cooperation, affection, aid, financial support and (between spouses) it amounts to sexual relations. With regard to child's society, it is a ***filial*** consortium. Parental consortium is a parent's society, affection and companionship given to a child. *Consortium vitae* is the agreement between two parties to live together. He further argued that even as per the judgment passed in ***Pranay Sethi's*** case (supra), this benefit has not been restricted only to the wife.

I have heard learned counsel for the parties and perused the case file.

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident. Parties are not in dispute with respect to the findings given by the Tribunal on issue No.1 that the accident had taken place on account of rash and negligent driving of the offending vehicle by respondent No.1.

Hon'ble the Supreme Court in ***Sarla Verma's*** case (supra) had considered, in detail, the principles to be followed while calculating the compensation by taking the income of the deceased and his future prospects as well as the deductions to be made towards his personal expenses. In this judgment, Hon'ble the Supreme Court had also clarified as to how the multiplier should be applied while calculating the compensation. In that case, Rs.5000/- has been awarded on account of loss of estate, Rs.5000/- towards funeral expenses and Rs.10,000/- as loss of consortium to the widow. Compensation under the conventional heads, as laid down in ***Sarla Verma's*** case, has been followed by the Five Judge Bench in ***Pranay Sethi's*** case (supra). Hon'ble the Supreme Court has revised the compensation to be awarded under the conventional heads i.e. loss of estate – Rs.15,000/-, loss of consortium – Rs.40,000/- and funeral expenses – Rs.15,000/-. It has been further laid down that after every three years, enhancement should be made at the rate of 10%. The Hon'ble Supreme Court did not agree with the view expressed in ***Rajesh vs. Rajbir Singh and others,*** 2013 (9) SCC 54, where Rs.25,000/- were granted towards funeral expenses and Rs.1,00,000/- towards care and guidance for minor children. In this backdrop, the revision, as stated above, was made.

In ***Pranay Sethi's*** case (supra), it has been observed that the Second Schedule, which was enacted in 1994 has now become redundant, irrational and unworkable due to changed scenario including the present cost of living and current rate of inflation and increased life expectancy. In ***Pranay Sethi's*** case (supra), the Hon'ble Supreme Court further observed that the Second Schedule had not been followed starting from the judgment passed in ***U.P. State Road Transport Corporation and others vs. Trilok Chandra and others,*** 1996 (4) SCC 362 and there has not been any amendment in the same and the conventional damage has to be appositely determined.

Thereafter, while referring to the decision given in ***Rajesh's*** case (supra), it was observed that awarding of Rs.1,00,000/- towards loss of care and guidance of minor children was not correct.

In ***Pranay* Sethi** (supra), Hon'ble the Supreme Court, while revising the conventional heads, has not restricted the benefit of consortium only to the wife. Since the benefit has not been restricted only to the wife, question for consideration would be, whether the benefit of consortium is to be given to the wife or it has to be given to all the family members, who are/were dependent on the deceased. The Apex Court in ***Magma General*** (supra) had examined this issue and observed 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. vs. 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."

Hence, Hon'ble the Supreme Court has given the benefit of consortium of Rs.40,000/- to a child, who lost his parents, to parents who lost their child and to spouse who lost her husband/wife keeping in view the fact that Motor Vehicle Act is a beneficial legislation and its aim is to provide genuine compensation to the victims. In ***Oriental Insurance Company Limited vs. Meena Variyal & Ors.,*** 2007 (2) RCR (Civil) 698, Hon'ble the Supreme Court had allowed an appeal filed by the Insurance Company and held that in a claim petition under Section 166 of the Motor Vehicle Act, 1988, the claimants were required to lead evidence to show the negligence of driver. A claim under Section 166 was not maintainable against an Insurance Company, if the driver of the vehicle himself was driving and had died in a road accident. It was further observed that Sections 163-A and 166 of the Act are separate. Mode of calculation of compensation under Sections 163-A and 166 of the Act are also separate. Motor Vehicle Act was amended by introducing Section 163-A after the verdict given by Hon'ble the Supreme Court in ***Minu B. Mehta vs. Balkrishna Ramchandra Nayan,*** 1977 (2) SCR 886. In a claim petition under Section 163-A, claimants are not required to prove negligence of the driver, who caused the accident. The compensation was to be strictly calculated as per Second Schedule of the Act. In para no.24 of the judgment, it was observed as under:-

