IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No. 734 of 2016 (O&M)

Date of Decision:15.03.2023

Amanpreet Kaur and Ors. ... Appellants

Versus

Randhir Singh and Ors. ... Respondents

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Mr. Paramveer Singh, Advocate
for Mr. Samir Rathore, Advocate, for the appellants.

Mr. Ashwani Talwar, Advocate and
Mr. Vinod Khunger, Advocate
for respondent No.3-Insurance Company

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SANJIV BERRY, J. (ORAL)

The present appeal has been preferred by the claimants-appellants against the award dated 24.09.2015 passed by the Motor Accident Claim Tribunal, Mohali (hereinafter referred to as 'Tribunal').

2. The facts relevant to the present case are that the claimants, who are wife, sons and parents of the deceased, had filed the claim petition stating therein that on 25.05.2014 Pardeep Singh was going from Dasuya, District Hoshiarpur to Mukerian, District Hoshiarpur while driving TATA ACE (loading) vehicle bearing registration No. PB-07Z-7658 at a moderate speed alongwith his younger brother Hardeep Singh who was also sitting in the Cabin of the driver. At about 8.20 p.m, when they reached near Paper

Mills Mukerian on Dasuya to Mukerian Road, then Pardeep Singh stopped his vehicle on his extreme left side of the road in Katcha portion to urinate. In the meanwhile, a Sawaraj Mazda Truck bearing registration No. HR-37C-6163 came from behind being driven rashly, negligently at a very high speed and hit against Pardeep Singh as a result he suffered multiple injuries. Rajender Singh driver-respondent No.1 of the offending vehicle fled away from the spot. Hardeep Singh brother of the deceased took him to the Civil Hospital Mukerian but Pardeep Singh died on reaching Hospital. FIR against respondent No.1 driver of Sawaraj Mazda Truck No. HR-37C-6163 was lodged on the statement of Hardeep Singh with police of P.S. Mukerian. It is averred that Pardeep Singh was 43 years of age at the time of accident, and being an Ex-serviceman and owner/driver of TATA ACE vehicle No. PB-07Z-7658, he was earning ₹12,000/- from pension plus ₹20,000/- per month from driving his own vehicle.

3. The claim petition was contested by the respondents.

4. On the basis of the pleadings and the evidence on the record, the Tribunal awarded the compensation and held respondents No.1 and 2 (being driver and owner) and respondent No.3- Insurance Company, liable jointly and severally for payment of compensation, however the first lability to make the payment of the awarded amount to be that of respondent No.3- Insurance company as follows:-

Sr.No.	Heads	Compensation Awarded
i)	Assessed monthly income	Rs. 20,000/-
ii)	30% (i) to be increased, future Prospect	Rs. 20000 +6000 = Rs. 26,000/-

iii)	1/4th of (ii) above deducted as personal expenses of deceased	Rs. 26000- Rs. 6500 = Rs. 19500/-
iv)	Compensation after multiplier of '14' is applied	Rs. 19500/- x 12 x 14 = Rs. 32,76,000/-
v)	Loss of consortium to the claimants	Rs, 1,00,000/-
vi)	Loss of love and affection, care and guidance to claimants No.2 and 3 (sons)	Rs. 50,000/ - each i.e Rs. 1,00,000/-
vii)	Loss of love and affection to claimants No.4 and 5 (mother and father)	Rs.50,000/ - each i.e Rs. 1,00,000/-
Viii)	Funeral expenses	Rs. 25,000/-
	Total compensation awarded	Rs. 36,01,000/-
	Interest	6% per annum

5. Learned counsel for the appellants contends that the income of the deceased and interest awarded has been taken on the lower side, by learned Tribunal. The income of deceased instead of ₹20,000/- per month, has to be ₹32,000/- per month at the time of death and interest ought to have been awarded @ 12% per annum instead of 6% awarded. In support of his contentions, he has relied upon the law as laid down by Hon'ble Supreme Court in ***Civil Appeal No.6152 of 2021, Chandra @ Chanda @ Chandraram & Anr. Vs. Mukesh Kumar Yadav & Ors***. And in ***Civil Appeal No. 7368 of 2013, Minu Rout and another Vs. Satya Pradyumna Mohapatra and others***.

6. I have heard learned counsel for the parties and perused the record.

7. As far as issue of negligence is concerned, it is not in dispute, as there is no appeal by the Insurance Company or driver/owner. Consequently

the finding of Tribunal qua this issue is affirmed.

