IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5894 of 2014
Date of Decision: 13.05.2019

Sheela Devi and another

......Appellants

Vs.

Sukhminder Singh and others

.........Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Satbir Rathore, Advocate,
for the appellants.

Mr. Harsh Aggarwal, Advocate,
for respondent no. 3.

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AMOL RATTAN SINGH, J. (ORAL)

By this appeal, the claimants before the Motor Accidents Claims Tribunal, Hoshiarpur, seek enhancement of the compensation of Rs. 8,91,000/- awarded to them on account of the unfortunate death of their son Ajay Parmar, in a motor vehicle accident that took place on 08.05.2012.

The respondents before the Tribunal not being in appeal against any finding of the Tribunal including the negligence in driving the vehicle concerned by respondents no. 1 and 2 herein, nothing further needs to be stated on that aspect by this Court, except to observe that respondent no. 1 herein was found negligent in driving the truck that led to the accident with the deceased, who was riding on a motor-cycle bearing registration no. PB-54-D-6913, the registration number of the truck being PB05-T-9309.

Thus, issue no. 1 was decided in favour of the appellants and against the respondents.

Coming to the issue of compensation, i.e. issue no. 2, it is not denied even on behalf of the respondents that as a matter of fact evidence was led to show that the deceased was 26 years old and was getting a salary of Rs. 6,280/- per month even as per the salary certificate produced by AW-2 Vivek Dhiman, who testified being a Senior Executive with M/s Dominant Systems Pvt. Ltd. Panchkula.

However, the Tribunal took only the basic salary of the deceased to be his income, i.e. Rs. 4,050/- per month, with that too reduced to Rs. 4,000/- per month.

To that amount Rs. 2,000/- was added by loss of future prospects of an increased income (taking such addition to be 50% of the salary), with a 1/3rd deduction made on such total monthly income towards the personal expenses of the deceased.

Thus, under the head of loss of income to the appellants-claimants, a sum of Rs. 8,16,000/- was awarded, with Rs. 25,000/- awarded towards funeral expenses and Rs. 50,000/- for loss of love and affection.

Hence, as already noticed, the total amount of compensation awarded was Rs. 8,91,000/-.

Learned counsel for the appellants submits that, firstly, the Tribunal wholly erred in taking even less than the basic salary of the deceased to be his monthly income, because he was also getting a house rent allowance of Rs. 405/-, a city compensatory allowance for Rs. 800/- and an education allowance of Rs. 250/-, along with “other allowances” of Rs. 775/- (as shown in the salary certificate Ex. A-3).

He also submits that interest @ only 6% per annum has been awarded by the Tribunal, whereas actually it should be at least 7.5% per annum on the compensation paid, running from the date of filing of the claim petition, till the date of realization of the amount.

Mr. Harsh Aggarwal, learned counsel for respondent no.3 (the insurance company as had insured the aforesaid truck), on the other hand, submits that allowances have been correctly deducted by the Tribunal, they being in the form of his house rent allowance, city compensatory allowance and educational allowance, with the deceased working in Panchkula but the claimants living in Hoshiarpur.

He further submits that the loss of future prospects of an increased income should have been calculated not @ 50% of the salary of the deceased but @ 40% thereof, he having worked with a private company with no permanent job security.

He next submits that half the income of the deceased would have to be deducted towards his personal expenses, he being a bachelor, with the appellants-claimants being his parents, even in terms of the judgment of the Supreme Court in **Smt. Sarla Verma and others** vs. **Delhi Transport Corporation and another,** (2009) 6 SCC 121.

He next submits that a maximum of Rs. 30,000/- would be payable to the appellants under the 'conventional heads', i.e. towards loss of estate, funeral expenses and last rites, and not Rs. 75,000/- as has been awarded by the Tribunal. His argument is that nothing is payable towards loss of consortium, the appellant-claimants being the parents and not the spouse of the deceased.

Having considered the matter, even though the respondents are not in appeal even against the quantum of compensation, yet, such compensation is naturally to be calculated, as per law settled.

Therefore, considering it accordingly, as regards the 'conventional heads' payable, I do not agree with learned counsel for the insurance company, because though Rs. 40,000/- is undoubtedly to be paid towards loss of consortium as per the judgment of the Supreme Court in **National Insurance Company Ltd.** vs. **Pranay Sethi** (2017) 16 SCC 680, and normally loss of consortium would be payable to a consort/spouse, however, in **Magma General Insurance Co. Ltd.** v. **Nanu Ram @ Chuhru Ram and others** (Civil Appeal no.9581 of 2018 decided on 18.10.2018), their Lordships, after considering the judgment in **Pranay Sethi**, held as follows:-

> *"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.*
>
> *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 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 Rs. 40,000/- each for loss of Filial Consortium."

(Emphasis applied in the present judgment only).

Thus, obviously, though as per the literal meaning of the word, Mr. Aggarwal would not be wrong to say that consortium would be for a consort, the interpretation given to the said term, in legal parlance, being as above, obviously even the parents of the deceased are entitled to such compensation under that head.

Hence, as regards compensation under the 'conventional heads', Rs. 70,000/- would be payable to the appellants.

Coming then to the compensation towards loss of income. In my opinion, Mr. Aggarwal, learned counsel for the insurance company is correct to the extent that with the deceased having lived in Panchkula with his parents (appellant-claimants) living in Hoshiarpur, as regards house rent allowance, city compensatory allowance and educational allowance, that would be specific to the deceased himself and not to the parents; but as regards the "Other Allowances" shown in the salary certificate Ex. A-3, to the tune of Rs. 775/- per month, I see no reason as to why that should not be taken as a part of his monthly income, to be added to the basic salary of Rs. 4,050/-.

That being so, the monthly income of the deceased works out to Rs. 4,825/- per month, to which 40% has to be added by way of loss of prospects of an increased income (as per the ratio of Pranay Sethi), thereby coming to a total sum of Rs. 6,755/- per month, or Rs. 81,060/- per annum.

From that amount, 50% has to be deducted towards the personal expenses of the deceased, he being a bachelor, in terms of the ratio of the judgment of the Supreme Court in **Sarla Vermas'** case (supra). (Reference paragraph 15 thereof).

Consequently, the loss of annual income to the appellants would be Rs. 40,530/- to which a multiplier of 17 is to be applied, their son being 26 years old when he died, thereby coming to a total loss of income of Rs. 6,89,010/-.

Therefore, after Rs. 70,000/- is added to that (under the earlier mentioned "conventional heads"), the total compensation payable would come to Rs. 7,59,010/-, which is less than the compensation awarded by the Tribunal.

Hence, as regards enhancement of compensation, even though the appellants have lost their son, I find myself unable to grant such enhancement, but to repeat, with the respondents not being in appeal, naturally the compensation already awarded cannot be and would not be reduced.

As regards the contention of learned counsel for the appellants that the interest awarded by the Tribunal is on the lower side, @ 6% per annum on the total compensation awarded, though even this Court (this Bench) has been normally awarding not more than that rate of interest, keeping in view the interest rates these days, yet, I agree with him that, keeping in view the fact that it was the son of the appellants who died, at least very reasonable interest should be granted. Consequently, interest @ 7.5% per annum is awarded on the compensation already awarded by the Tribunal.

Such interest would run from the date of the filing of the claim petition, till the date of realization of the compensation.

The appeal is disposed of in the above terms.

May 13, 2019 **(AMOL RATTAN SINGH)**
nitin/dinesh **JUDGE**

Whether speaking/reasoned Yes
Whether Reportable No.