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

**FAO No.1780 of 2022 (O&M)**
**Date of Decision: 10.05.2022**

Major Singh ....Appellant

VERSUS

Suraj Bhan and Others ....Respondents

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Sanjay Jain, Advocate for the appellant.

**<u>ALKA SARIN, J.</u>**

The present appeal by the owner of the offending vehicle has been filed against award dated 15.12.2021 passed by the Motor Accident Claims Tribunal, SAS Nagar, Mohali (hereinafter referred to as the 'Tribunal').

The brief facts to the present *lis* are that the claimant-respondent nos.1 to 4 filed a claim petition on the ground that on 23.03.2017 at about 8:40 P.M, the deceased Ram Ratti was going from her house to the house of her other son namely Suraj Bhan by walking on the left side of the road Ambala Cantt to village Handesra. She was being followed by her son Satish Kumar and one Kushalpal on foot when an Alto Car bearing no.HR-04F-6676 came at fast speed from the front and struck against Ram Ratti and pushed into the wall. As a result of this accident, Ram Ratti received serious injuries and was taken to Civil Hospital, Ambala and, thereafter, referred to GMCH, Sector 32, Chandigarh but she died during treatment at GMCH, Sector 32, Chandigarh. It was averred that the car was being driven at a fast speed and in a rash and negligent manner by Gulshan Singh son of Major Singh (present respondent no.5). It was further submitted that Ram Ratti was a labourer and also doing milk dairy business and was earning Rs.30,000/- per month and, as such, a claim for compensation of Rs.15,00,000/- alongwith interest @ 12% per annum was made.

The present respondent no.5 (driver) filed a written statement taking the pleas that the claim petition is not maintainable; that the claimants have not come to the court with clean hands; that no accident had occurred as alleged by the claimants and a false and frivolous FIR was lodged in connivance with the Police. After filing of the written statement the present respondent no.5 (driver) did not appear and was proceeded against ex-parte on 05.02.2019. The appellant (owner) also filed a written statement taking similar pleas as taken by the present respondent no.5 (driver). On 16.01.2020 the appellant suffered a statement that the offending vehicle was not insured on the date of the alleged accident. As a result, the service upon the insurance company was dispensed with.

From the pleadings of the parties, the following issues were framed :

1. Whether the death of Ramrati was the result of motor vehicular accident caused by the rash and negligent driving of respondent no.1 while driving Car bearing no.HR-04F-6676 ? OPP
2. If issue no.1 is proved then as to whether the claimants are entitled to received compensation, if so, to what extent and from whom ? OPP

3. Whether the claim petition is not maintainable ? OPR2

4 Whether the claimants have not come to the court with clean hands as no accident took place with Car bearing no.HR-04F-6676 ? OPR2

5. Relief.

On issue no.1, the Tribunal, on the basis of the evidence and statements of the witnesses, held that Ram Ratti had died on account of rash and negligent driving of the present respondent no.5 (driver) while driving the offending vehicle i.e. Alto Car bearing no.HR-04F-6676 owned by the appellant (owner) in a rash and negligent manner. On issue no.2 the Tribunal held that the income of Ram Ratti be considered as Rs.5,000/- per month being a housewife and accordingly, her annual income was assessed at Rs.60,000/-. The Tribunal, while taking the age of the deceased as 69 years, awarded a total compensation of Rs.4,80,000/-, as under :

| S. No. | Heads of Claim | Amount |
|---|---|---|
| 1 | Monthly income | Rs.5,000/- |
| 2 | Annual income | Rs.60,000 (5000x12) |
| 3 | Multiplier | 5 |
| 4 | Compensation | Rs.3,00,000 (60000x5) |
| 5 | Consortium<br>(4 claimants : 3 children & spouse) | Rs.1,60,000/- (40000x4) |
| 6 | Funeral expenses | Rs.20,000/- |
| 7 | TOTAL | Rs.4,80,000/- |

The Tribunal also awarded interest at the rate of 8% per annum from the date of filing of the claim petition till its actual realization from the present respondent no.5 (driver) and the appellant (owner) and both were held jointly and severally liable.

