IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

***

FAO-488-2019(O&M)
Date of decision : 17.09.2024

Sushila and another

... Appellants

Versus

Jagdish and others

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Parmod Parmar, Advocate
for the appellants.

Mr.Abhinav Singla, Advocate for
Mr.Amit Goyal, Advocate
for respondent no.3.

VIKAS BAHL, J.(ORAL)

CM-1693-CII-2019

1. This is an application filed under Section 5 of the Limitation Act read with Section 151 CPC for condonation of delay of 19 days in filing the appeal.

2. For the reasons stated in the application, which is supported by an affidavit, the application is allowed and delay of 19 days in filing the appeal is condoned.

FAO-488-2019

1. The mother and younger brother of the deceased Tejdeep have filed the present appeal for modification of the award dated 10.08.2018 and

for enhancement of the compensation awarded.

2. The only question which arises for consideration in the present petition is as to what compensation are the present appellants entitled to, as there is no dispute about the fact that deceased Tejdeep died in an accident which took place on 15.09.2017, and which involved the car which was driven by Jagdish and was owned by Naresh and was insured by respondent no.3-insurance company.

3. Learned counsel for the appellants has submitted that the income of the deceased in the present case has been assessed as Rs.8000/- by the Tribunal whereas the minimum wages, at the relevant time were Rs.8280/-. It is further submitted that the amount on account of loss of estate / love and affection as well as on account of funeral expenses which was taken into consideration was Rs.15,000/- each whereas the same was required to be assessed as Rs.18,000/- each. It is argued that no amount has been awarded on account of loss of consortium and thus, an amount of Rs.96,000/- (48,000 x 2) is required to be added on the said count. It is stated that thus, the present appellants are entitled to an enhanced amount of Rs.1,44,336/- and it is prayed that the said amount be released along with interest at the rate of 9% per annum from the date of filing of claim petition till the date of payment. In support of his arguments, learned counsel for the appellants has relied upon the law laid down by the Hon'ble Supreme Court in case titled as ***Sarla Verma (Smt.) and others Vs. Delhi Transport Corporation and another*** reported as ***(2009) 6 SCC 121***, ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported as

(2017) 16 SCC 680, and ***Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and others*** reported as ***(2018) 18 SCC 130***.

4. On the other hand, learned counsel for respondent no.3-insurance company has submitted that the interest at the rate of 9% is highly excessive and the interest at the rate of 6% is at best to be granted to the appellants.

5. Learned counsel for the appellants has submitted a revised chart. The said chart is reproduced hereinbelow:-

"Appellants/Claimants: 2 claimants : mother and younger brother

Date of accident : 15.09.2017

Nature of case : Death cases

Age and status of the deceased : 22 years old unmarried named Tejdeep

Insurance company : Royal Sundaram General Insurance Company

DETAILS OF RELIEF GRANTED / CLAIMED IN APPEAL

Particulars	***Granted by Tribunal***	***Claimed in appeal***
Income assessed	*8000/-*	*8280/- as per minimum wages notification attached*
Future prospects 40%	*40.00%*	*40% (8280+3312)= 11592/-*
Deduction	*½*	*½ 11592-5796=5796*
Multiplier	*18*	*18*
Loss of estate/love and affection	*15000/-*	*18000/-*
Funeral expenses	*15000/-*	*18000/-*
Loss of consortium	*Not granted*	*48000x2=96,000/-*
Total compensation	*12,39,600/-*	*5796x12x18=12,51,936+36 000+96000=13,83,936/-*
Enhanced amount		*13,83,936-12,39,600= 1,44,336/-*
Rate of interest	*7% per annum*	*9% per annum from the date of filing the petition i.e. 06.12.2017*

CHANDIGARH

DATED: 16.09.2024"

6. This Court has heard learned counsel for the parties and has

perused the paper book and has also considered the said revised chart and the same has been found to be in accordance with law.

7. The Hon'ble Supreme Court in para 42 of ***Sarla Verma's case*** (Supra) had observed as under:-

> *"We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative* ***multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years,*** *that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."*

A perusal of the above would show that for the age of 22 years, multiplier of 18 is to be applied.

8. The Hon'ble Supreme Court in ***Pranay Sethi's case*** (Supra), has held as under:-

> *"59.In view of the aforesaid analysis, we proceed to record our conclusions:-*
>
> *59.1 The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.*
>
> *59.2 As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.*

59.3 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.

59.4 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.*

59.5 For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

59.6 The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

59.7 The age of the deceased should be the basis for applying the multiplier.

59.8 Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.

60. The reference is answered accordingly. Matters be placed before the appropriate Bench."

A perusal of the above judgment would show that it was observed by the Hon'ble Supreme Court that addition of some percentage of the actual salary to the income of the deceased towards future prospects was also required to be taken into consideration and the said percentage was specifically defined with respect to persons who were having a permanent job or/were self-employed or on a fixed salary. The chart as reproduced in para 42 of the judgment of ***Sarla Verma's case*** (Supra) was approved and a total amount of Rs.70,000/- on conventional heads namely loss of estate, loss of consortium or funeral expenses was also mentioned which required to be enhanced at the rate of 10% in every three years.

9. The Hon'ble Supreme Court in ***Magma General Insurance Company Limited's case (Supra)*** had further observed that in death case, under the head of loss of consortium, the parents of the deceased are entitled to be awarded loss of consortium under the head of filial consortium, children are entitled to parental consortium. To the widow, spousal consortium is to be given. Relevant portion of the said judgment is reproduced hereinbelow:-

> *"21. A Constitution Bench of this Court in Pranay Sethi 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,co-operation, 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.

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 5. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of Filial Consortium.*

24. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under 'Loss of Consortium' as laid down in Pranay Sethi (supra). In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs.40,000 each for loss of Filial Consortium."

In the abovesaid judgment, an amount of Rs.40,000/- each was awarded to the father and sister of the deceased and thus, the amount of consortium awarded was made dependent upon the number of claimants/legal representatives.

10. The chart prepared by learned counsel for the appellants reproduced hereinabove is in accordance with law and deserves to be accepted except on the aspect of interest. The income of the deceased has been rightly assessed in the chart and even the loss of estate and funeral expenses to the extent of Rs.18,000/- on each count are required to be awarded instead of the amount of Rs.15,000/- awarded by the Tribunal on both the said counts. An amount of Rs.96,000/- (48,000 x 2) is also required to be given on the count of loss of consortium. Thus, the present appellants are entitled to an amount of Rs.1,44,336/- as additional compensation. With respect to the rate of interest, this Court is consistently awarding the rate of interest at the rate of 7.5% per annum, which rate of interest is also reasonable in the present case.

11. Keeping in view the above said facts and circumstances, the present appeal is partly allowed and award dated 10.08.2018 is modified and respondent no.3 is directed to pay an additional amount of compensation to the tune of Rs.1,44,336/- to the appellants along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till its realisation within a period of six weeks from today.

12. Pending application, if any, stands disposed of in view of the abovesaid order.

(VIKAS BAHL)
JUDGE

September 17, 2024.
Davinder Kumar

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