> "24. We think that the law laid down in ***Minu B. Mehta & Anr. v. Balkrishna Ramchandra Nayan & Anr.*** (supra) was accepted by the legislature while enacting the Motor Vehicles Act, 1988 by introducing Section 163-A of the Act providing for payment of compensation notwithstanding anything contained in the Act or in any other law for the time being in force that the owner of a motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be, and in a claim made under sub-section (1) of Section 163A of the Act, the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle concerned. Therefore, the victim of an accident or his dependants have an option either to proceed under Section 166 of the Act or under Section 163-A of the Act. Once, they approach the Tribunal under Section 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But, if they proceed under Section 163A of the Act, the compensation will be awarded in terms of the Schedule without calling upon the victim or his dependants to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle."

Even in ***Sarla Verma's*** case (supra), reference has been made to the judgment passed in ***Minu B. Mehta's*** case (supra) and it has been held as under:-

> "18. The principles relating to determination of liability and quantum of compensation are different for claims made under Section 163A of MV Act and claims under Section 166 of MV Act (see ***Oriental Insurance Co. Ltd. v. Meena Variyal, 2007 (2) RCR (Civil) 698.*** Section 163A and Second Schedule in terms do not apply to determination of compensation in applications under Section 166. In Trilok Chandra, this Court, after reiterating the principles stated in Susamma Thomas, however, held that the operative (maximum) multiplier, should be increased as 18 (instead of 16 indicated in Susamma Thomas), even in cases under Section 166 MV

Act, by borrowing the principle underlying Section 163A and the Second Schedule. This Court observed:

> "Section 163-A begins with a non obstante clause and provides for payment of compensation, as indicated in the Second Schedule, to the legal representatives of the deceased or injured, as the case may be. Now, if we turn to the Second Schedule, we find a table fixing the mode of calculation of compensation for third party accident injury claims arising out of fatal accidents. The first column gives the age group of the victims of accident, the second column indicates the multiplier and the subsequent horizontal figures indicate the quantum of compensation in thousand payable to the heirs of the deceased victim. According to this table the multiplier varies from 5 to 18 depending on the age group to which the victim belonged. Thus, under this Schedule the maximum multiplier can be up to 18 and not 16 as was held in Susamma Thomas case... Besides, the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. For example, if the deceased, a bachelor, dies at the age of 45 and his dependents are his parents, age of the parents would also be relevant in the choice of the multiplier.... What we propose to emphasise is that the multiplier cannot exceed 18 years' purchase factor. This is the improvement over the earlier position that ordinarily it should not exceed 16..."

Hence, the argument of learned counsel for the Insurance Company that for giving the benefit of consortium, it has to be restricted to wife as per Second Schedule, is liable to be rejected. Moreover, in the judgment passed in ***Pranay Sehti*** (supra), the benefit has not been restricted to wife while awarding consortium of Rs.40,000/-. In this backdrop, in the judgment passed in ***Magma General Insurance Co.*** (supra), Hon'ble the Supreme Court has only interpreted the definition of word 'consortium.' Hence, it is not against the verdict given by the Larger Bench of the Hon'ble Supreme Court.

This aspect can also be examined from another angle. On account of death of a person, if he is survived by a spouse, two minor children and old parents, in that situation, giving benefit of Rs.40,000/- as loss of consortium only to the spouse would mean that parents and minor children have not suffered any loss of consortium. It does not mean that there is no loss of companionship to the parents and minor children. Definition of word 'consortium' includes spouse consortium, parental consortium and filial consortium. Moreover, in the judgment of ***Pranay Sethi*** (supra), loss of consortium was not restricted only to wife. It has been restricted while awarding compensation as per Second Schedule under Section 163-A of the Act. However, provisions of Second Schedule have not been followed while assessing compensation under under Section 166 of the Act. Since in ***Pranay Sethi*** (supra), loss of consortium was not restricted to a spouse, the judgment passed in ***Magma General Insurance Co.*** (supra), while examining the definition of word 'consortium', has extended this benefit to parents and children as well. This judgment is not against the decision given by the Five Judge Bench in ***Pranay Sethi*** (supra). Hence, the argument of learned counsel for the Insurance Company that under the conventional heads, as per Second Schedule, the benefit should be restricted only to the wife, is rejected.