The argument raised by learned counsel for the appellant (owner) is that the children of Ram Ratti ought not have been awarded consortium since they were all adults and would be having their own sources of income. It has further been contended that the judgment in **Magma General Insurance Co. Ltd. vs. Nanu Ram [2018(18) SCC 130]** is contrary to the law laid down in the case of **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [2017(16) SCC 680]**.

I have heard learned counsel for the appellant (owner) and perused the paperbook.

In the matter of **Magma General Insurance Co. Ltd.** (*supra*) the discussion regarding consortium was as under:

> *"21. A Constitution Bench of this Court in Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium. 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 v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149]*

*21.1. 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". [Black's Law Dictionary (5th Edn., 1979).]*

*21.2. 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".*

*21.3. 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.*

*22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have* *recognised 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.*

*23. 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 count [Rajasthan High Court in Jagmala Ram v. Sohi Ram, 2017 SCC OnLine Raj 3848 : (2017) 4 RLW 3368; Uttarakhand High Court in Rita Rana v. Pradeep Kumar, 2013 SCC OnLine Utt 2435 : (2014) 3 UC 1687; Karnataka High Court in Lakshman v. Susheela Chand Choudhary, 1996 SCC OnLine Kar 74 : (1996) 3 Kant LJ 570]. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of filial consortium.*

> *24. 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 [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] . 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."*

Thus, parental consortium is awarded when a child, whether a minor or an adult, looses parental aid, protection, affection, society, discipline, guidance and training due to the death of a parent in a motor accident. These indices are not dependant upon the age of a child or the age of the deceased parent. One cannot say that the parental aid, protection, affection, society, discipline, guidance and training can be quantified at a higher level if the child is a minor and at a lower level if the child is a major at the time of death of a parent in a motor accident. Merely because the four children of Ram Ratti are adults cannot be a factor to deny them parental consortium. Consortium is not dependant on the age, income or dependency of either the deceased or the claimant. Learned counsel for the appellant (owner) has not cited any judgement to support his contention.

The second argument of the learned counsel that the judgment in **Magma General Insurance Co. Ltd.** (*supra*) is contrary to the law laid down in **Pranay Sethi & Ors.** (*supra*) cannot but be rejected. A perusal of the judgment in **Magma General Insurance Co. Ltd.** (*supra*) clearly reveals that the said judgment has been passed after due consideration of the law laid down in **Pranay Sethi & Ors.** (*supra*). In **Pranay Sethi & Ors.** (*supra*) it was held as under :

> *"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."*

A perusal of the above reproduced paragraph clearly reveals that there is no conflict whatsoever and only the principal of awarding compensation under the head "loss of consortium" as laid down in **Pranay Sethi & Ors.** (*supra*) has been extended to grant of compensation under the heads Spousal Consortium, Parental Consortium and Filial Consortium. The said judgment still holds the field.

In **New India Assurance Co. Ltd. vs. Somwati [2020(9) SCC 644]** a similar argument as raised by counsel for the appellant (owner) was considered and rejected by the Supreme Court. It was inter-alia held :

> *"37. The learned counsel for the appellant has submitted that Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] has only referred to spousal consortium and no other consortium was referred to in the judgment of Pranay Sethi [National*

*Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] , hence, there is no justification for allowing the parental consortium and filial consortium. The Constitution Bench in Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] 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 [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] cannot be read to mean that it lays down the proposition that the consortium is payable only to the wife.*

*38. The three-Judge Bench in United India Insurance Co. Ltd. [United India Insurance Co. Ltd. v. Satinder Kaur, (2021) 11 SCC 780 : 2020 SCC OnLine SC 410] has categorically laid down that apart from spousal consortium, parental and filial consortium is payable. We feel ourselves bound by the above judgment of the 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."*

No judgment to the contrary has been referred to or relied upon by the counsel for the appellant (owner).

No other point has been urged by learned counsel for the appellant (owner).

In view of the pleadings and evidence on the record and the findings recorded, I do not find any illegality or infirmity in the impugned award passed by the Tribunal. The present appeal is without merit and is dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

**( ALKA SARIN )**
**JUDGE**

**10th May, 2022.**
sandeep

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO