

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

102

**FAO-1810-2002 (O&M)
Decided on : 07.08.2023**

UMA VERMA AND OTHERS

. . . Appellants

Versus

SUBHASH RANA AND OTHERS

. . . Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Harinder Sharma, Advocate
for the appellant.

Mr. Vinod Chaudhri, Advocate
for respondent No.3.

SANJAY VASHISTH, J. (Oral)

1. The present appeal has been filed by the Appellants/petitioners/claimants (hereinafter referred as claimants) in MACT Case No. 46 of 2000 dated 12.01.2002 for modification of award/judgment dated 12.01.2002 passed by Ld. Motor Accidents Claims Tribunal, Jagadhri (hereinafter referred to as Ld. Tribunal) by way of seeking enhancement of amount of compensation, on account of death of Mukesh Verma.

The petitioners-claimants in the present case are widow (Appellant No. 1), daughter (Appellant No. 2), son (Appellant No. 3), father (Appellant No. 4) and mother (Appellant No. 5) of the deceased Mukesh Kumar.

2. Briefly stated facts of the case are that the fatal accident took place on 07.02.2000 when the deceased Mukesh Verma was coming from Yamunanagar Bus Stand to Jagadhri. Mukesh Verma was driving a scooter

bearing No. PB/10AB/3522, while his brother-in-law namely Ram Gopal s/o Mool Chand was following him on his own scooter at a distance of about 15/20 feet. When Mukesh Verma reached near Zimidara Petrol Pump, Jagadhri, one Maruti Car bearing No. HR02D/7575 driven by Subhash Rana (respondent No.1) struck with the scooter of Mukesh Verma, who fell down and became unconscious. Ram Gopal, who was following Mukesh Verma immediately parked his scooter and took Mukesh Verma to Gaba Hospital, Jagadhri, with the help of Dinesh Gupta, resident of Jagadhri and some other persons. Despite best efforts, the condition of Mukesh Verma became worse and on midnight of 08.02.2000, he was referred to PGI, Chandigarh, where he succumbed to his injuries on 09.02.2000. Regarding the said accident, FIR No. 36 dated 08.02.2000 under Section 279/304-A IPC was registered at Police station, City Jagadhri.

3. Claimants filed a claim petition under Section 166 and 140/141 of The Motor Vehicles Act, 1988 for seeking compensation before the Ld. Tribunal pleading that Subhash Rana/Respondent No. 1 was coming from the wrong side and was driving the car in a rash and negligent manner that led to the fatal accident.

4. After completion of the pleadings, Ld. Tribunal framed the following issues:

- I. Whether the motor vehicle accident that occurred on 07.02.2000, is an outcome of rash and negligent driving of car no. HR 02D-7575 by respondent No. 1? OPP
- II. Whether the petitioners are entitled to compensation on account of death of Mukesh Verma, if so, in what amount and from whom?
OPP

III. Whether the Respondent No. 3, is entitled to repudiate the contract of insurance on the grounds alleged? OPR.

IV. Relief

5. For proving the issue No.1, Claimants examined Dinesh Kumar as PW-3, who was the eye witness of the accident and he categorically deposed that the accident occurred due to rash and negligent driving of car bearing No. HR 02D-7575 and he even followed the said car upto D.C Chowk, but the driver managed to escape and later was identified as Subhash Rana (Respondent No.1). Further, the statement of PW-3 remained unimpeached and unrebutted as no oral or documentary evidence was placed on file by the respondents. In view of the deposition of the witnesses and evidence on record, Ld. Tribunal decided the Issue No. 1 in favour of Claimants.

6. It was claimed by Claimants that the deceased Mukesh Verma used to earn Rs. 15,000 per month (Rs.9000 per month by working as Design office Incharge in Pragati Silico Limited Company and Rs. 6,000 per month by doing part time work). However, after examining the witnesses and perusing the evidence on record, Ld. Tribunal determined the monthly income of the deceased as Rs. 4000/- per month. Age of the deceased was considered as 28 years in consonance with the Post mortem report and a multiplier of 15 was applied. Ld. Tribunal further awarded Rs. 2000 as funeral expenses and Rs. 5,000 as expenses for medicines and ambulance. Thus, the total compensation awarded by the Tribunal was Rs. 4,75,000.

