IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No. 130 of 2016

1. Mostt. Usha Singh wife of Late Santosh Kumar
2. Harshita, 6 years old minor daughter of Late Santosh Kumar
3. Shristey, 3 years old minor daughter of Late Santosh Kumar
4. Subham, 1 and ½ years old minor son of Late Santosh Kumar
5. Babani Devi wife of Vijay Shankar Singh, mother of deceased Late Santosh Kumar

(Appellant Nos. 2,3 and 4 are minor children of Late Santosh Kumar and as such they are filing the present Appeal under the natural and legal guardianship of their Mother Mostt. Usha Singh i.e. Appellant No. 1)

All are resident of village- Awarhia, P.O.-Pipariya, P.S.-Durgawati, Dist.-Kaimur, at present C/o Sri Arbind Kumar, Advocate, at Village and P.O.-Thanua, P.S.-Sheosagar, Dist.-Rohtas. (Claimants in the Claim Case)

... ... Appellant/s

Versus

1. Md. Mukhram S/o Jamil Ahmad, resident of Village-Sapale Baccol, P.O.-Deoband, Dist.-Saharanpur (U.P.), At present, Pinani, Hardoi, U.P. (Opp. Party No.-1 in the Claim Case), (Owner of Truck Tailor No. UP-30A/7594)
2. Branch Manager, Reliance General Insurance Company Ltd.
B.O.-Saharanpur, P.O.-Saharanpur, Dist.- Saharanpur (U.P.)
(Opp. Party No.2 in the Claim Case), (Insurer of Truck Tailor No. U.P. 30A/7594
3. Vijay Shankar Singh, s/o Late Ram Charitra Singh, R/o Village-Awarhia, P.O.-Pipariya, P.S.-Durgawati, Dist.-Kaimur at present C/o Sri. Arvind Kumar, Advocate at Village & P.O.-Thanua, P.S.-Sheosagar, Dist.-Rohtas (Father of deceased Late Santosh Kumar), (Opp. Party No. 3 in the Claim Case)

... ... Respondent/s

Appearance :

For the Appellant/s : Mr. Rajen Sahay, Adv.
For the Respondent/s : Mr. Durgesh Kumar Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA

ORAL ORDER

10 06-11-2023 Heard learned counsel for the appellants and learned counsel for the respondents-Insurance Company.

2. The appellants have filed this Miscellaneous Appeal against the judgment and Award dated 06.08.2015 passed by the Claims Tribunal in Motor Vehicle Claim Case No. 45 of 2012 whereby the Tribunal had awarded compensation of Rs. 5, 19, 990/- for enhancement of compensation amount.

3. Learned counsel for the appellants submits that the learned Tribunal has not awarded future prospect of 40 per cent of income of the deceased and also has not passed order inconsonance with the judgment passed by the Hon'ble Supreme Court with regard to the conventional heads. Learned counsel for the appellant has challenged the quantum of awarded amount on various grounds.

4. Learned Tribunal has not awarded future prospect of 40 per cent, conventional heads as per the decision of the Hon'ble Supreme Court in ***Pranay Sethi Case*** reported in ***(2017) 16 SCC 680*** and also has not awarded interest at the rate of 9 per cent on the awarded amount. Learned Tribunal ought to have considered the future prospects of the deceased and while computing the compensation ought to have added additional 40 per cent on actual income with regard to conventional heads and

actual income in monthly income of the deceased and then ought to have computed compensation which would be just compensation as envisaged under Section 158 of the Act. He has relied upon the judgment of the Hon'ble Supreme Court in case ***National Insurance Company Limited vs. Pranay Sethi & Ors.*** reported in ***(2017) 16 SCC 680.***

5. The Tribunal has also failed to follow the judgment of Hon’ble Supreme Court in case of ***Sarla Verma (Smt.) & Ors. vs. Delhi Transport Corporation & Anr.*** reported in ***(2009) 6 SCC 121***. As regards the payments of claims on conventional heads, referring to the judgment of the Hon’ble Constitution Bench of the Supreme Court of India in the case of ***Pranay Sethi*** **(Supra)**, learned counsel submits that the appellants are entitled to get claim on account of funeral expenses at Rs. 15,000/-, estate loss at Rs. 15,000/-, spousal consortium at Rs. 40,000/- to appellant no. 1, who is widow of the deceased, and parental consortium at the rate of Rs. 40,000/- to each of the three minor children (i.e. appellant nos. 2 to 4) as also filial consortium at the rate of 40 per cent to the mother of the deceased.

6. Learned counsel for the appellants further submits that the learned Tribunal has also failed to grant interest at the

rate of 9 per cent of the awarded amount.

7. Learned counsel for the appellants has relied on the judgment of the Hon'ble Apex Court in case of ***Chandra @ Chanda @ Chandraram & Anr. vs. Mukesh Kumar Yadav & Ors.*** reported in ***(2022) 1 SCC 198*** and submits that in the said case, the Hon'ble Apex Court has relied upon the judgments in the case of ***Sarla Verma vs D.T.C.*** reported in ***2009 (6) SCC 121*** and ***Magma General Insurance Company Ltd. vs. Nanu Ram @ Chuhru Ram and Ors.*** reported in ***(2018) 18 SCC 130*** to hold that the appellants were entitled for parental consortium of Rs. 40,000/- to each of the dependents.

