S. No.223

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

FAO No.6327 of 2018
Date of Decision:13.12.2022

Jai Singh and others .....Appellants

Vs.

Sahi Ram and others .....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Sandeep Kumar Yadav, Advocate for the appellants.

Mr. Sanjeev Kodan, Advocate for respondent No.3.

****

DEEPAK GUPTA, J.

Claimants are children of deceased Hari Ram. They are in this appeal, aggrieved by the award dated 30.01.2018, whereby learned MACT Narnaul has awarded compensation of ₹6,15,000/- on account of motor vehicular death of their father Hari Ram.

2. Accident occurred on 09.03.2016, when Hari Ram (since deceased) was going towards his house through a road leading from Ateli to Mohindergarh at around 9:00 am, when he was hit by motor cycle No.HR-35D-0297 which was being driven by respondent driver in rash and negligent manner, causing multiple grievous injuries on the person of Hari Ram. He was taken to hospital. FIR No.65 dated 13.03.2016 under Sections 279, 337, 338 IPC was registered at Police Station. As Hari Ram later on succumbed to the injuries on 25.03.2016, so Section 304-A IPC was added. Offending vehicle was duly insured. Claimants are the two sons and the daughter of deceased Hari Ram, who claimed compensation on account of the expenses incurred on medical treatment and also on account of death of Hari Ram. Learned Tribunal found that an amount of ₹4,90,000/- had been in-

curred towards treatment of the deceased prior to his death. However, by referring to ***Smt. Manjuri Bera Vs. The Oriental Insurance Company Ltd. And another, 2007(2) R.C.R. (Civil) 674,*** it was held by the Tribunal that as the claimants were major and not dependent upon the earnings of the deceased, so they were entitled to compensation only as per Section 140 of the Motor Vehicles Act, 1988. After holding so, an amount of ₹50,000/- towards loss of love and affection and ₹25,000/- towards funeral were expenses allowed and thus, total compensation of ₹6,15,000/- was awarded, payable by the driver, owner and insurer of the offending vehicle jointly and severally along with interest @ 9% per annum.

3. It is contended by learned counsel for the appellants that even if the claimants are major children of the deceased and were not fully dependent upon his earnings, still they being the LRs are entitled not only to file the petition but also to seek compensation on account of death of Hari Ram. Reliance has been placed upon ***National Insurance Company Ltd. Vs. Birender and others, 2020(1) R.C.R. (Civil) 694.***

4. Having considered the submissions of both the sides, I find merit in the appeal.

5. As far as the factum of accident having been caused due to rash and negligent driving of the offending vehicle is concerned, the same is not in dispute, as finding of the Tribunal in this regard has not been challenged either by the driver/ owner or by the Insurance Company.

6. There is also no dispute to the fact that an amount of ₹4,90,000/- was incurred during the treatment of deceased- Hari Ram prior to his death.

7. Coming to the entitlement of the claimants to compensation on account of loss of dependency, there can be no dispute that being the children, they

are legal representatives of the deceased.

8. In ***National Insurance Company Ltd. Vs. Birender and others*** *(supra),* two major sons being the legal representatives of the deceased sought compensation under Section 166 of the MV Act. Objection was raised by the Insurance Company that as they were not dependent upon the earnings of the deceased, so, they were entitled to compensation only for loss of love and affection and other conventional heads. Insurance Company had placed reliance upon **Smt. Manjuri Bera's case (supra)**.

9. After taking note of the legal position enunciated in **Smt. Manjuri Bera's case (supra)**, Hon'ble Supreme Court held as under :-

> *"15. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependent on the deceased and not to limit the claim towards conventional heads only."*

Compensation was accordingly assessed.

10. Besides above, this court (Coordinate Bench) in ***Gurdev Kaur and others Vs. Jharmal Singh and another***, 2017 (3) PLR 8 has held as under :-

> *"There is no rebuttal to the statement of appellant-claimant Smt. Gurdev Kaur the widow of deceased Mam Raj that she and her two sons are living jointly. Meaning thereby both the sons were living jointly with their deceased father. No doubt both of them are major and are doing the private job. One of them is getting the salary at 2 of 3 the rate of Rs.7000/- to Rs.8000/- per month and the other is getting salary at the rate of Rs.10,000/- to Rs.12,000/- per month. So, it is not a case where the sons of the deceased were drawing big sala-*

> *ries and they were not in need of any contribution to the family by their father. It is an admitted fact that even if a son is major and is earning, he does not stop looking to his father for financial help. The sons, even if they are major, do not lose the status of legal representatives, about which there is a reference in Section 166 (1)(c) of the Motor Vehicles Act, 1988 (for brevity the "Act"). Therefore, even the major sons and daughters are entitled to maintain the claim petition on the death of their father.*

11. In view of the legal position as above, it is held that claimants are entitled to compensation on the basis of multiplier method, even if they are major children of the deceased. They do not loose the status of legal representatives, about which there is a reference in Section 166 (1) (c) of the Act.

12. As noticed by the learned Tribunal, the age of the deceased was 66 years at the time of his accidental death and so, multiplier of 5 will be applicable. Accident took place in March, 2016. Taking cue from the minimum wages prevalent in Haryana at that time, the notional income of the deceased is taken at ₹ 8,000/- per month i.e. ₹ 96,000/- per annum.

13. There being three claimants, 1/3rd of the income is to be deducted towards personal expenses of the deceased as per law laid down by Hon'ble Supreme Court in case of ***"Sarla Verma v Delhi Transport Corporation",*** reported as (2009) 6 SCC 121, affirmed in ***Pranay Sethi's*** case (*supra*). After 1/3 cut, loss of dependency works out to be ₹64,000/-.

14. 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)."*

15. Having regard to the legal position as above, claimants being children of the deceased cannot be denied the compensation under the head of loss of parental consortium on account of death of their father.

16. 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.**

17. 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 ₹ 1,32,000/- (₹44,000/- each) for loss of consortium/ parental consortium.

18. In view of the above, the compensation allowable to the claimants is as under:-

Sr. N:	Head of Compensation	Amount
1	Loss of dependency (64,000 x 5)	₹3,20,000/-
2	Loss of parental consortium	₹ 1,32,000/- *(₹44,000 each)*
3	Funeral Expenses	₹16,500/-
4	Loss of Estate	₹16,500/-
5	Expenses incurred prior to death	₹4,90,000/-
	Total:	₹9,75,000/-
	Already allowed by the Tribunal	₹6,15,000/-
	Enhanced Compensation	**₹3,60,000/-**

19. As such, appellants – claimants are held entitled to the enhanced compensation of ₹3,60,000/- along with interest @ 7.5 % per annum from the date of filing of the petition till realisation, to be shared equally.

Appeal is disposed of accordingly.

December 13, 2022 **(DEEPAK GUPTA)**

renu **JUDGE**

Whether Speaking/reasoned Yes/No
Whether reportable: Yes/No