104.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM No.13356-CII-2023 in
FAO No.1047 of 2016
Date of Decision: 11.10.2023

Iffco Tokio General Insurance Company Limited ... Appellant

Versus

Reshma Devi and others ... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Rajneesh Malhotra, Advocate, for the appellant.

Mr. Ashit Malik, Advocate, for respondents No.1 and 2.

None for respondents No.3 and 4.

GURBIR SINGH, J.

CM-13356-CII-2023

Prayer in this application filed under Section 151 CPC by respondents No.1 and 2-claimants is for vacation of stay granted vide order dated 11.02.2016.

Pursuant to notice in the application, Mr. Rajneesh Malhotra, Advocate, has caused appearance on behalf of non-applicant/ appellant-Insurance Company. As per office report, respondent No.3-driver has been served, whereas respondent No.4 is reported to have died.

It is submitted by learned counsel for the applicant-claimants-respondents No.1 and 2 that present appeal has been filed by the Insurance Company on the question of quantum and the appellant-Insurance Company has to satisfy the award passed in favour of the respondents No.1 and 2-claimants, so service upon respondents No.3 and 4 i.e. driver and owner respectively is not necessary.

Learned counsel for the applicant-respondents No.1 and 2 has also prayed that instead of deciding stay application, main case, which stood admitted, be heard and decided on merits.

Said request of learned counsel for the applicant-respondents No.1 and 2 is not opposed by learned counsel for the appellant.

In view of above, service upon respondents No.3 and 4 is hereby dispensed with. With the consent of learned counsel for the parties, the main case, which was admitted vide order dated 23.09.2019, is taken on board for hearing today itself.

The application for stay is disposed of since by this judgment, main case itself is being disposed of.

FAO No.1047 of 2016

1. The present appeal has been filed by the Insurance Company i.e. insurer of the offending vehicle, against the award dated 01.10.2015 passed by learned Motor Accident Claims Tribunal, Karnal, whereby driver, owner i.e. respondents No.3 and 4 herein along with the appellant-Insurance Company have been held liable jointly and severally to pay the amount of compensation to the claimants.

2. Briefly stated, the claimants-respondents No.1 and 2, mother and brother of the deceased Krishan Kumar, filed a petition for grant of compensation that respondent No.3-driver of TATA ACE vehicle registration No.HR-45A-5582 caused the accident while driving said offending vehicle on 06.07.2013 at about 6.50 A.M. and thereby caused the death of Krishan Kumar in the said accident. FIR was also lodged at Police Station Gharaunda, Karnal on the same day i.e. 06.07.2013. It was averred that Krishan Kumar was working with Maruti Udyog Limited. Relying on the salary statement of June, 2013 Ex.P2, income of the deceased was taken as Rs.29,052/- per month, which was rounded off to Rs.29,000/- per month. At the time of accident, the deceased was 24 years old. While deducting personal expenses, 50% of the income was taken as future prospects. The Tribunal awarded the amount of compensation under the following heads:-

	Date of Accident	6.7.2013
Age of deceased	24 years	
Claimants	Mother and brother of deceased	
Sr. No.		
1.	Income	Rs.29,000/-per month.
2.	Add 50% of increase on account of future prospects	Rs.14,500/- (29,000+14,500)=Rs.43,500/-
3.	Deduction 1/3rd as number of dependents are two	Rs.4,500/- (43,500-14,500)=Rs.29,000/-
4.	Multiplier (Annualized)	Eighteen (18)
5.	Multiplier	eighteen (18) 29,000 X 12 x 18= Rs.62,64,000/-
6.	Loss of dependency	Rs.62,64,000/-
7.	Medical expenses	Nil
8.	Loss of consortium to spouse	Nil
9.	Loss of love and affection for mother & brother of deceased.	Rs.2,00,000/-
10.	Loss of estate	Rs.1,00,000/-.
11.	Funeral expenses	Rs.25,000/-
	Total	Rs.65,89,000/-

