

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

**FAO-3756-2002(O&M)  
Date of Decision:18.01.2021**

**Paramjit Kaur and others**

**..... Appellants**

**versus**

**Gurdev Singh and others**

**..... Respondents**

**CORAM : HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA**

**\*\*\***

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

Mr. Harjinder Singh, Advocate for the respondent/insurance Co.

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**TEJINDER SINGH DHINDSA, J. (ORAL)**

This case has been taken up through Video Conferencing via Webex facility in the light of Pandemic Covid-19 situation and as per instructions.

This is a claimants' appeal seeking enhancement of compensation.

Counsel for the parties have been heard.

Briefly it may be noticed that a claim petition under Section 166 of the Motor Vehicles Act, 1988 was filed before the Motor Accident Claims Tribunal, Chandigarh claiming compensation on account of death of Balbir Singh in an accident that took place on 30.10.2000 involving the offending vehicle i.e. truck bearing registration No. PB-23-8957.

Claimants before the Motor Accident Claims Tribunal were the

widow, two minor children and parents of the deceased namely Balbir Singh.

Based upon the pleadings of the parties the following issues were framed by the Tribunal:-

1. Whether the claimants are the legal heirs of the deceased? OPP
2. Whether the accident took place due to the rash and negligent of respondent no.1 while he was driving vehicle no. PB-23-8957? OPP
3. If issues no. 1 & 2 are proved, to what amount of compensation the claimants are entitled and from whom of the respondents? OPP
4. Whether the respondent no.1 was not holding a valid driving licence? If so, its effect? OPR
5. Relief.

Since the only issue arising in the instant appeal is with regard to quantum of compensation, the findings recorded by the Tribunal with regard to issue No.3 would be relevant.

Suffice it to take note that the Tribunal fixed the dependency of the claimants at Rs.5000/-per month i.e. Rs. 60,000/- per annum. Taking the age of the deceased to be 42 years at the time of the death, multiplier of 16 was applied. Total amount of compensation payable to the claimants was as such determined to be Rs. 9,60,000/-. The amount of compensation was apportioned in the following manner:-

- |      |                            |   |                 |
|------|----------------------------|---|-----------------|
| i)   | Widow (Paramjit Kaur)      | - | Rs. 3, 40,000/- |
| ii)  | Minor son (Amandeep Singh) | - | Rs. 2,50,000/-  |
| iii) | Minor son (Navdeep Singh)  | - | Rs.2,50,000/-   |
| iv)  | Father (Karnail Singh)     | - | Rs. 1,00,000/-  |

Apparently no amount was awarded in favour of the mother of the deceased namely Jagir Kaur as she had expired during the pendency of the claim petition before the Motor Accident Claims Tribunal.

Interest @ 9% per annum on the compensation amount computed from the date of filing of the claim petition till realisation was also granted.

Instant appeal seeking enhancement of compensation came up for hearing before this Court on 08.01.2021 and submission advanced by Mr.Ashwani Arora, Advocate for the claimant-appellants was noticed that the claim seeking enhancement would be covered in terms of the decisions of the Hon'ble Supreme Court in **National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) R.C.R. (Civil) 1009** as also **The New India Assurance Company Limited vs. Smt. Somwati and others, 2020(4) PLR 1**. Accordingly Mr.Arora had offered to prepare a calculation sheet indicating the proposed enhanced compensation in terms of the guidelines/parameters laid down by the Apex Court in the afore-noticed two decisions and to share the same with the counsel representing the contesting respondent/insurance company.

During the course of resumed hearing of the main appeal today counsel for the appellants as also for the insurance company have furnished separate calculation sheets reflecting the proposed enhancement of compensation. Perusal of both the calculation sheets shows that there is a common meeting ground insofar as monthly income, tax liability for the year 2001-02, balance income post tax, increase of income towards future prospects @ 30% as per parameters laid down in Pranay Sethi's case (supra) and thereafter arriving at a total annual income of Rs.1,51,518/-. Five

dependents have been shown at the time of the accident. Deduction @ 1/4<sup>th</sup> i.e. Rs.37,880/- is reflected in both the calculation sheets and as such the total income after deduction has been calculated at Rs.1,13,638/- (Rs. 1,51,518/- - Rs. 37,888/-). The multiplier to be applied has been agreed to be 14 and the dependency as such has been calculated at Rs. 1,13,638/- x 14 = Rs.15,90,932/-. Funeral expenses and loss of estate @ Rs.15,000/- for both such heads has also been agreed to.