7. Issue no. 3 was also decided in the favour of Claimants, and all the respondents i.e Driver – Subhash Rana (Respondent No.1), Owner – Rakesh Kumar (Respondent No.2) and United India Assurance Co. Ltd.

were held jointly and severally liable to pay the amount of compensation.

8. Appellants/Claimants have filed the present petition seeking enhancement of the compensation as awarded by the Ld. Tribunal.

9. While addressing arguments, Counsel for the appellants submits that the Ld. Tribunal has erred in determining the monthly salary of the deceased – Mukesh Verma as only Rs. 4000. While substantiating his argument, Ld. Counsel relies upon the deposition of P.W. 4 - Ram Kumar Saini who was working as Personnel Manager in Pragiti Silicons Limited. Ram Kumar Saini deposed that Deceased- Mukesh Verma, was working as Design office in charge in the said concern and drew a salary of Rs. 8,900. Counsel for appellants further relies on the salary certificate (Exhibit P.6) issued by the institution (Pragiti Silicons Limited), which bears the signatures of both Director of the Firm as well P.W.4 Ram Kumar Saini. In support of his contention, Ld. Counsel relies upon the judgment of Hon'ble Apex Court titled **Rajwati @ Rajjo v. United India Assurance Company Ltd. 2023(1) R.C.R (Civil) 205 = Law Finder Doc ID #2082054**. While relying upon the said judgment, Counsel for the appellants submits that Hon'ble Apex Court has clearly laid down that the Salary certificate is a conclusive proof of the income of the deceased. For the sake of Convenience, Paragraph 20 of the judgment is reproduced herebelow:

*“20. In view of the above, we do not agree with the view taken by the High Court while rejecting the **salary certificate (Exhibit 19)** and pay slip (Exhibit 20) of the deceased merely on the ground that the person issuing the two aforementioned documents was not examined before the Learned Tribunal. The 5 (2011) 3 SCC 646*

said documents are conclusive proof of the income of the deceased and were also corroborated by the statements of the deceased's wife (Appellant No. 1 herein) and his co-workers. As such, the High Court was not justified in assessing the income of the deceased at Rs.4,836/- per month on the basis of minimum wages fixed by the State at the relevant time. Resultantly, we affirm the findings of the Learned Tribunal so far as they relate to assessing the deceased's income at Rs.11,225/- per month on the basis of aforementioned two documents. Annual income of the deceased, therefore, amounts to, Rs.11,225/- x 12 = Rs.1,34,700/-."

10. On the other hand, Ld. Counsel for Respondent No. 3 – Insurance Company submits that the Ld. Tribunal has rightly determined the monthly salary of the deceased as Rs. 4000/- per month. He submits that even the witness Ram Kumar Saini (P.W. 4) of the Appellants themselves in his cross-examination has admitted that the basic salary of the deceased – Mukesh Verma was Rs. 4000/- per month and no income tax was deducted from his salary. He further submits that had his salary been Rs. 8900/- per month as claimed by the Claimants, his salary would have been subject to deduction of income tax.

11. It is further averred by the Counsel for the petitioners that in consonance of the well settled law laid down by the Hon'ble Apex Court in ***National Insurance Company Limited v. Pranay Sethi and Ors., 2017(4) RCR (Civil) 1009***, (Law Finder Doc Id #918174) and ***Smt. Sarla Verma and others v. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77***, (Law Finder Doc ID #188882), a multiplier of 17 should have been applied as the age of deceased at the time of his death was 28 instead of 15 as applied by the Ld. Tribunal. He further submits that Claimants are entitled to future prospects to the tune of 40% as the deceased – Mukesh Verma was in a fixed salaried job and less than 40 years of age at the time of

