IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.7866 of 2016
Date of Decision:12.03.2019

Malkit Kaur and others

.................APPELLANTS

Vs.

Harpal Singh and others

.................RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DR. RAVI RANJAN

Present: Ms.Kusum Raj, Advocate for
Mr.S.S.Sahu, Advocate for the appellants.

Ms.Vandana Malhotra, Advocate for
respondent No.3-Insurance Company.

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DR. RAVI RANJAN, J.(Oral Judgment)

The present appeal has been preferred by the claimants-appellants for enhancement of the awarded compensation amount granted on account of death of Jaggu Singh son of Sh. Ginder Singh vide the Judgment and Award dated 02.03.2016 passed in CIS No.MACP/83 of 2015 by the Motor Accident Claims Tribunal, Fatehabad (hereinafter referred to as “the Tribunal”).

The claimants-appellants (petitioners before the Tribunal) was filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as “the Act") for compensation on account of death of Jaggu Singh due to the injuries suffered by him in a motor vehicular accident which took place in the area falling within the jurisdiction of Police Station, Ratia on 23.01.2015 at about 5.30 P.M.

Short facts which are necessary for consideration of the *lis* stands enumerated as under:-

The case of the claimants/appellants is that on 23.01.2015, Jaggu Singh(since deceased) while going from Lali to Ratia on his motorcycle bearing Registration No.HR-59C/6190, when reached near old Gurdawara, Lali Road, Ratia at about 5.30 P.M., a tractor bearing Registration No.HR-59C/6543 (hereinafter referred to as the "offending vehicle") came from Ratia side, which was being driven by respondent No.1-Harpal Singh, at a high speed and in a rash and negligent manner and struck against the motorcycle of Jaggu Singh. As a result of which, he fell down on the road and sustained injuries. The injured was taken to Civil Hospital, Ratia where he was medico legally examined, however, in view of serious injuries, injured-Jaggu Singh was referred to MAMC, Agroha for treatment but the injured was finally admitted in Jindal Hospital, Hisar where he remained admitted but on 27.01.2015, he succumbed to the injuries. According to the claimants-appellants, the accident was witnessed by one Bhola Singh son of Ginder Singh.

A case bearing FIR No.59 dated 23.01.2015 under Sections 279/337/338 and 304-A of the Indian Penal Code was registered against respondent No.1. It is claimed by the claimants-appellants that at the time of the accident, the age of the deceased was 45 years. He was an expert operator of glass cutting, grinding and fixing of glass in the buildings and furniture and used to earn Rs.15,000/- per month from the above said source and was also earning Rs.10,000/- per month by doing extra work of fixing the glass etc. It is further claimed that the claimants-appellants, who are five in numbers including his widow, one major son, one major daughter and two minor daughters, were dependent upon the deceased and they claimed Rs.40 lacs as compensation from the respondents.

Upon notice, respondents No.1 and 2 filed their joint written statement controverting the averments made in the claim petition. Several preliminary objections regarding maintainability, cause of action and locus standi etc. were taken and on merit, it was pleaded that the accident took place due to negligent driving of the motorcyclist himself and a false FIR has been registered against answering respondent No.1. It was further pleaded that, at the time of accident, the tractor bearing Registration No.HR-59C/6543 was insured with respondent No.3, i.e. TATA AIG General Insurance Company Ltd. All other averments made in the petition were also controverted and dismissal of the petition was prayed for.

In the aforesaid background of factual matrix, I have heard learned counsel for the appellants as well as respondent No.3-Insurance Company and perused the records of this case.

The Tribunal has held that the alleged accident has taken place due to rash and negligent driving of the offending vehicle, i.e., tractor. However, in view of lack of any evidence, it was unable to accept the income of the deceased as Rs.25,000/- per month and has only accepted Rs.6,000/- per month as income of the deceased for the relevant purpose. The multiplier of 13 has been taken and in view of five numbers of dependents, 1/4th of income has been deducted towards the personal expenses of the deceased for the purpose of calculating his annual dependency. An amount of Rs.1,00,000/- has been given to Malkit Kaur, i.e., widow of the deceased(petitioner No.1 before the Tribunal) towards loss of consortium and Rs.28,000/- has been assessed towards funeral expenses and Rs.80,000/- towards the expenses incurred on the treatment of the deceased. Though, the claimants-appellants have claimed that Rs.5,00,000/- were spent towards the medical expenses of the deceased, but at the time of the hearing of the case, learned counsel representing the appellants does not press the issue of compensation amount granted by the Tribunal under the head of medical expenses.

