



FAO-1707 of 2007(O&M)

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

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Date of Decision: November 07, 2024

Smt. Raj Rani and ors.

.....Appellants

Vs.

State of Haryana and ors

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Naveen Jhanjholia, Advocate
for the appellants

Mr. Ayuvan Singh, AAG, Haryana

Mr. D.R. Bansal, Advocate with Mr. Rahul Bansal, Advocate
for respondent No. 3-Insurance Co.

SUDEEPTI SHARMA J.

1. The present appeal has been preferred against the award dated 19.01.2007 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Sirsa (for short, 'the Tribunal'), for enhancement of compensation granted to the appellants.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 06.03.2004, Krishan Chand-driver and Ved Parkash conductor left Sirsa for Delhi in the bus bearing registration No. HR-57-0923. There were about 14-15 passengers in the ill fated bus including Gurdeep Singh and Shingara Singh. When the bus reached near the temple in the area of village Dhangar, District Fatehabad, in the meantime a bus bearing registration No. HR-57-0904 came from the opposite side being driven by Surender Singh rashly and negligently and struck against the ill fated bus.

Consequently, the driver of both the bus died on the spot. Six or seven passengerw



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of both the buses suffered injuries. The injured were shifted to General Hospital, Fatehabad. F.I.R No. 102 dated 06.03.2004 under Sections 279/337/304-A IPC was registered at P.S. Fatehabad against the driver of the offending bus.

3. Upon notice of the claim petition, the respondents appeared and denied the factum of accident/compensation.

4. From the pleading of the parties, the Tribunal framed the following issues:-

- “1. Whether the accident in question took place due to rash and negligent driving of driver of Bus of Haryana Roadways Depot, Sirsa bearing registration No.HR-57-0923 thereby causing death of Krishan Chand, Mahender Jain and injuries to Radhey Sham, as alleged? OPP*
- 2. Whether the claimants are entitled for compensation, if so, how much and from whom ? OPP*
- 3. Whether the present petitions are not maintainable in the present form? OPR*
- 4. Whether the petitioners have got no cause of action to file the present petition? OPR*
- 5. Whether the driver of bus of Haryana Raodways bearing registration No. HR-57-0923 was not holding a valid and effective driving license at the time of the alleged accident if so to what effect? OPR3*
- 6. Relief.”*

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the tune of Rs.3,94,000/-

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along with interest @ 7.5% per annum. However, the claimants were awarded the compensation to the tune of Rs.1,97,000/-, on account of contributory negligence.

The relevant portion of the award reads as under:-

“17. Out of the passengers of buses in question only Radhey Sham petitioner has appeared in the witness box as PW-4. He has filed his affidavit Ex. PW-4/A wherein in para No.3 he has pleaded that on 6.3.2004 he boarded the offending bus from Agroha Mor at 4-40 A.M. for coming to Sirsa. The driver of the offending bus was utmost rash and negligent. At about 5 or 5-15 A.M. the bus reached near Canal Bridge near a temple in the area of Dhangar. The ill fated bus came from the side of Sirsa. The driver of the offending bus dashed the offending bus against the ill fated buys and caused the accident in question. Thus, these averments of the affidavit of PW-4 go to show that he has deposed against the driver of the offending bus but his version being not supported by any other evidence cannot be admitted to be correct straightway. Therefore, in order to find out the truth in the version of PW-4 his cross-examination is also to be considered. In his cross-examination conducted by respondents No.1 and 2 he denied the correctness of the suggestion that drivers of both the buses were at fault and that the accident in question took place ribunadue to the failure of the breaks of both the buses involved in the accident. Because the witness has denied the correctness of the version of respondents No.1 and 2, therefore, it can be held that the respondents have not been able to get admission of eye witness

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on this point. As I have stated that the respondents No.1 and 2 have not adduce any other evidence on this point, therefore, its stands proved on the file that the accident in question was not the result of the failure of the breaks of the buses involved in the accident.

18. In Para no.24 of the petitions mentioned at S.No. 1 above the petitioners have pleaded that Surender Kumar driver of the offending bus was driving the offending bus rashly and negligently and in violation of the traffic rules. There was a turn at the place of accident. The driver of the offending bus could not properly gave turn to the bus. Resultantly, the offending bus struck in the ill fated bus from the driver side and the accident in question took place. These averments of para no.4 have though not been admitted by the respondents No.1 and 2 but at the same time these averments in respect of the curve (turn) in the road at the place of accident are not specifically denied by the respondents. Therefore, the fact remains that the respondents No.1 and 2 have admitted the fact that there is a curve on the road at the place of accident. If this fact is considered in view of the facts and circumstances of the case then it would go to show that the drivers of both the buses were rash and negligent. They knew fully well that there is a curve in the road but even then they did not maintain their proper side on the road while crossing the curve and this is why the accident in question took place.

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19. The driver's side of both the buses struck against each other. This fact again goes to show that the drivers of both the buses were rash and negligent and equally responsible for causing this accident.. They should have maintained proper distance while crossing the buses. Had they been vigilant and careful and had observed the traffic rules they could avoid the accident but they did not do so. Therefore, I have no hesitation to hold that the drivers of both the buses were equally responsible for causing the accident in question.”

6. Hence the appellants filed the present appeal seeking enhancement of the compensation to them.

SUBMISSIONS OF THE COUNSELS FOR THE PARTIES

7. Learned counsel for the appellants contends that the compensation granted to the appellants, is on the lower side and deserves to be enhanced. The Tribunal further wrongly deducted the amount on account of contributory negligence and failed to include future prospects in its calculation. The amount awarded for funeral expenses and loss of consortium is on the lower side. He further contends that no amount was awarded for loss of estate. Therefore, he prays that the present appeal be allowed and compensation should be enhanced as per latest law.

