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

**FAO No.6102 of 2015 (O&M) and
XOBJC-271-CII-2016 (O&M)
Date of Decision:10.01.2020**

Mina Devi and Ors.

.....appellants

Versus

Ram Janam and Ors.

..... Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashwani Arora, Advocate
for the appellants.

Mr. Neeraj Khanna, Advocate
for respondent No.1.

Mr. R.C. Gupta, Advocate
for respondent No.3.

ANIL KSHETARPAL, J.(Oral)

By this order appeal filed by the claimants and cross-objections filed by the driver of the offending vehicle shall stands disposed of. Findings of rash and negligent driving and the accident having taken place due to the rash and negligent driving is not being questioned in this appeal. Late Sh. Harendra Chaudhari lost his life in a motor-vehicular accident. His widow, three minor children and aged mother filed a claim-petition. Learned Motor Accident Claims Tribunal assessed the income of the deceased, who was 30 years of age at the time of accident, to be Rs.5000/- per month. The Court deducted 1/4th of the income towards personal expenses and thus worked out annual dependency at Rs.45000/-. Keeping

in view the age of the deceased an addition of 30% of the earning was

made by the Court and multiplier of 17 was applied to arrive at compensation payable. The amount awarded by the Motor Accident Claims Tribunal under different heads as under:

Sr. No.	Amount
Loss of dependency	Rs.5000-1/4 th +30% x 12 x 17 Rs.9,94,500/-
Funeral Expenses	Rs.25,000/-
Loss of love and affection	Rs.25,000/-
Loss of consortium	Rs.25,000/-
Granted by MACT	Rs.10,69,500/-

Learned counsel appearing for the appellant has submitted that learned Court has committed error in increasing the income by only 30%, whereas it should be 40% as per the judgment passed by the Constitution Bench in the case of *National Insurance Company Ltd. vs. Pranay Sethi and Ors., 2017 ACJ 2700*. He further submitted that for loss of consortium only at Rs.25000/- has been awarded which should be Rs.40,000/- as per the aforesaid judgment with respect to the widow. He further claimed that parental consortium to the minor children and filial consortium to the mother should also be awarded.

On the other hand, learned counsel appearing for respondent No.1-driver of the offending vehicle has submitted that he was having a valid driving licence and therefore recovery rights given to the Insurance Company against the owner and driver are erroneous. Learned counsel appearing for the insurance-company has submitted that he has got verified the validity of a driving licence and submit that it is a valid licence.

However, he submits that mother and the children would not be entitled to

filial and parental consortium once the widow has already been granted consortium.

This Court has considered the submission and find substance in the argument of the learned counsel for the appellant. As per the judgment passed by the Constitution Bench, with respect to person below the age of 40, the income on account of future prospects is required to be increased by 40%. Thus the Tribunal has erred in awarding addition of 30% in the income on account of future prospects. The Tribunal has further over-looked that for loss of consortium, widow is entitled to Rs.40000/- not Rs. 25000/-. As regards, claim of the appellant for grant of parental consortium and filial consortium, it will be noticed that the judgment passed by the Supreme Court in the case of ***Magma General Insurance Co. Ltd. Vs. Nanu Rama and Ors.*** was a case dealing with claim petition having been filed by the parents of unmarried child. No doubt, the court had held that the consortium includes spousal consortium, parental consortium and filial consortium. However, the Hon'ble Supreme Court had not held that in each and every case apart from spousal consortium, parental consortium and filial consortium is to be granted.

On consideration of the matter, this Court is of the view that the minor children and the mother are not entitled to parental and filial consortium separately particularly when the widow has already been granted spousal consortium as laid down by the Constitution Bench. The Constitution Bench has specifically held that maximum consortium which can be awarded is Rs.40000/-.

As regards, recovery rights given to the Insurance Company in

absence of a valid driving licence, the learned counsel appearing for the insurance company has now admitted that on the date of accident, cross-objector was having valid driving licence.

Keeping in view the aforesaid facts, the award passed by Motor Accident Claims Tribunal against cross-objector and the owner shall stand set aside. The compensation payable to the appellant is re-calculated as under:

Sr. No.	Amount
Loss of dependency	5000+ 40%-1/4 th x12x17 5000-1750x12x17 Rs.10,71,000/-
Conventional heads	Rs.70,000/-
Total	Rs.11,41,000/-

The amount deposited by the driver and the owner, if any, before Executing Court shall be refunded to him.

The interest awarded by the Motor Accident Claims Tribunal is remain as it is.

(ANIL KSHETARPAL)
JUDGE

10th January 2020
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No