8. The Constitution Bench of Hon'ble Supreme Court in ***Pranay Sethi (supra)*** has 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 has been defined in a case of ***Harpreet Kaur & Ors. vs. Mohinder Yadav & Ors.*** reported in ***2022 SCC Online SC 1723 [Rajesh vs. Rajbir Singh, (2013) 9 SCC 54]*** which reads as under:-

> *"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. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of filial consortium."

9. Having heard counsel for the appellants as well as counsel for the respondents and perusal of the records as also the judgments of the Hon'ble Apex Court, this Court finds that there is no dispute on applying multiplier of '17' in the instant case (age of the deceased-30 years). Further, there is no dispute on providing future prospects and claims on conventional heads. With regard to living expenses to be calculated as 1/4th of the income of the deceased and that the claimants are entitled for

spousal consortium and parental consortium and the enhanced amount is concerned, the monthly income of the deceased in the instant case is not in dispute that the deceased was aged about 30 years working as a khalasi/Assistant driver and was earning Rs. 3300/- per month at the time of accident.

10. On adding the future prospect, in view of the judgment of the Hon'ble Apex Court in ***Pranay Sethi (supra)***, this Court has no doubt that in this case 40% of the salary amount of the deceased would be entitled to be added while calculating total loss of dependency.

11. In ***Pranay Sethi (supra)***, the Hon'ble Apex Court has recognised three categories of conventional heads- (i) funeral expenses at 15,000/-, (ii) Estate loss at 15,000/- (iii) loss of consortium at Rs. 40,000/-. While discussing the meaning of word 'consortium', the Hon'ble Supreme court in the case of ***Pranay Sethi*** (*supra*) though did not approve the principles laid down in ***Rajesh vs. Rajbir Singh (2013) 9 SCC 54*** but revisited the principles on fixation of conventional heads, after quoting paragraph 17 of *Rajesh vs. Rajbir Singh*, which reads as under:-

> *"17... In legal parlance, "consortium" is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non- pecuniary head of damages has not been properly understood*

by our courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium."

12. It is well settled by the judicial pronouncements that the widow of the deceased would be entitled for a spousal consortium and the minor children would get parental consortium. In case of the parents, if dependent on the deceased, they would be entitled for filial consortium. In the case of ***Janabai WD/O Dinkarrao Ghorpade & Ors. vs. ICICI Lombard Insurance Company Ltd.*** *reported in* ***2022 (10) SCC 512*** the Hon'ble Apex Court has awarded Rs. 40,000/- each on

account of the spousal and parental consortium. In the present case, the widow (appellant no. 1) would be entitled for Rs. 40,000/- as spousal consortium whereas appellant nos. 2 to 4 would be entitled for Rs. 40,000/- each on account of parental consortium and respondent no. 5 (mother of the deceased) would be entitled for 40,000/- on account of filial consortium. They would also be entitled for the claim on account of funeral expenses at Rs. 15,000/- and Estate loss at Rs. 15,000/-.

13. On the point of future prospect, if it is added as per the judgment of the Hon'ble Apex Court, while calculating the total loss of dependency, in absence of there being any mandate of the Hon'ble Apex Court on this point, ratio has been applied in the present case where the deceased was below 40 years an additional 40% of the established income of the deceased should be awarded towards future prospect which has been elaborated in paragraph '59.4' of ***Pranay Sethi (supra)*** case which is quoted below:-

> *59.4. In case the deceased was selfemployed 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. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was*

between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

14. Thus, claimants are found entitled for following amounts:-

1.	***Name***	***Santosh Kumar***
2.	***Age***	***50 years***
3.	***Monthly Income***	***Rs. 3300/- per month***
4.	***Additional to income to future prospect @40% deceased being less than 40 years***	***Rs. 3300+Rs. 1320= Rs. 4620/-***
5.	***Annual Income***	***Rs. 4620/- X 12 =Rs. 55, 440/-***
6.	***Deduction towards personal and living expenses 1/4th (25%)***	***Rs. 55,440-Rs. 13,860= Rs. 41,580/-***
7.	***Multiplier based on age of 30 years***	***17X41,580***
8.	***Amount of Compensation***	***Rs. 7,06,860/-***
9.	***Loss of Parental Consortium for three minor children***	***Rs. 40,000X3= Rs. 1,20,000/-***
10.	***Loss of Estate***	***Rs. 15,000/-***
11.	***Loss of Spousal Consortium***	***Rs. 40,000/-***
12.	***Loss of Filial Consortium***	***Rs. 40,000/-***
13.	***Funeral Expenses***	***Rs. 15,000/-***
14.	***Total Amount of Compensation***	***Rs. 9,36,860/-***

15. The amount of compensation as awarded by the learned Tribunal is enhanced from Rs. 5,19,990/- to Rs. 9,36,860/-. The total amount of compensation would be Rs. 9,36,860/- minus Rs. 50,000, which was granted under Section

140 of the Motor Vehicle Act. The enhanced amount i.e. Rs. 9,36,860/- shall carry interest at the rate of 8 per cent per annum from the date of filing of claim petition till realization. The due amount is to be paid by Branch Manager Reliance General Insurance Company- respondent no. 2 within a period of three months from today to the claimants.

16. The claimant no. 1 has already received Rs. 50,000 /- which shall be deducted from total awarded amount and the remaining amount shall be paid within three months at the rate of 8 per cent per annum.

17. Accordingly, this appeal is allowed.

(Khatim Reza, J)

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