3. Learned counsel for the appellant-Insurance Company has assailed the award passed by the Tribunal on the question of compensation. It is submitted that since the deceased Krishan Kumar was bachelor, deductions towards personal expenses should have been taken as ½ instead of 1/3rd. Multiplier with regard to age of mother of the deceased was required to be taken into consideration, but the Tribunal adopted the multiplier of 18 keeping in view the age of the deceased. The mother was about 55 years of age, so multiplier of 9 was required to be taken into consideration. The brother of deceased cannot be considered as dependent upon the deceased. There was no evidence on record that the deceased was in permanent job and had a steady income, so the learned Tribunal has wrongly granted 50% as future prospects. The compensation towards loss of love and affection to the extent of Rs.1 lakh to both the claimants, Rs.1 lakh towards loss to estate and Rs.25,000/- for funeral expenses have been wrongly awarded. It is further submitted that PW-1 Vikash Kumar, Assistant Manager, Maruti Suzuki, Gurgaon, had himself admitted in his cross-examination that sum of Rs.29,67,434/- and Rs.7,50,000/- were paid to respondent No.1, mother of deceased, and said amount was required to be deducted from the amount of compensation awarded to the claimants.

3.1 Learned counsel further submits that the income of the deceased has been wrongly taken as Rs.29,000/- per month despite the fact that the allowances viz. HRA, uniform maintenance, reimbursement, child education allowance, conveyance allowance, additional conveyance were personal allowances to the deceased and were liable to be deducted from the income of the deceased while assessing compensation. The other allowances such as B-Shift allowance, PPRS B (in-house spares), PPRS (A) are the incentives to the deceased and the same fluctuate every month of the basis of many factors i.e. attendance, production and therefore, same could not have been assessed as a part of regular monthly income of the deceased. B-shift allowance is meant for night service as admitted by PW1 and the same was liable to be deducted while assessing the amount of compensation. No deduction on account of income tax has been made from the income of the deceased. The interest awarded on the amount of compensation at the rate of 12% per annum is on higher side.

4. Learned counsel for respondents No.1 and 2-claimants submits that the deceased was permanent employee of Maruti Udyog Limited. The income of the deceased has been rightly taken into consideration by the learned Tribunal in accordance with the settled principles of law.

5. I have heard learned counsel for the parties and have gone through the record.

6. The deceased was 24 years of age, a bachelor, so deduction with regard to personal expenses should have been taken as ½ instead of 1/3rd. The multiplier is required to be based on the age of the deceased and not the age of the claimant-mother as held by the Hon'ble Supreme Court in ***Sube Singh and another Versus Shyam Singh (dead) and***

others, 2018(2) R.C.R. (Civil) 131. Since the deceased was regular employee of the Company as stated by PW-1 Vikash Kumar, Assistant Manager, Maruti Suzuki, Gurgaon, so, future prospects have been rightly taken as 50%. The pay slip for the month of June, 2013 was proved as Ex.P2 where Rs.12,000/- has been shown as LTC. It is not the case of the claimants that said amount was paid every month, so same has been rightly deducted while assessing income of the deceased. Since other allowances are being paid monthly like child education allowance, B-shift allowance, PPRS B (in-house spares), conveyance allowance, additional allowance, PPRS (A), same are taken as income of the deceased. So, the income of the deceased has been rightly taken as Rs.29,052/- per month which was rounded off to Rs.29,000/- per month. Since the income of the deceased exceeds taxable limits, so income tax @ 10% is required to be deducted from the income of the deceased. The claimants are entitled to the amount under conventional heads as mentioned in case ***National Insurance Company Versus Praney Sethi and others, (2017) 14 SCC 663***. The award of Rs.1 lakh to both the claimants, Rs.1 lakh towards loss of estate and Rs.25,000/- towards funeral expenses have been wrongly awarded.

6.1 In view of the law laid down in ***Vimal Kanwar and others Versus Kishore Dan and others, 2013(2) R.C.R. (Supreme Court) 945***, any amount of financial assistance paid to legal heirs of deceased is not to be deducted while computing compensation and this Court is also of the same view.