There is a consensus arrived at between the parties to enhance the compensation to the extent afore-noticed.

There is, however, two aspects which would require to be considered and adjudicated upon.

Insofar as the claimants are concerned, an amount of Rs. 2 lakhs towards loss of consortium for all the five claimants is being set up. Per contra insurance company is agreeable only to payment of Rs.1,20,000/- towards loss of consortium i.e. Rs. 40,000/- each for the widow and the two children. Counsel for the insurance company has vehemently argued that the mother of the deceased had also died soon thereafter on 04.03.2001. Further more, since the father of the deceased has also died thereafter in the year 2015, both the parents would not be entitled to any amount under the head of loss of consortium.

The second issue to be considered by this Court is with regard to the interest component. Counsel representing the claimant-appellants seeks the interest component as awarded by the Tribunal i.e. @ 9% per annum to be kept intact even qua the enhanced compensation amount.

Counsel representing the contesting respondent-insurance company would, however, submit that the accident had taken place in the

year 2000 and the interest @ 9% per annum had been awarded by the Tribunal in the award that had been pronounced in the year 2002. Rate of interest at 9% per annum was prevalent at that point of time. Reliance has been placed upon decision of the Hon'ble Supreme Court in **Smt. Kaushnuma Begum and others vs. The New India Assurance Co.Ltd. and others in Appeal (civil) 6 of 2001, Special Leave Petition (civil) 1431 of 2000** decided on **03.01.2001** to contend that on account of change in economy/policy of the Reserve Bank of India and the interest rates thereafter having dropped it is the prevalent rate of interest as of date i.e. 6% per annum that ought to be awarded.

Rival contentions advanced on behalf of the parties have been considered.

In **The New India Assurance Company Limited vs. Smt. Somwati and others, 2020(4) PLR 1** following had been held:-

*“36. The word ‘consortium’ has been defined in Black’s law Dictionary, 10th edition. The Black’s law dictionary also simultaneously notices the filial consortium, parental consortium and spousal consortium in following manner:-*

***"Consortium 1.*** *The benefits that one person, esp. A spouse, is entitled to receive from another, including companionship, cooperation, affection, aid, financial support, and (between spouses) sexual relations a claim for loss of consortium.*

- *Filial consortium A child's society, affection, and companionship given to a parent.*
- *Parental consortium A parent's society, affection and companionship given to a child.*
- *Spousal consortium A spouse's society, affection and companionship given to the other spouse.”*

37. *The Magma General Insurance Company Ltd. (Supra) as well as United India Insurance Company Ltd.(Supra), Three-Judge Bench laid down that the consortium is not limited to spousal consortium and it also includes parental consortium as well as filial consortium. In paragraph 87 of United India Insurance Company Ltd. (supra), 'consortium' to all the three claimants was thus awarded. Paragraph 87 is quoted below:-*

*"87. Insofar as the conventional heads are concerned, the deceased Satpal Singh left behind a widow and three children as his dependants. On the basis of the judgments in Pranay Sethi (supra) and Magma General (supra), the following amounts are awarded under the conventional heads:-*

*i) Loss of Estate: Rs. 15,000*

*ii) Loss of Consortium:*

*a) Spousal Consortium: Rs. 40,000*

*b) Parental Consortium: 40,000 x 3 = Rs. 1,20,000*

*iii) Funeral Expenses: Rs. 15,000"*

38. *Learned counsel for the appellant has submitted that Pranay Sethi has only referred to spousal consortium and no other consortium was referred to in the judgment of Pranay Sethi, hence, there is no justification for allowing the parental consortium and filial consortium. The Constitution Bench in Pranay Sethi has referred to amount of Rs.40,000/- to the 'loss of consortium' but the Constitution Bench had not addressed the issue as to whether consortium of Rs.40,000/- is only payable as spousal consortium. The judgment of Pranay Sethi cannot be read to mean that it lays down the proposition that the consortium is payable only to the wife.*

39. *The Three-Judge Bench in United India Insurance Company Ltd. (Supra) has categorically laid down that apart from spousal consortium, parental and filial consortium is payable. We feel ourselves bound by the above judgment of Three Judge Bench. We, thus, cannot accept the submission of*

*the learned counsel for the appellant that the amount of consortium awarded to each of the claimants is not sustainable.*

