S. No.221

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO No.5182 of 2018 (O&M)
Date of Decision:

Seela Bai alias Sito Bai and others .....**Appellants**

Vs.

Om Parkash and others .....**Respondents**

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Dheeraj Narula, Advocate for Mr. Sandeep Sharma, Advocate for the appellants/ claimants.

None for respondent No.1.

Mr. Sushil Kumar Verma, Advocate for respondent No.2.

Mr. Suman Jain, Advocate for respondent No.3/ Insurance Company.

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DEEPAK GUPTA, J.

By way of this appeal, claimants challenge the award dated 24.10.2017 passed by Ld. Motor Accident Claims Tribunal, Sirsa, qua the quantum of compensation only. Since there is no appeal on the part of the owner / driver or the Insurance Company, therefore, there is no dispute on the issue of negligence of the offending vehicle.

2. Accident had taken place on 05.07.2015. Dharmender expired in the said accident and undisputedly, he was 28 years of age. There are five claimants, who include widow, two minor children and parents of the deceased. Learned Tribunal has assessed the notional income of the deceased at ₹5,000/- per month, applied the multiplier of 17 and assessed total compensation of ₹9,90,000/- including ₹1 lac for loss of consortium, ₹1 lac towards loss of love and affection and ₹25,000/- towards funeral expenses.

3. It is contended by learned counsel for the appellants- claimants that deceased was dealing in sale and purchase of milch animals on commission basis and was earning ₹15,000/- per month as has also been deposed by PW Seela and so, his notional income has been taken on the lower side;. Learned counsel referred to a judgment of Hon'ble Supreme Court in **Chandra @ Chanda @ Chandaram and another, 2021(4) R.C.R. (Civil) 492**, wherein it has been held that merely because claimants are unable to produce documentary evidence to show the monthly income of the deceased, same does not justify adoption of the lowest tier of minimum wages while computing income. In the case before Hon'ble Supreme Court, the deceased was driver of the heavy vehicles and his income was taken to be ₹15,000/-.

4. In the present case, there is no cogent evidence regarding the avocation of the deceased. It is no doubt true that ₹5,000/- per month as taken to be notional income of the deceased by learned Tribunal is on the lower side but in the absence of any proof regarding the avocation of the deceased, his income cannot be taken to be ₹15,000/- per month as contended by learned counsel for the appellants. The minimum wages in Haryana at the relevant time were approximately ₹5,800/- per month. Having regard to the said minimum wages and the young age of the deceased, let the notional income of the deceased be taken at ₹8,000/- per month, i.e. ₹96,000/- per annum.

5. As has been held by a Constitutional Bench of Hon'ble Supreme Court in **Pranay Sethi's case,** in case deceased was self employed or on a fixed salary, an addition of 40% of the established income should be the warrant, where the deceased was below the age of 40 years. It has been clarified by Hon'ble Supreme Court in **Hem Raj Vs. Oriental Insurance Company Limited 2018 (2)**

PLR 480 that there cannot be any distinction, where there is a positive evidence of income and where minimum income is determined on guess work. It was held that both the situations stand on the same footing and that addition of income towards future prospects is admissible even in case of notional income.

6. After adding 40% towards future prospects in view of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680,*** income of deceased to compute the compensation works out to be ₹1,34,400/- per annum.

7. Deceased was 28 years of age at the time of his accidental death and so, appropriate multiplier will be '17' as per ***Sarla Verma Versus Delhi Transport Corporation (2009) 6 SCC 121,*** duly approved in ***Pranay Sethi.***

8. There being five dependents i.e. claimants, therefore, 1/4th of the income of deceased is to be deducted towards self expenses in view of **Sarla Verma's case**. After making this deduction, dependency works out of ₹ 1,00,800/- per annum. With the dependency at ₹ 1,,00,800/- per annum and multiplier of '17', the compensation works out to be ₹ 1,00,800 x 17 = ₹ **17,13,600/-.**

9. The judgment in **Pranay Sethi's case** was announced by Hon'ble Supreme Court on 31st October 2017. While 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**.

10. 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/- for loss of consortium.

11. 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)."*

12. Having regard to the legal position as above, parents & children of the deceased cannot be denied the compensation under the head of filial consortium/loss of parental consortium on account of death of their beloved son/ parents. As such, it is held that compensation of ₹44,000/- each is liable to be paid to each of the claimants No.2 to 5 i.e. children & parents of the deceased.

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	₹17,13,600-00
2.	Loss of consortium/ filial consortium/parental consortium to petitioners.	₹2,20,000-00 *i.e. ₹ 44,000/- each.*
3.	Funeral expenses.	₹16,500-00
4.	Loss of estate.	₹16,500-00
	Total	**₹19,66,600-00**

14. After deducting the amount of ₹9,90,000/- already awarded by the Tribunal, the enhanced compensation is held to be ₹9,76,600/-. Claimants are allowed the same along with interest @ 7.5 % per annum from the date of filing of the petition till realisation. This enhanced compensation be paid to the appellants-claimants in the same proportion as allowed by the Tribunal.

15. Appeal is disposed of accordingly.

December , 2022 **(DEEPAK GUPTA)**
renu **JUDGE**

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