his death. He further submits that Ld. Tribunal has made a deduction of $1/3^{\text{rd}}$ on account of personal expenses of the deceased, however, in view of the law laid down by the Apex Court, the deduction should be $1/4^{\text{th}}$ as the number of dependants of the deceased are five. He further prays for Rs. 50,000 on account of funeral expenses, Rs. 20,000 on account of loss of estate and Rs. 44,0000 each on account of loss of spousal consortium to Appellant No.1, loss of parental consortium to Appellant 2 and 3, and loss of filial consortium to Appellant 4 and Appellant 5. He further submits that interest on the said amount should be maintained @12% as awarded by Ld. Tribunal.

12. Ld. Counsel for the Respondent No. 3 – Insurance Company submits that amount of compensation has been rightly awarded by the Ld. Tribunal and there is no need of causing any interference in the well-reasoned award passed by the Ld. Tribunal.

13. I have gone through the impugned award and the calculations mentioned therein, heard the learned counsel for the parties and has perused the authorities cited.

14. There is no doubt that in a situation where the different Courts at different times were at diversions in their opinion and in the absence of any clarification by the law makers despite recommendations by the Hon'ble Apex Court, all the major issues were referred to the larger Bench and accordingly, Constitution Bench was constituted in **Pranay Sethi's case (supra)**. Thus, for the purpose of reaching out to appropriate amount of compensation for adjudging the rights of the claimants, guidelines laid down in the judgment of the Constitution Bench in **Pranay Sethi's case (supra)**, would help the Courts.

15. This Court will now deal with all the aspects in order.

I. **Assessment of Salary of deceased:**

I.A. Determination of Monthly Salary of deceased

In order to compute the amount of compensation payable to the claimants, the first aspect to be determined is the monthly salary of the deceased. Ld. Tribunal in its impugned award has determined the salary of deceased as Rs. 4,000/- per month. Ld. Counsel for the appellants submits that as per Salary certificate (Exhibit P-6), the deceased Mukesh Verma used to draw a salary of Rs.8,900 per month, thus, Ld. Tribunal has erred in determining the salary of deceased as Rs. 4,000/- per month. Counsel for the appellants has also cited a judgment **Rajwanti @ Rajjo's (supra)** in support of his contention in which the Apex Court has held that salary certificate is a conclusive proof of income of the deceased. However, Counsel for respondent No. 3 – Insurance Company argues that P.W.4 – Ram Kumar Saini (P.W.4) has stated that no income tax was deducted from the income of the deceased and in his cross-examination, he has further admitted that the salary of Deceased – Mukesh Verma was Rs. 4,000/- per month. Thus, Ld. Tribunal has rightly determined the salary of the deceased.

This Court has gone through contentions of both the counsel and the judgment cited by the Ld. Counsel for the appellants and is of the considered view that the monthly income of the deceased should be assessed as per the salary certificate in view of the law laid down by the Apex court in **Rajwanti @ Rajjo's (supra)**. This court is not ad idem with the argument propounded by the Counsel for the respondent and reasoning given by the Ld. Tribunal that since, the P.W. 4 has stated in his deposition that no income tax was deducted from the income of the deceased and if the salary of deceased is assessed as Rs. 8,900/- per month, it would have fallen

in the income tax bracket, thus, the income should be assessed as Rs. 4,000 per month.

However, the claim of the appellants that deceased used to earn Rs. 6,000 per month extra by doing a apart time job is not tenable in the absence of any cogent evidence produced by the appellants/claimants on record.

Thus, this Court in consonance with the law laid down by the Apex court in **Rajwanti @ Rajjo v. United Indian Insurance Company Ltd. (supra)**. assesses the income of the deceased as Rs. 8,900 per month as per the salary certificate (Exhibit P6) which is duly signed by the Director of the Institution i.e.Pragiti Silicons Limited.

