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

FAO No.3669 of 2016
Date of Decision: 30.01.2019

Suman and others

...Appellants

Versus

Santra Devi and others

....Respondents

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

Present: Mr. Alankrit Bhardwaj, Advocate for the appellants.

Mr. Kulvir Narwal, Advocate for respondent No.1.

None for respondent No.2.

Mr. Rajneesh Malhotra, Advocate for respondent No.3.

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**B.S.WALIA, J (Oral).**

1. Appeal has been filed by the widow, two minor children and mother of Vijay, who died in a motor vehicular accident on 11.05.2014.

2. The learned Motor Accidents Claims Tribunal, Rohtak (hereinafter referred to as 'the Tribunal') took into account the age of the deceased as 28 years, income as unskilled labourer at Rs.6,000/- per month, applied multiplier of '17' and on account of four dependants made deduction of 1/4$^{th}$ of the income of the deceased towards his personal expenses, awarded ₹1,00,000/- on account of loss of consortium, ₹25,000/- on account of funeral expenses and thereby awarded total compensation of ₹10,43,000/- along with interest @ 7.5% per annum from the date of claim petition till realization.

3. Learned counsel for the appellants contended that despite entitlement no amount was awarded on account of future prospects, secondly apart from loss of spousal consortium, two minor children and mother of the deceased were also entitled to loss of parental/filial consortium respectively. Besides no amount was awarded on account of loss of estate.

4. Learned counsel for the respondent-Insurance Company fairly did not oppose the grant of future prospects in view of the decision of Hon’ble the Supreme Court in National Insurance Company Ltd. versus Pranay Sethi and others, 2017(4) RCR (Civil) 1009. He, however, contended that loss of spousal and parental consortium cannot exceed ₹1,00,000/- in view of the decision of Hon’ble the Supreme Court in Vimla Devi and others vs. National Insurance Company Ltd. and others, 2019 (1) RCR (Civil) 86 and further that the mother of the deceased was not entitled to grant of filial consortium in view of the decision of Hon’ble the Supreme Court in Magma General Insurance Co. Ltd vs. Nanu Ram Alias Chuhru Ram 2018 (4) RCR Civil 333. Besides ₹25,000/- awarded on account of funeral expenses was liable to be scaled down to ₹15,000/-.

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

6. Admittedly, the deceased was 28 years of age and was self employed. Accordingly, in terms of para No.61(iv) of the decision in Pranay Sethi’s case (supra), 40% of the established income of the deceased less tax component is to be added on account of future prospects while computing compensation.

7. Likewise, in view of paragraph No.61 (viii) of the decision in Pranay Sethi's case (supra), the appellants are held entitled to ₹15,000/- on account of funeral expenses and like amount on account of loss of estate. The widow of deceased is also held entitled to ₹40,000/- on account of loss of spousal consortium, while as per paragraph No.8.7 of the decision in Magma General Insurance Co. Ltd's case (supra), ₹40,000/- is payable to each of the children of the deceased on account of loss of parental consortium. However, no amount is payable to the mother of the deceased on account of filial consortium on account of the deceased being married.

8. In the circumstances, the appellants are held entitled to the following compensation:-

| Sr. No. | **Head** | **Amount assessed by the Tribunal** | **Amount assessed by this Court** |
|---|---|---|---|
| 1 | Notional Income | ₹6000/- | ₹6000/- |
| 2 | Future Prospects | Nil | 40% |
| 3. | Total Income | ₹6000/- | ₹8400/- |
| 4. | Multiplier applied | 17 | 17 |
| 5. | Deduction | 1/4$^{th}$ of ₹6000/- i.e. ₹1500/- | 1/4$^{th}$ of ₹8400/- i.e. ₹2100/- |
| 6. | Dependency | ₹4500x12x17=₹9,18,000/- | ₹6300x12x17=₹12,85,200/- |
| 7. | Funeral Expenses | ₹25,000/- | ₹15,000/- |
| 8. | Loss of Estate | Nil. | ₹15,000/- |
| 9. | Loss of consortium | ₹1,00,000/- | ₹40,000/- as spousal consortium to widow and ₹40,000/- each to the two minor children. However, the same is restricted to Rs.1 Lakh in view of decision in Vimla Devi's case (supra) |
| | Total | ₹10,43,000/- | ₹14,15,200/- |

9. Accordingly, as against the compensation of ₹10,43,000/- awarded by the Tribunal, the appellants are held entitled to award of compensation of ₹14,15,200/- along with interest @ 7.5% per annum w.e.f. the date of filing of the claim petition till date of payment, less amount, if any, already paid.

10. Needless to mention, the appellants would be entitled to the award of compensation in proportion to their shares as determined 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. The Insurance Company shall make payment of compensation to the appellants after making deduction of tax liability, if any, qua future prospects, in accordance with the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra). However, the right of the Insurance Company to recover the compensation paid from the owner after making payment to the claimants, would be subject to the outcome of the decision of the learned Tribunal pursuant to remand of the matter in FAO No.1836 of 2016, on the question of grant of recovery rights in light of the objection raised by the owner of the offending vehicle.

11. Accordingly, appeal is allowed and award dated 18.02.2016, passed by the learned Tribunal, Rohtak is modified to the extent as noted above.

**(B.S.WALIA)**
**JUDGE**

**30.01.2019**
rajesh.k.khurana

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