6.2 Another argument raised by learned counsel for the appellant that the brother of deceased cannot be considered as dependent upon the deceased and no consortium can be granted to him, finds force. Claimant No.2-Pardeep, brother of deceased, was minor at that time. Since parents of claimant No.2 were alive at the time of death of Krishan Kumar, so he cannot be considered as dependent upon his brother Krishan Kumar, since deceased. Moreover, there is no evidence brought by claimants that claimant No.2 was dependent upon deceased. As such, no consortium can be granted to him. In case ***Magma General Insurance Company Limited Versus Nanu Ram alias Churu Ram and others, 2018(3) Law Herald (SC) 2410,*** consortium was granted only to the spouse, children and mother. Loss of consortium was again considered by the higher Bench of Hon'ble Supreme Court in ***United India Insurance Company Limited Versus Satinder Kaur @ Satwinder Kaur and others, 2021(11) SCC 780, 2020(2) Law Herald (SC) 1715.*** The relevant extract of the said judgment is as under:-

> "**b)** ***Loss of Consortium***
>
> Loss of Consortium, in legal parlance, was historically given a narrow meaning to be awarded only to the spouse i.e. the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. 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 for awarding compensation in

various jurisdictions such as the United States of America, Australia, etc. English courts have recognised the right of a spouse to get compensation even during the period of temporary disablement.

In ***Magma General Insurance Co. Ltd. v. Nanu Ram & Ors.***, 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)***.

At this stage, we consider it necessary to provide uniformity with respect to the grant of consortium, and loss of love and affection. Several Tribunals and High Courts have been awarding compensation for both loss of consortium and loss of love and affection. The Constitution Bench in Pranay Sethi (supra), has recognized only three conventional heads under which compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses.

In ***Magma General (supra)***, this Court gave a comprehensive interpretation to consortium to include spousal consortium, parental consortium, as well as filial consortium. Loss of love and affection is comprehended in loss of consortium.

The Tribunals and High Courts are directed to award compensation for loss of consortium, which is a legitimate conventional head. There is no justification to award compensation towards loss of love and affection as a separate head."

6.3 In view of above discussion, the claimant No.2 being brother is not entitled for any consortium.

6.4 Keeping in view the prevalent rate of interest in the year 2013 when the accident took place, the claimants are entitled for interest on the awarded amount at the rate of 7.5% per annum.

7. Accordingly, the amount of compensation which claimant No.1 is entitled, is being re-calculated as under:-

1.	Income of the deceased	Rs.29,000/-per month.
2.	Add 50% of increase on account of future prospects	Rs.14,500/- (29,000+14,500)=Rs.43,500/-
3.	Annual	Rs.5,22,000/- (43,500X12)
4.	Tax deduction in 2013 0 to 2 lakh = 0% 2 lakh to 5 lakh = 10% 5 lakh to 10 lakh = 20%	5,22,000/- 10% of 3,00,000= 30,000 20% of 22,000=4,400 5,22,000-34,400=4,87,600
5.	Deduction 50% (bachelor)	2,43,800/- (4,87,600x ½)
6.	Multiplier	18
7.	Loss of dependency	Rs.43,88,400/- (2,43,800 x 18)
8.	Loss of consortium	Rs.44,000/-
9.	Loss of estate	Rs.16,500/-
10.	Funeral expenses	Rs.16,500/-
	Total	**Rs.44,65,400**

8. In view of above, the award of the Tribunal is modified to the above extent and respondent-claimant No.1, namely, Reshma Devi shall be entitled to Rs.44,65,400/- which shall be disbursed to her in the manner already indicted by the Tribunal in its award dated 01.10.2015. However, the said amount shall carry interest @ 7.5% per annum before the date of the petition till its realization.

9. The appeal stands disposed of accordingly.

(GURBIR SINGH)
JUDGE

October 11, 2023
sanjeev

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No