I.B. Future Prospects:

Counsel for the appellants further argues that the Ld. Tribunal has failed to provide enhancement towards future prospects to the salary of the deceased in consonance with guidelines laid down by the Apex Court in **Pranay Sethi’s case (supra)**. Thus, the claimants are entitled to enhancement of 40% as future prospects as the deceased – Mukesh Verma was a fixed salaried employee and was of age less than 40. Counsel refers to Para 61 (iv) of the said judgment, which is reproduced herebelow:

“61. In view of the aforesaid analysis, we proceed to record our conclusions:-

*x-----x-----x-----x-----x-----x-----x-----
-x-----x-----x-----x-----x*

(iv) In case the 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. 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.”

Therefore, in view of the law laid down by Hon'ble Apex Court, this court deems it fit to add future prospects to the tune of 40% to the monthly salary of the deceased – Mukesh Verma. Hence, an amount of Rs. 3,560 (40% of Rs.8,900) is added as future prospects and thus, the monthly income of the deceased comes out to be Rs. 12,460 (Rs. 8,900 + Rs. 3560).

I. C. Deduction Towards Personal Expenses:

In the judgment of the Constitution Bench in **Pranay Sethi's case (supra)**, Hon'ble Apex Court has affirmed the formula laid down in ***Smt. Sarla Verma and others v. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77, (Law Finder Doc ID #188882)*** for the purpose of calculation of deduction towards personal expenses. The relevant para No.14 of the said judgment says as under:-

"14. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6 and one-fifth (1/5th) where the number of dependant family members exceed six."

As pointed out by counsel for the appellants (claimants) and admitted by counsel for respondent No.3 - Insurance Co., there are total five claimants in the present case. Therefore, deduction of salary of the deceased would be 1/4th instead of 1/3rd, as held by Ld. Tribunal. In other words,

appellants (claimants) would be entitled to receive 3/4th of the remnant amount of salary of the deceased, which comes out to Rs. 9,345 per month.

I.D. Annual Salary of Deceased:

Now, by multiplying the monthly salary of the deceased – Mukesh Verma i.e. Rs. 9,345 with 12 months i.e. one year period, the total entitlement of compensation of appellants (claimants) would be of Rs. 1,12,140 per annum.

Accordingly decided.

II. Multiplier:

Counsel for the appellants (claimants) submits that multiplier of 15 has been applied by the Ld. Tribunal, whereas, as per the schedule/guidelines laid down in Sarla Verma's Case (supra), multiplier of 17 would be applicable.

This Court has gone through the submissions and the findings recorded by the Hon'ble Apex Court in **Pranay Sethi's case (supra)** as well as in **Sarla Verma's Case (supra)**. Undoubtedly, as per the schedule given in Sarla Verma's case (supra), for the age group of 26 to 30 years, applicable multiplier is 17.

Thus, this Court is of the view that multiplier of 17 should have been applied in the present case, instead of multiplier of 15, as applied by Ld. Tribunal.

III. Loss of Future Income:

This way, total amount of compensation, by applying the multiplier of 17, would be of Rs. 19,06,380/- (Rs. 9,345 x 12 x 11).

Accordingly decided.

IV. **Assessment Qua Compensation of Loss Of Estate, Funeral Expenses and Loss of Consortium:**

Out of all the aforesaid three heads, Ld. Tribunal has awarded only Rs. 2000/- qua funeral expenses and Rs.5,000 as expenses for medicines and ambulance. However, no amount of compensation was even assessed towards loss of estate and loss of consortium. Keeping in view the amount awarded in another judgment by the Hon'ble Apex Court i.e. "**Smt. Anjali and others v. Lokendra Rathod and others 2023 (1) R.C.R. (Civil) 229 Law Finder Doc ID #2081014**", lump-sum amount towards of Rs. 20,000/- can be considered towards loss of estate. The amount of Rs. 2000/- awarded by the Ld. Tribunal seems to be very nominal, thus, considering the date of accident i.e.07.02.2000, an appropriate amount of Rs. 25,000/- for funeral expenses is justified. For the accident, which took place in the year 2010, the Hon'ble Apex Court in **Smt. Anjali's case (supra)** awarded Rs. 50,000/- towards funeral expenses.