8. *Per contra*, learned counsel for the respondent-Insurance Company argues on the lines of the award and contends that the compensation granted by the Tribunal is not on the lower side and the present appeals seeking enhancement of the compensation, is liable to be dismissed. He further contends that the recovery rights be granted to the Insurance Company, as one of the passenger who appeared

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as PW4 (Radhey Shyam) has made a statement that the driver of the offending vehicle was utmost rash and negligent. The driver of the offending bus dashed the offending bus against the ill fated bus and caused the accident in question.

9. I have heard learned counsel for the parties and perused the whole record of this case.

10. A perusal of the record indicates that the Tribunal has rightly assessed the income of the deceased as Rs.3000/- per month. Moreover, the amount awarded under funeral expenses, transportation and loss of consortium is on the lower side. Further no amount was awarded towards future prospect and loss of estate. Therefore, the award requires indulgence of this Court.

11. However, the argument of learned counsel for appellants that Tribunal further wrongly deducted the amount on account of contributory negligence, is liable to be rejected, as it was proved on record that there was a curve on the road at the place of the accident and, thus, the driver of both the buses were rash and negligent in causing the accident.

12. Further, the argument of learned counsel for the Insurance company that the recovery rights be granted to the Insurance Company is rejected, as on perusal of the record, it has been found that the Insurance Company failed to prove on record with regard to invalidity of the driving licence of both the drivers of the offending vehicles.

SETTLED LAW ON COMPENSATION

13. Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation and Another [(2009) 6 Supreme Court Cases 121]**, laid down the law on assessment of compensation and the relevant paras of the same are as under:-

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“30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardised deductions. Having a considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.



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32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

* * * * *

42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas³, 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.

14. Hon'ble Supreme Court in the case of **National Insurance Company Ltd. Vs. Pranay Sethi & Ors.** [(2017) 16 SCC 680] has clarified the law under Sections 166, 163-A and 168 of the Motor Vehicles Act, 1988, on the following aspects:-

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- (A) Deduction of personal and living expenses to determine multiplicand;
- (B) Selection of multiplier depending on age of deceased;
- (C) Age of deceased on basis for applying multiplier;
- (D) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses, with escalation;
- (E) Future prospects for all categories of persons and for different ages: with permanent job; self-employed or fixed salary.

The relevant portion of the judgment is reproduced as under:-

*“52. As far as the **conventional heads** are concerned, we find it difficult to agree with the view expressed in Rajesh². It has granted Rs.25,000 towards funeral expenses, Rs 1,00,000 towards loss of consortium and Rs 1,00,000 towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in*

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determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that 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 principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.

* * * * *

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.*



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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 paras 30 to 32 of Sarla Verma⁴ which we have reproduced hereinbefore.

59.6. The selection of multiplier shall be as indicated in the Table in Sarla Verma¹ read with para 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.”

15. Hon’ble Supreme Court in the case of **Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram & Others [2018(18) SCC 130]** after considering **Sarla Verma (supra)** and

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Pranay Sethi (Supra) has settled the law regarding consortium. Relevant paras of the same are reproduced as under:-

“21. A Constitution Bench of this Court in Pranay Sethi² 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, cooperation, 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.*

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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 recognised 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. 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



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under "loss of consortium" as laid down in Pranay Sethi². 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.

CONCLUSION

16. In view of the law laid down by the Hon’ble Supreme Court in the above referred to judgments, the present appeal is allowed. The award dated 19.01.2007 is modified accordingly. The appellants-claimants are entitled to enhanced compensation as per the calculations made here-under:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Compensation Awarded</i>
1	Monthly Income	Rs.3000/-
2	Future prospects @ 50%	Rs.1500/- (50% of 3000)
3	Deduction towards personal expenditure 1/4th	Rs.1125/- (4500X 1/4th)
4.	Total Income	Rs.3375/- (4500-1125)
5	Multiplier	16
6	Annual Dependency	Rs.6,48,000/- (3375X12X16)
7	Loss of Estate	Rs.18,000/-
8	Funeral Expenses	Rs.18,000/-
	Loss of Consortium Filail : Rs. 48,000/-x2 Parental:Rs. 48,000/-x2 Spousal:Rs. 48,000/-x1	Rs.2,40,000/-
	Total Compensation	Rs.9,24,000/-
	Compensation be awarded to the claimants due to contributory negligence	Rs.4,62,000/-
	Amount Awarded by the Tribunal	Rs.1,97,000/-
	Enhanced amount of compensation	Rs.2,65,000/-

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17. So far as the interest part is concerned, as held by Hon'ble Supreme Court in *Dara Singh @ Dhara Banjara Vs. Shyam Singh Varma* 2019 ACJ 3176 and *R.Valli and Others VS. Tamil Nandu State Transport Corporation* (2022) 5 **Supreme Court Cases 107**, the appellants-claimants are granted the interest @ 9% per annum on the enhanced amount from the date of filing of claim petition till the date of its realization.

18. The Insurance Company is directed to deposit the enhanced amount of compensation along with interest with the Tribunal within a period of two months from today. The Tribunal is further directed to disburse the enhanced amount of compensation along with interest in the accounts of all the claimants/appellants as per ratio settled in the award dated 19.01.2007. The claimants/appellants are directed to furnish the bank account details to the Tribunal. Further Insurance Company is directed to disburse the current schedule fees to Mr. D.R. Bansal, Advocate, within a period of ten days from the date of receipt of certified copy of this order.

19. Disposed of accordingly.

20. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

November 07, 2024
G Arora

Whether speaking/non-speaking : Speaking
Whether reportable : Yes