The claimants-appellants seek enhancement of the compensation amount chiefly on two aspects.

First is that grant of any amount under the head of 'Future Prospects' has not been considered as per the law laid down by Constitution Bench of Hon'ble Apex Court in **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) R.C.R. (Civil) 1009.** According to the claimants-appellants since the age of the deceased has been taken to be 48 years by the Tribunal, the future prospects to the tune of 25% of the income is to be added while calculating the compensation amount. It is next contended that a lump sump amount of Rs.1,00,000/- has only been granted to his widow but the sons and daughters have not been awarded parental consortium.

Learned counsel representing respondent No.3-Insurance Company submitted that so far as the issue of consortium is concerned, Rs.1,00,000/- has already been awarded. Therefore, there is no question of awarding further amount. However, she is not in a position to controvert the claim of the appellants that the admitted amount under the head of 'Future Prospects' should be added.

So far as consortium part is concerned, the Hon'ble Apex Court in **Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Churu Ram and others, 2018 (4) R.C.R. (Civil) 333**, after considering its earlier decision rendered in **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) R.C.R. (Civil) 1009**, has observed as under:-

> 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. v. Rajbir Singh Ors. (2013) 9SCC 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, cooperation, 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.

A few High Courts have awarded compensation on this count5. 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."

In the present case, in view of the decision of the Apex Court in **Pranay Sethi (supra)** and **Magma General Insurance Co. Ltd. (supra)**, the claimant-appellant No.1-Malkit Kaur (widow of the deceased) would only be entitled for spousal consortium for an amount of Rs.40,000/-. However, the children, i.e., appellants-claimants No. 2 to 4 would also be entitled for parental consortium at the rate of Rs.40,000/- each as they have lost their one of the parents in the motor vehicular accident.

No other issue has been raised by learned counsel for the parties save and except those which stands considered and discussed as above.

Accordingly, this Court would deem it appropriate to award the widow of the deceased-Malkit Kaur (claimant-appellant No.1) for an amount of Rs.40,000/- for loss of spousal consortium and Rs.40,000/- each to the four children of the deceased, i.e., appellants-claimants No. 2 to 4 as parental consortium for loss of one of their parents.

Further, in my considered opinion, the interest rate of 9% per annum would serve the purpose in such a situation when a person has lost his life due to negligent driving of the offending vehicle.

Accordingly, the rate of interest is raised from 7.5 to 9% per annum to be calculated from the date of filing of the claim petition till the date of actual realization.

As such, the award of the Tribunal is stands modified and re-calculated as under:-

Sr. No.	**Heads of Compensation**	**Amount**
1.	Income	Rs.6,000/- per month
2.	Addition of Future Prospects (@ of 25% of income)	(Rs.6,000+Rs.1500)=Rs.7500/-
3.	Deduction(1/4th) for personal expenses	Rs.7500-Rs.1875=Rs.5,625/-
4.	Multiplier (age group of 45 to 50)	13
5.	Total loss of dependency	Rs.5,625x13x12=Rs.8,77,500/-
6.	Spousal and parental consortium to five dependents	Rs.40,000/- to each dependent, i.e., comes to Rs.2,00,000/-
7.	Funeral expenses	Rs.28,000/-
8.	Medical expenses	Rs.80,000/-
	Total compensation	**Rs.11,85,500/-**
	Enhanced compensation amount	**Rs.11,85,500-Rs.9,10,000/- =Rs.2,75,500/-**

Accordingly, the claimants-appellants are held entitled to the enhanced amount of Rs.2,75,000/-. They would also be entitled for enhanced interest @ 9% per annum on the awarded amount to be calculated from the date of filing of the claim petition till the date of actual realization. However, the mode of disbursement of the compensation amount as well as the costs part as recorded in the impugned Judgment and Award of the Tribunal are kept intact.

It is made clear that obviously the total amount payable would be after deducting the actual amount which has already been paid by the Insurance Company to the appellants-claimants, however, the interest has to be calculated afresh.

In the result, this appeal stands allowed and impugned Judgment and Award of the Tribunal stands modified and the awarded amount is enhanced to the extent as indicated above. However, parties shall bear their own costs.

(DR. RAVI RANJAN)
JUDGE

12.03.2019
Anjal

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No