The term "consortium" has been defined by the Hon'ble Apex Court in **Magma General Insurance Company Limited v. Nanu Ram alias Chuhru Ram and others, (2018) 18 SCC 130**. For the sake of convenience, the relevant extract of the judgement is reproduced herebelow:

"21. A Constitution Bench of this Court in Pranay Sethi (supra) 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.

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."

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 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 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."

As far as, awarding of amount of compensation towards the head of 'loss of consortium' is concerned, in **Pranay Sethi's case (supra)**, Hon'ble Apex Court decided it as Rs. 40,000/- without clarifying the different relations of the claimants with the deceased. However, subsequently, in **Smt. Anjali's case (supra)**, the Hon'ble Apex Court, awarded amount of compensation in the form of 'spousal consortium' and 'parental consortium', separately Rs. 40,000/- to each of the claimants, along with 10% increase after every three years. In the present case also, if the same principle is applied, in that situation, all the five appellants (claimants) would be entitled for Rs. 44,000/- each, towards the heads of 'loss of spousal consortium', 'loss of parental consortium' and "loss of filial consortium".

Therefore, it is held that appellants (claimants) are entitled for an amount of Rs. 44,000/- each under the heads of 'loss of spousal consortium', 'loss of parental consortium' and “loss of filial consortium”

16. Thus, in the light of above-said discussion, the total amount of compensation under all the heads is calculated as under:-

Sr. No.	Head	Compensation Awarded
1.	Income	Rs. 8,900/- p.m.
2.	Future Prospects	Rs. 3,560/- (i.e.40% of the income)
3.	Deduction towards personal expenses	Rs. 3,115/- (i.e. 1/4th of [Rs. 8,900 + Rs. 3,560])
4.	Total Annual Income	Rs. 1,12,140 (i.e. 3/4th of [Rs. 8,900 + Rs. 3,560] x 12)
5.	Multiplier	17
6.	Loss of Dependency	Rs. 19,06,380(i.e. Rs. 1,12,140 x 17)
7.	Funeral Expenses	Rs. 25,000/-
8.	Loss of Estate	Rs.20,000/-
9.	Loss of	Rs. 44,000/-

	Spousal Consortium	
10.	Loss of Parental Consortium to each of the two children	Rs. 88,000/- (Rs. 44,000 x 2)
11.	Loss of Filial Consortium to parents i.e. mother and father of the deceased	Rs. 88,000/- (Rs. 44,000 x 2)
12.	Total Compensation to be Paid	Rs. 21,71,380/-

17. **Calculation of Interest:**

Counsel for the appellants further submits that the rate of interest awarded by the Ld. Tribunal i.e.at 12% per annum from the date of filing of the claim petition till its realization is worth to be maintained. However, learned counsel appearing on behalf of respondent No.3 - Insurance Co., submits that the rate of interest should not be over the awarded amount and therefore, it should not be more than 6% per annum.

18. I have gone through the judgments cited by counsel for the appellants (claimants) and thus, I deem it appropriate to grant the rate of interest at 7.5% per annum.

19. Thus, keeping in view the aim of this beneficial legislation of providing relief to the victims or their families, the total compensation payable to the appellants (claimants) is Rs. 21,71,380/- along with interest at 7.5% per annum from the date of filing of claim petition till the date of payment of compensation to the appellants (petitioners/claimants).

20. Needless to mention that out of the total payable compensation amount, already paid amount (if any) in compliance to the impugned award would be adjusted.

21. Therefore, by partly modifying the award, appeal is allowed with the terms indicated here-above.

(SANJAY VASHISTH)
JUDGE

August 07, 2023

Lavisha

Whether speaking/reasoned: Yes/~~No~~
Whether Reportable: Yes/~~No~~