

2024:PHHC:073942



216.

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.2663 of 2023 (O&M)

Date of decision: 01.05.2024

Oriental Insurance Company Limited and another Appellants

Versus

Paramjit Kaur and others Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Alankrit Bhardwaj, Advocate, for the appellants.

None for the respondents.

GURBIR SINGH, J.

1. Present appeal has been filed by the insurer(s) of offending vehicle bearing registration No.PB-03AG-0070, against the award dated 21.03.2023 passed by learned Motor Accident Claims Tribunal, Barnala whereby for causing death of Jagroop Singh, the claimants, who are wife, three daughters and one son, have been granted compensation of Rs.10,04,840/- and appellant No.1 along with driver-respondent No.6 and owner-respondent No.7 have been jointly and severally held liable to pay said compensation to the claimants.

2. Vide impugned award, the claimants-respondents No.1 to 5 have been granted compensation in the following manner:-

Sr. No.	Heads	Calculation
i.	Income assessed	₹8,000
ii.	10% of (i) above to be added as future prospects	₹8,000 + 800= ₹8800 per month
iii.	1/3 rd of (ii) deducted as personal expenses of the deceased	₹8800- ₹2930=Rs.5870
iv.	Compensation after multiplier of ‘11’ is applied	₹5870x12x11 = ₹7,74,840
v	Funeral expenses	₹15,000
vi	Loss of consortium	₹ 40000 (sic) x5=₹ 200,000
vii	Loss of estate	₹15,000
	Total (iv) to (vii)	₹7,74,840 + ₹2,30,000=₹10,04,840

3. Learned counsel for the appellants contends that except wife, major married daughters and son cannot be considered as dependants upon the deceased father. They each have been wrongly granted loss of consortium @ ₹40,000/-. Even deduction for personal expenses should have been taken as ½ instead of 1/3rd as there was only one dependant i.e. wife of the deceased. In support of his arguments, he has relied upon ***Shri Ram General Insurance Company Limited Versus Bhagat Singh Rawat and others, Law Finder Doc Id # 2251622*** to contend that loss of consortium cannot be granted to each of the dependants.

4. I have heard the submissions of learned counsel for the appellant and have gone through the file.

5. Married daughters may not be fully dependent upon their father, but it is well known in our society, father has to meet the requirements of his married daughters on visiting the house by daughter(s) on any festival or whenever there is some occasion, may be good or bad. It is the duty of the father of the married daughter(s) to help his daughter(s)

by one way or the other. So, it cannot be said that married daughter is not dependent upon her father. Unless there is some evidence that major son is independently leading a life and is not dependent upon his father for day-to-day needs, it cannot be said that major son is not dependent upon his father. In case *C. Sarasu and others Versus S. Muthusamy and others, 2024 ACJ 269*, the Madras High Court held that father, in Hindu society, takes care of married daughter and major sons till his death. They being Class-1 legal heirs under Section 8 of Hindu Succession Act, cannot be excluded from granting compensation. Thus, I am of the view that the learned Tribunal has rightly taken 1/3rd of the income as personal living expenses of the deceased.

5.1 Another contention raised by learned counsel for the appellants is that consortium cannot be granted to each of the claimants. In case *Magma General Insurance Company Limited Versus Nanu Ram alias Churu Ram and others, 2018(3) Law Herald (SC) 2410*, consortium was granted to the spouse, children and mother. Loss of consortium was again considered by the higher Bench of Hon'ble Supreme Court in *Civil Appeal No.2705 of 2020 (arising out of SLP (Civil) No.28548 of 2014)* titled as *United India Insurance Company Limited Versus Satinder Kaur @ Satwinder Kaur and others*. 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. In view of above, the Tribunal has rightly granted consortium of Rs.40,000/- to each of the claimants. The authority cited by learned counsel for the appellants of case ***Shri Ram General Insurance Company Limited (supra)*** is of no help to the appellants.

7. In the light of above discussion, I do not find any illegality in the award passed by the learned Tribunal. The appeal is without merit and it is dismissed accordingly.

8. Pending application, if any, shall also stand disposed of.

(GURBIR SINGH)
JUDGE

May 01, 2024
sanjeev

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