*40. We, thus, found the impugned judgments of the High Court awarding consortium to each of the claimants in accordance with law which does not warrant any interference in this appeal. We, however, accept the submissions of learned counsel for the appellant that there is no justification for award of compensation under separate head 'loss of love and affection'. The appeal filed by the appellant deserves to be allowed insofar as the award of compensation under the head 'loss of love and affection'.*

By applying the dictum as laid down in Smt.Somwati's case (supra) both the parents of the deceased Balbir Singh are held entitled to a filial consortium of Rs. 40,000/-each. The submission advanced by counsel for the insurance company that since parents of the deceased have already expired as such the amount under the head of loss of consortium cannot be awarded is found to be misconceived and not well founded. Upon the death of Balbir Singh in a motor vehicle accident that took place on 30.10.2000, not only the widow and minor children but even the parents had filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 before the Motor Accident Claims Tribunal, Chandigarh. Claim of the parents for grant of filial consortium as such had crystalised at the time of the accident itself i.e. on 30.10.2000 when they had lost their son Balbir Singh in the accident. Such claim which already stood crystalised on the date of the accident cannot be negated by the subsequent death of the parents themselves. In taking such view this Court would draw support from the decision of the Hon'ble Supreme Court in **Kirti and another vs. Oriental**

**Insurance Company Ltd. [Civil Appeal Nos.19-20 of 2021 (Arising out of Special Leave Petition (C) Nos. 18728-29 of 2018)]** decided on **05.01.2021** and in which it had been observed as follows:-

*“ We have thoughtfully considered the rival submissions. It cannot be disputed that at the time of death, there in fact were four dependents of the deceased and not three. The subsequent death of the deceased's dependent mother ought not to be a reason for reduction of motor accident compensation. Claims and legal liabilities crystallise at the time of the accident itself, and changes post thereto ought not to ordinarily affect pending proceedings. Just like now appellant-claimants cannot rely upon subsequent increases in minimum wages, the respondent-insurer too cannot seek benefit of the subsequent death of a dependent during the pendency of legal proceedings..... ”*

As such it is held that the insurance company would be liable to pay the amount of Rs. 40,000/- for each of the parents i.e. a total of Rs. 80,000/- towards filial consortium.

Insofar as the component of interest is concerned, admittedly the Motor Accident Claims Tribunal in the award dated 01.04.2002 has awarded interest @ 9% per annum from the date of filing of the claim petition. On the one hand the claimants were entitled even to the enhanced compensation amount and the benefit of which they have been deprived of through these years. It is the respondent-insurance company that has benefitted from such amount. The accident resulting in the death of Balbir Singh had taken place in the year 2000. The claim petition had been instituted in the year 2000 itself and came to be decided vide award dated 01.04.2002. It is not in dispute that the prevailing rate of interest at that

point of time was 9% approximately on fixed deposits. Be that as it may it cannot be lost sight of that the interest rates thereafter have dropped. As of date the prevailing rate of interest is 6% per annum approximately on fixed deposits and going up to 7.5% per annum for senior citizens.

In the considered view of this Court and by adopting a middle path and keeping the equities in mind the ends of justice would be served if interest at the rate of 7.5% per annum is awarded on the enhanced compensation. It is so directed.

In view of the above the present appeal is allowed. By referring to the consensus arrived at between the parties, the amount of compensation by computing dependency is determined at Rs.15,90,932/-. Funeral expenses and loss of estate at the rate of Rs.15,000/- for each of these heads is also awarded in terms of the consensus arrived at between the parties.

That apart the amount of Rs. 2 lakhs towards loss of consortium is awarded i.e. Rs.40,000/- for the widow towards spousal consortium, Rs.40,000/- each for both the children towards parental consortium and Rs.40,000/- each for the parents i.e. Rs.80,000/-towards filial consortium.

The enhanced compensation amount as afore-calculated would also carry interest at the rate of 7.5% per annum from the date of filing of the claim petition till actual payment.

As regards the apportionment of the enhanced compensation is concerned it is directed that 50% of the enhanced compensation would be released in favour of the widow namely Smt.Paramjit Kaur (appellant No.1).

The balance 50% would be divided equally amongst both the sons of the deceased i.e. appellants No.2 and 3 respectively. It is taken note that both the children i.e. appellants No. 2 and 3 have since attained the age of majority. Their share as indicated hereinabove be released to them in terms of the present judgment.

Appeal is disposed of accordingly.

(TEJINDER SINGH DHINDSA)  
JUDGE

18.01. 2021  
sunita

|                           |        |
|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |