

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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FAO No.4222 of 2023(O&M)

Date of Decision:08.08.2023

The Oriental Insurance Co. Ltd.

....Appellant

Versus

Sukhwinder Kaur and others

...Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Sandeep Suri, Advocate for the appellant.

SANJAY VASHISTH, J.(Oral)

1. Present appeal has been filed by the Oriental Insurance Company (respondent No.2 in the claim petition), challenging the award dated 27.02.2023 passed by Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal'). While dealing with the claim petition filed by the claimants under Section 166 of the Motor Vehicle Act, the tribunal assessed the compensation amount to the tune of Rs.22,32,055/- alongwith interest @ 7% per annum from the date of petition till its realization.

Ld. Tribunal further held that if the award amount is not paid within three months, interest would be paid @ 7.5% per annum over the awarded amount.

2. The ground of challenge taken by the appellant-Insurance Company is explained in paragraph No.3 of the grounds of appeal.

For the sake of convenience, the same is reproduced hereunder:

'3. That in the present case, the Ld. Tribunal had awarded a sum of Rs.16,500/-on account of loss of estate, a sum of Rs.16,500/- towards loss of funeral expenses and a sum of Rs.44,000/- as consortium on account of loss of consortium/spouse payable to wife/ appellant

No.1. The Ld. Tribunal also awarded a sum of Rs.44,000/- each to the appellants/ claimants No.2 and 3 for loss of parental consortium and a sum of Rs.44,000/- each to appellants / claimants No.4 & 5 for loss of filial consortium. In fact, the claimants are entitled to Rs.16,500/- for funeral and last rites expenses, a sum of Rs.16,500/- towards loss of estate and Rs.44,000/- towards loss of consortium, in view of recent judgment of Hon'ble Apex Court Judgment in Shri Ram General Insurance Co. Ltd. vs Bhagat Singh Rawat and others CA Nos. 2410-2412/2023 decided on 27.03.2023, wherein it was held that amount for loss of consortium was to be given under single head and not to each of the claimants. Our Hon'ble High Court in case titled as Mrs. Usha Sharma and others vs Ishwar Chand and others FAO-2196-2002 decided on 21.04.2023, relying upon judgment in Bhagat Singh Rawat (supra) has held that the claimants are to be granted a sum of Rs.40,000/- in total under the head loss of consortium. Thus, the impugned award is not sustainable in the eyes of law and the same is liable to be set aside.'

3. While referring to the judgment passed by the Hon'ble Apex Court in **National Insurance Company Limited Vs. Pranay Sethi and others 2017 (4) R.C.R (Civil)1009 (law finder doc Id No.918174)**, learned counsel for the appellant submits that the amount awarded under the head of consortium has to be fixed as Rs.40,000/- only with the increase of 10% after every three years. Thus, appellant submits that by adding 10% increase in the fixed amount of consortium, same cannot be awarded under all the different heads to all the claimants separately.

4. In other words, appellant submits that all the five claimants were entitled to the total consortium amount of Rs.40,000/- alongwith 10% increase after three years, which comes out to Rs.44,000/- only, thus, awarding of 44,000/- to each of the claimants

is against the principal laid down in the case of **Pranay Sethi's case(supra)**.

5. Learned counsel has also referred to the judgment of Hon'ble Apex Court in **Sri Ram General Insurance Co. Limited Vs. Bhagat Singh Rawat and others 2023(2) TAC713.**

6. I have heard the arguments addressed by learned counsel for the appellant and also gone through the judgment relied upon, i.e. **Sri Ram General Insurance case (supra) and the Pranay Sethi's case (supra)**, but nowhere finds any such discussion, which is addressed by the counsel for the appellant.

In other words, neither the judgment says that each of the claimants, is entitled separately for fixed amount of consortium as Rs.40,000/-; nor does it say that fixed amount of Rs.40,000/- would be paid to all the claimants.

7. Subsequent to the *Pranay Sethi's case (supra)*, Hon'ble Apex Court in a case of **Smt. Anjali and others Vs. Lokendra Rathod and others 2023(1) R.C.R (Civil) 229 (law finder doc id No.2081041)**, while dealing with an appeal, held entitlement of consortium Rs.44,000/- to each of the parents under the head of the 'filial consortium' and Rs.44,000/- to each of the three children under the head of 'parental consortium'. Thus, position of law has been made clear by the Hon'ble Apex Court itself in a subsequent judgment that is **Smt. Anjali and others' (supra)**.

8. Not only this, considering the judgments of Hon'ble Apex Court i.e. *Pranay Sethi's case (supra)* and *Smt. Anjali's case (supra)*, in an appeal for enhancement of compensation, this Court has also taken note of said proposition and considering the legislation to be beneficial law for the victims has took a compassionate view and followed the spirit of the judgment held in the case of *Smt. Anjali's case (supra)*. For the said purpose, observation made by the Hon'ble Apex Court in case of *Magma General Insurance Company Limited v. Nanu Ram alias Chuhru Ram and others, (2018) 18 SCC 130* regarding meaning and the purpose of consortium, is worth to be noticed. 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.”

9. Considering all the aforementioned circumstances and the judgments of the Hon'ble Apex Court, I do not find any strength in the submission addressed by the counsel, thus, **the present appeal deserves to the dismissed.**

10. As the appeal has been dealt with on merits, this Court does not find any reason to deal with the issue raised in the application i.e. CM-13920-CII-2023, thus, application stands dismissed.

**[SANJAY VASHISTH]
JUDGE**

August 08, 2023
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Whether speaking/reasoned
Whether reportable?

Yes/no
Yes/no