S. No.212

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO No.4802 of 2016 (O&M)
Date of Decision:12.12.2022

Krishna Devi and another .....**Appellants**

Vs.

Balbir Singh and others .....**Respondents**

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Ashish Jhamb, Advocate for Mr. Rajbir Singh Arya, Advocate for the appellants.

Mr. P.S. Sullar, Advocate for the Oriental Insurance Co. Ltd.

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DEEPAK GUPTA, J.

By way of this appeal, claimants challenge the award dated 23.02.2016 passed by Ld. Motor Accident Claims Tribunal, Karnal, whereby compensation of Rs.6,98,000/- has been allowed on account of death of an unmarried 18 year old boy Surender Kumar. Claimants are the parents of the deceased. Appeal is qua the quantum of compensation only.

2. Driver/ owner and Insurance Company having not filed any appeal, so it remains undisputed that accident was caused on 15.01.2013 due to rash and negligent driving of offending vehicle, i.e. Canter No.HR-45-5575.

3. The contention of learned counsel for appellants is that deceased was 18 years old. He was a brilliant student of 10+1 and that even the minimum wages in January, 2013 in Haryana were more than ₹5,500/- per month and so, his notional income at ₹4,000/- per month has been taken by the Tribunal on lower side.

Besides, no compensation has been allowed towards loss of estate or funeral expenses.

4. Heard.

5. Date of birth of deceased Surender Kumar has been found by the tribunal to be 03.03.1994, which means that he was 19 years of age at the time of his accidental death.

6. As per the findings of the learned Tribunal, deceased was a student of 10+1. Considering the young age of the deceased and the fact that he had already passed matriculation examination, the notional income at ₹4,000/- per month has been assessed on lower side. As rightly pointed out by learned counsel that even the minimum wages for skilled person in Haryana in 2013 were approximately 45,850/- per month. Taking into mind the said fact, notional income of the deceased- Surender is to be taken at ₹6,000/- per month. Thus, annual notional income of the deceased works out to ₹72,000/-. Deceased being below 40 years of age, so 40% of the amount is liable to be added towards future prospects. After adding this amount, notional earnings of the deceased works out to be ₹1,00,800/- per annum.

7. Admittedly deceased was a bachelor. In **Sarla Verma's case,** Hon'ble Supreme Court held as under:

> *"31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally 50 per cent is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent (s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary,* ***the father is likely to have his own income and will not be considered as***

a dependent and the mother alone will be considered as a dependent. *In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father.*

32. Thus even if the deceased is survived by parents and siblings, only ***the mother would be considered to be a dependent and 50 per cent would be treated as the personal and living expenses of the bachelor and 50 per cent as the contribution to the family.*** *However, where family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."*

8. Thus, in case of death of unmarried child, only the mother of the deceased is entitled to compensation and, therefore, deduction of one half is to be made towards personal expenses. After making this deduction dependency works out to ₹50,400/-. Deceased being in the age bracket of 15 to 20, appropriate multiplier will be '18' and so, compensation for loss of dependency works out to 450,400/- x 18 = ₹9,07,200/-.

9. It has been held in **Magma General Insurance Co. Ltd. Vs. Nanu Ram, (2018) 18 SCC 130** that the word 'consortium' includes spousal consortium, parental consortium as well as filial consortium. Referring to the said authority, it has been further held by Hon'ble Supreme Court in **United India Insurance Co. Ltd. Vs. Satinder Kaur @ Satwinder Kaur & others, 2020(3) R.C.R. (Civil) 75**, as under:-

"In Magma General Insurance Co. Ltd. v. Nanu Ram & Ors., ***(2018 18 SCC 130: 2018(4) RCR (Civil) 333*** *this Court interpreted "consortium"*

to be a compendious term, which encompasses spousal consortium, parental consortium, as well as 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.

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 and affection, and their role in the family unit.

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 permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is the compensation for loss of love and affection, care and companionship of the deceased child.

The Motor Vehicles Act, 1988 is a beneficial legislation which has been framed with the object of 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 the children who lose the care and protection of their parents in motor vehicle accidents.

The amount to be awarded for loss consortium will be as per the amount fixed in Pranay Sethi (supra)."

10. Having regard to the legal position as above, claimants being parents of the deceased cannot be denied the compensation under the head of filial consortium on account of death of their beloved son.

11. In **Pranay Sethi's case** (announced by Hon'ble Supreme Court on 31st October 2017), while allowing allowing ₹40,000/- for loss of consortium; ₹ 15,000/- for funeral expenses and ₹15,000/- for loss of estate, it was held that these amounts should be enhanced @ 10% in every three years. Said addition was also allowed by Hon'ble Supreme Court in **N. Jayshree & others Vs. Cholamandalam MS General Insurance Company Ltd., 2021(4) RCR (Civil) 642.**

12. In view of above, it is held that the compensation towards funeral expenses; loss of estate and loss of consortium are to be allowed with 10% increase in the amounts as above i.e. ₹16,500/- for funeral expenses; ₹16,500/- for loss of estate; and ₹44,000/- each for loss of filial consortium.

13. On account of above discussion, total compensation amount payable to the claimants works out to be **₹19,66,600/-** under various heads, as per following details:-

Sr. No.	Head of compensation	Amount.
1.	Loss of dependency	₹9,07,200-00
2.	Loss of filial consortium to petitioners.	₹88,000-00 *i.e. ₹ 44,000/- each.*
3.	Funeral expenses.	₹16,500-00
4.	Loss of estate.	₹16,500-00
	Total	**₹10,28,200-00**

14. After deducting the amount of ₹6,98,000/- already awarded by the Tribunal, the enhanced compensation is held to be ₹3,30,200/-. To take it in round figure, the enhanced compensation is held to be **₹3,30,000/-.** Claimants are allowed the same along with interest @ 7.5 % per annum from the date of filing of the petition till realisation. It is made clear that claimant- father will be entitled to only ₹44,000/- (loss of filial consortium) along with proportion interest; whereas

rest of the amount is to be paid to the claimant- mother.

Appeal is disposed of accordingly.

December 12, 2022 **(DEEPAK GUPTA)**

renu **JUDGE**

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No