Learned counsel for the Insurance Company has further argued that once in ***Pranay Sethi's*** case (supra), benefit of consortium is restricted to Rs.40,000/-, this amount can be shared between the spouse, children and parents. Even this argument is liable to rejected as if, a person dies and the claimant is only wife, then she will get Rs.40,000/- as loss of consortium. But, in case along with the wife, there are two children and parents of the deceased, then this amount has to be divided between five people, meaning thereby each of them will get Rs.8000/-. Division of the amount of consortium cannot be made. Amount of Rs.40,000/-, awarded as loss of consortium, cannot be divided as this amount will never be consistent in all the cases relating to motor accident claims. In some cases, there can be two claimants, in some other cases there can be four claimants and even there can be more than 06 claimants. Hence, keeping in view the definition of word 'consortium' as defined in ***Magma General Insurance Co.*** (supra), this benefit of Rs.40,000/- is to be given to the spouse, parents and children individually.

Moreover, benefit of consortium has been granted by Co-ordinate Benches of this Court in ***Shri Ram General Insurance Co. Ltd. vs. Beant Kaur and others,*** FAO No.2110 of 2016, decided on 14.03.2019; ***Gian Singh vs. Ashok and others***, FAO No.6482 of 2016, decided on 25.04.2019; ***Usha and others vs. Madan Lal and others,*** FAO No.771 of 2002, decided on 09.04.2019; ***Kulwinder Kaur and others vs. Shivji Ram Goyal and others,*** FAO No.5055 of 2003, decided on 30.04.2019; ***Raj Wati and others vs. Suresh Kumar and others,*** FAO No.6124 of 2014, decided on 16.10.2018 and ***Sharmila and others vs. Leela Ram and others,*** FAO No.3831 of 2012, decided on 26.10.2018.

In this view of the matter, all the claimants i.e. widow, parents and children are held entitled for the benefit of consortium. Award in this case was passed on 01.04.2014. There is no dispute with regard to the income of the deceased. All other benefits, except loss of consortium, have been rightly given by the Tribunal as per the law prevalent on that date. Hence, in the peculiar facts and circumstances of the case, to meet the ends of justice, compensation is only being re-assessed by giving them (claimants) the benefit on account of loss of consortium as per judgment passed by Hon'ble the Supreme Court in ***Magma General Insurance Co.***

Ltd. (supra) as under:-

Sr. No.	**HEADS**	**CALCULATIONS**
(i)	Income	Rs.2,39,997/- per annum
(ii)	50% of (i) above to be added as future prospects	2,39,997 + 1,19,999 = Rs.3,59,996/-
(iii)	Income after deducting the income tax	Rs.3,59,996 – 16,480 = Rs.3,43,516/-
(iv)	1/4th of (iii) above is deducted as personal expenses of the deceased	3,43,516 – 85,879 = Rs.2,57,637/-
(v)	Compensation after multiplier of 16 is applied	Rs.2,57,637/- x 16 = Rs.41,22,192/-
(vi)	Loss of consortium to widow-claimant No.1	Rs.40,000/-
(vii)	Loss of estate	Rs.15,000/-
(viii)	Loss of filial consortium to parents i.e. claimant-appellant Nos. 5 & 6	Rs.80,000/- (Rs.40,000/- each)
(ix)	Loss of parental consortium to the children i.e. claimant-appellant Nos.2, 3 and 4	Rs.1,20,000 (Rs.40,000/- each)
(x)	Funeral expenses	Rs.15,000/-
(xi)	**Enhanced amount of compensation**	**Rs.43,92,192 – 41,42,192 = Rs.2,50,000/-**

The enhanced amount of compensation of **Rs.2,50,000/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9 per annum from the date of filing of the claim petition, till its realization keeping in view the judgment passed by Hon'ble the Supreme Court in ***Dara Singh @ Dhara Banjara vs. Shyam Singh Verma & others,*** Civil Appeal No.4528 of 2019 (arising out of SLP (C) No.5720 of 2019), decided on 01.05.2019. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and both the appeal i.e. FAO No.4745 of 2014 and FAO No.5582 of 2014 stands disposed of.

(RITU BAHRI)
JUDGE

24.07.2019
ajp

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