8. The amount of compensation awarded by the learned Tribunal is assailed by learned counsel for the appellants on the ground that the same is inadequate. As apart from his getting pension of ₹12,000/- per month as ex-serviceman, the deceased was also plying his own TATA ACE commercial vehicle and earning ₹20,000/- per month but the Tribunal on this count considered ₹8,000/- being his notional income as Driver.

9. There is no dispute qua the deceased getting ₹12,000/- per month as pension being an ex-serviceman. As regards the contention of learned counsel for the appellants that he was earning ₹20,000/- per month by plying his TATA ACE vehicle commercially, admittedly no proof of such income has come forward on record. However at the same time it is in evidence that the deceased was owning TATA ACE vehicle and even in the FIR it is so recorded and there is no rebuttal to the same. It is worth mentioning here that as per the version given in the FIR and also in the petition, the deceased along with his brother was going to in the said TATA ACE when on the way he stopped it on the road side *Katcha Berm* to urinate and in the meanwhile the accident took place with the offending vehicle.

10. The learned Tribunal by applying guess work had taken the income of the deceased from plying TATA ACE at ₹8,000/- per month which in the facts and circumstances of the present case appears to be on lower-side. In ***United India Insurance Company Ltd. Vs. Firoz and others, Neutral Citation No:=2019:PHHC:122515***, this Court had taken the income of the deceased, a driver by profession at ₹12,000/- per month and

thus, the ends of the justice would meet if the income of the deceased in the present case from plying of his TATA ACE vehicle for commercial purpose is taken as ₹12,000/- per month.

11. In ***National Insurance Company Limited vs Pranay Sethi and others", reported as 2107 Supreme (SC) 1050***, a constitutional Bench of Hon'ble Supreme Court has held as under:

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

> *xxxxxxxxxxxxxxxxx*
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> *(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax. (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."*

12. 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.*
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> *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.*
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> *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)."*

13. In the light of the above said legal position qua the compensation to be awarded towards loss of consortium, the claimants being widow, children and parents of the deceased, the sole bread earner of the

family cannot be denied the compensation under the head loss of filial consortium.

14. Further as per the decision of Hon'ble Supreme Court in ***Smt. Salra Verma vs. Delhi Transport Corporation, (SC) : Law Finder Doc Id # 188882,*** when number of family members is 4 to 6 the deduction of the personal expenses from income has to be $1/4^{th}$.

15. Thus, in the light of the aforesaid discussion and applying principle laid down in the aforesaid judgments to the facts and circumstances of the present case, the compensation payable to the claimants is determined as under:-

Sr.No	Heads	Compensation Awarded
i)	Assessed monthly income	₹12000/- + ₹12,000/- = ₹ 24,000/-
ii)	25% (i) to be added towards future Prospect	₹24,000/-+₹6,000/- =₹30,000/-
iii)	$1/4^{th}$ of (ii) above deducted as personal expenses of deceased	₹30,000/- - ₹7500/- = ₹22,500/-
iv)	Compensation after multiplier of '14' is applied	₹22,500/- x12 x14 = ₹37,80,000/-
v)	Loss of consortium to the claimant No.1	₹44,000/-
vi)	Loss of filial consortium to claimants No.2 and 3 (sons) ₹44,000/- each	₹88,000/-
vii)	Loss of filial consortium to claimant No.4 and 5 (mother and father) ₹44,000/- each	₹88,000/-
viii)	Funeral expenses	₹16500/-
xi)	Loss of Estate	₹16,500/-
	Total Compensation	**₹40,33,000/-**
	Compensation awarded by the Tribunal	₹36,01,000/-
	Compensation enhanced	₹40,33,,000/ - ₹36,01,000- = **₹4,32,000/-**

The amount of the enhanced compensation aforesaid shall be payable by respondents No. 1 to 3 jointly and severally with interest @ 7.5% per annum from the date of filing of the claim petition till its realization. However, the first liability being of respondent No.3- Insurance Company which shall pay the amount of enhanced compensation to the claimants in such a way that the appellants-claimants No.3 and 4 being parents of the deceased would get ₹50,000/- each from enhanced compensation and the remaining enhanced compensation shall be equally paid to appellants-claimants No.1, 2 and proforma-respondent No.4, in addition to the compensation already awarded by Ld. Tribunal.

16. Accordingly the appeal is allowed and the award dated 24.09.2015 passed by Motor Accident Claims Tribunal, Mohali, is hereby modified in above terms.

17. Pending application(s) if any also stand disposed of.

(SANJIV BERRY)
JUDGE

15.03.2023
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i) Whether speaking/reasoned? Yes/No
ii) Whether reportable? Yes/No