IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5798 of 2018 (O&M)

Date of Decision: 26.03.2019

Nirmala and others

.......Appellants

Versus

Sunil Kumar Arjariya and others

......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sunny Namdev, Advocate for
Mr. Saurabh Dalal, Advocate
for the appellants.

AVNEESH JHINGAN, J.(oral)

The award dated 8.1.2018 passed by the Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as 'the Tribunal') has been assailed by the legal heirs of Ajay Singh @ Ajay Narwal, seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

Legal representatives of the deceased are the appellants. Respondents are the driver, owner and insurer (i.e The National Insurance Company Limited) of truck bearing registration No.HR-55-Q-1362 (for short 'the offending vehicle').

The facts necessary for adjudication of the present case are summarized below:

On 20.8.2016 Ajay Singh and Bijender were going to Orissa in truck bearing registration No.CG-07-CA-2644. Bijender was the second driver-cum-helper of the truck. The truck was being followed by another truck being driven by Joginder. On their way, the truck driven by Ajay Singh was struck by the offending vehicle. As a result of the impact Ajay Singh and Bijender sustained injuries. Ajay Singh was admitted to "We Care Super Speciality Hospital", Raipur, where he succumbed to injuries on 25.8.2016. FIR No.112 dated 20.8.2016 was registered at Police Station, Bodla, District Kabirdham.

In the claim proceedings, it was pleaded that the deceased was 35 years of age at the time of accident and he was working as a driver. His income was claimed as ₹ 20,000/-, i.e. ₹ 15,000/- as salary from M/s Arora Transport Corporation and ₹ 5000/- from agricultural work. The claimants failed to prove the earning of the deceased. The Tribunal assessed the monthly earning of ₹ 10,200/-, 40% future prospects were awarded, $1/4^{th}$ deduction for self-expenses was made as the deceased was survived by five dependants and multiplier of 15 was applied as the date of birth recorded of the deceased was 20.1.1977. The Tribunal awarded a sum of ₹ 21,31,000/- alongwith interest at the rate of 7.5.% per annum. The amount awarded included ₹ 1,33,326/- for medical expenses, ₹ 40,000/- for loss of consortium to the spouse, ₹ 15,000/- each for loss of estate and for funeral expenses.

The Tribunal considering the facts and appreciating the evidence adduced held that the accident was caused due to rash and negligent driving of the offending vehicle. The insurer was held liable to pay compensation.

Heard learned counsel for the appellants and perused the relevant documents produced by him.

The only issued raised by learned counsel for the appellants is that the deceased was survived by minor children and parents and no filial consortium has been awarded and no amount has been awarded for loss of love and affection.

The contention raised by learned counsel for the appellants lack merits.

The issue with regard to the amount to be awarded under the conventional heads has been dealt with by five-Judge Bench of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157***

Relevant paras of judgment are reproduced below:

> "47. In our considered opinion, if the same is followed, it shall subserve the cause of justice and the unnecessary contest before the tribunals and the courts would be avoided.
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> 48. Another aspect which has created confusion pertains to grant of loss of estate, loss of consortium and funeral expenses. In Santosh Devi (supra), the two-Judge Bench followed the traditional method and granted Rs. 5,000/- for transportation of the body, Rs. 10,000/- as funeral expenses and Rs. 10,000/- as regards the loss of consortium. In Sarla Verma, the Court granted Rs. 5,000/- under the head of loss of estate, Rs. 5,000/- towards funeral expenses and Rs. 10,000/- towards loss of Consortium. In Rajesh, the Court granted Rs. 1,00,000/- towards loss of consortium and Rs. 25,000/- towards funeral expenses. It also granted Rs. 1,00,000/- towards loss of care and guidance for minor children. The Court enhanced the same on the principle that a formula framed to achieve uniformity and consistency on a socio-economic issue has to be contrasted from a legal principle and ought to be periodically revisited as has been held in Santosh Devi (supra). On the principle of revisit, it fixed different amount on conventional heads. What

weighed with the Court is factum of inflation and the price index. It has also been moved by the concept of loss of consortium. We are inclined to think so, for what it states in that regard. We quote:-

> "17. ... In legal parlance, "consortium" is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium."

49. Be it noted, Munna Lal Jain (supra) did not deal with the same as the notice was confined to the issue

of application of correct multiplier and deduction of the amount.

50. This aspect needs to be clarified and appositely stated. The conventional sum has been provided in the Second Schedule of the Act. The said Schedule has been found to be defective as stated by the Court in Trilok Chandra (supra). Recently in Puttamma and others v. K.L. Narayana Reddy and another, 2014(1) R.C.R.(Civil) 443 : 2014(1) Recent Apex Judgments (R.A.J.) 1 : (2013) 15 SCC 45 it has been reiterated by stating:-

> "... we hold that the Second Schedule as 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."

51. As far as multiplier or multiplicand is concerned, the same has been put to rest by the judgments of this Court. Para 3 of the Second Schedule
also provides for General Damages in case of death. It is as follows:-

> "3. General Damages (in case of death):
>
> The following General Damages shall be payable in addition to compensation outlined above:-
>
> (i) Funeral expenses - Rs. 2,000/-
>
> (ii) Loss of Consortium, if beneficiary is the spouse - Rs. 5,000/-
>
> (iii) Loss of Estate - Rs. 2,500/-
>
> (iv) Medical Expenses - actual expenses incurred before death supported
> by bills/vouchers but not exceeding - Rs. 15,000/-"

52. On a perusal of various decisions of this Court, it is manifest that the Second Schedule has not been

followed starting from the decision in Trilok Chandra (supra) and there has been no amendment to the same. The conventional damage amount needs to be appositely determined. As we notice, in different cases different amounts have been granted. A sum of Rs. 1,00,000/- was granted towards consortium in Rajesh. The justification for grant of consortium, as we find from Rajesh, is founded justification for grant of consortium, as we find from Rajesh, is founded on the observation as we have reproduced hereinbefore.

53. On the aforesaid basis, the Court has revisited the practice of awarding compensation under conventional heads.

54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/- loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which,

> the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs.15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads." ...(emphasis supplied)

As per the said decision, the amount to be awarded under the conventional heads have been fixed i.e. ₹ 15,000/- each to be paid for funeral expenses and for loss of estate and ₹ 40,000/- for loss of consortium to the widow. It has further been held by the Supreme Court that with the change of price index, the said amount would be enhanced by 10% every three years.

In view of the authoritative decision, no amount can be awarded for loss of love and affection and filial consortium. It has further been held by the Supreme Court in **Pranay Sethi's case (supra)** that the head relating to loss of love and affection of the minor children does not exist.

Being guided by the decision of the Supreme Court in **Pranay Sethi's case (supra)** no amount is awarded for filial consortium and loss of love and affection. There is no scope for enhancement.

The appeal is accordingly dismissed.

As the appeal has been dismissed, the application seeking condonation of delay is also dismissed.

(AVNEESH JHINGAN)
JUDGE

26.03.2019
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Whether speaking/reasoned Yes
Whether Reportable: Yes