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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-805-1991 (O&M)
Date of decision: 23.07.2024

Kumari Jyoti Rani and others

...Appellants

Versus

Shiv Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Aman Arora, Advocate for the appellants.

Mr. Sandeep Suri, Advocate
for respondent No.3-Oriental Insurance Company Ltd.

Mr. Nitin Gupta, Advocate
for respondent No.5-United Indian Insurance Company Ltd.

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VIKAS BAHL, J. (ORAL)

1. Four children and the husband of the deceased Shanti Devi have filed the present appeal for enhancement of the award of compensation granted to them by the Motor Accident Claims Tribunal to the tune of Rs.54,000/- along with interest.

2. It is not in dispute that the accident had occurred on 23.05.1990 in which the said Shanti Devi had died and the offending vehicle was a truck which was owned by respondent No.1 and was driven by respondent No.2 and the same was insured with respondent No.3-Oriental Insurance Company Limited.

3. Learned counsel for the appellants has submitted that in the present case, an additional compensation of Rs.3,48,000/- is to be awarded to the present appellants inasmuch as the Motor Accident Claims Tribunal has not awarded any amount under the conventional heads whereas an amount of Rs.2,40,000/- (Rs.48,000 x 5) on account of loss of consortium, Rs.18,000/- on account of funeral expenses and Rs.18,000/- on account of loss of estate is required to be awarded to the present appellants in view of the settled law. It is further submitted that the age of the deceased in the present case is rightly assessed as 45 years however the monthly income was taken to be Rs.450/- per month whereas the same should be taken as Rs.800/- per month, being the minimum wage of unskilled labour as on 01.01.1990. It is submitted that no amount has been awarded on account of future prospects and keeping in view the age of the deceased, 25% of the salary was to be taken into consideration for the purpose of future prospects. It is further submitted that the multiplier of 10 has been wrongly applied in the present case whereas the same should be 14. Learned counsel for the appellants has very fairly submitted that no deduction has been made whereas as per the settled law, deduction of 1/4th is ought to be applied. In support of his arguments, he 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***. A chart prepared by learned counsel for the appellants which

reflects the amount awarded by the Motor Accident Claims Tribunal and the fresh calculation as per the latest judgment of the Hon'ble Supreme Court is reproduced hereinbelow:-

"1. That the present matter pertains to First Appeal against order/award passed in MACP/70/1990 by MACT Faridabad presided by Sh. J.K. Sud, for the death of Smt. Shanti Devi.

2. Date of Death/Incidence is 23.05.1990.

3. FIR bearing number 192 dated 23.05.1990.

4. Issue qua rash & negligent act decided in favour of petitioners/claimants.

5. Impugned order/award dated 02.04.1991 passed by MACT Faridabad amounting Rs.54,000/- in favour of petitioners/claimants.

6. Comparative table of award passed by MACT Faridabad with fresh calculation as per latest law:-

Sr. No.	*Particulars*	*Awarded by MACT Faridabad*	*Fresh Calculation as per Latest Law in Pranay Sethi (supra), Nanu Ram (supra) etc.*
1.	*Age of the deceased assessed*	*45 years*	*45 years rightly assessed.*
2.	*Monthly income taken*	*Rs.450/-*	*Rs.800/- minimum wage of unskilled as on 1.1.1990.*
3.	*Future prospects*	*Not taken*	*25% as per age. (Rs.1000/-)*
4.	*Multiplier*	*10*	*14 as per age*
5.	*Personal Deductions*	*None*	*1/4th ought to be applied (Rs.750/-)*
6.	*Calculation*	*450 x 12 x 10 = 54,000/-*	*750 x 12 x 14 = 1,26,000/-*
7.	*Conventional heads*	*None*	*(i) 48000 x 5 = Rs.2,40,000/- (Consortium) (ii) Rs.18,000/- Funeral expense. (iii) Rs.18,000/- Loss of estate*
8.	*Total*	*54,000*	*Rs.4,02,000/-*
9.	*Interest*	*12%*	*As already awarded*

4. Learned counsel for contesting respondent No.3-Oriental Insurance Company Ltd. has submitted that the interest which has been mentioned by the learned counsel for the present appellants i.e. 12% per

annum is highly excessive and it is the settled law that the interest which is to be awarded is the current rate of interest, which at present is 7.5% per annum. Other aspects could not be disputed by learned counsel for respondent No.3-Insurance Company in view of the law laid down in the abovesaid three judgments.

5. Learned counsel for respondent No.5 has submitted that he is not a contesting party as no amount has been awarded against him and has prayed that even the enhanced amount is to be paid by respondent No.3.

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

7. Hon'ble the 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."*

8. A perusal of the above would show that for the age of 45 years, multiplier of 14 is to be applied.

9. 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."

10. 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.

11. 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."

12. 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.

13. The chart presented by the counsel for the appellants, except on the part of the interest to be awarded, is in accordance with law. Since, the age of the deceased has been assessed as 45 years thus, a multiplier of 14 is required to be applied and an amount of Rs.2,40,000/- (Rs.48,000 x 5) for loss of consortium is also required to be paid, in addition to Rs.18,000/- on account of funeral expenses and Rs.18,000/- on account of loss of estate.

Even the minimum wage which is required to be taken is Rs.800/- and also the future prospects at the rate of 25% is required to be taken into consideration as per the law laid down in ***Pranay Sethi's case*** (Supra). A perusal of the above reproduced chart would show that 1/4th amount is fairly stated to be deducted on account of personal deductions and is in accordance with law, thus, an additional amount of Rs.3,48,000/- over and above the awarded amount is to be paid to the appellants as enhanced compensation and the same is to be paid by respondent No.3-Oriental Insurance Company Ltd. This Court is consistently awarding interest at the rate of 7.5% per annum and is of the opinion that the said rate of interest is reasonable in the present case also.

14. Keeping in view the abovesaid facts and circumstances, the present appeal is partly allowed and the impugned award is modified and respondent No.3-Oriental Insurance Company Ltd. is directed to pay the additional amount of Rs.3,48,000/- in equal proportion 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 payment within a period of six weeks from the date of receipt of certified copy of the present order.

15. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

23.07.2024 **(VIKAS BAHL)**
Pawan **JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No