



FAO-1810-2007

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

FAO-1810-2007 (O&M)

Date of Decision: December 03, 2024

Saraswati and anr.

.....Appellants

vs.

Ishwar Singh and ors.

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Tara Chand Dhanwal, Advocate
for the appellants.

Mr. D.K. Dogra, Advocate
for the respondent-Insurance Company.

SUDEEPTI SHARMA J.

1. This is an old matter pertaining to the year 2007 but no one has put in appearance on behalf of the Insurance Company.
2. Previously vide order dated 18.07.2024 in FAO No.1682 of 2007, this Court had already issued directions to the Insurance Companies that in the event, any of their empanelled counsel fails to appear, the Court would request the counsel empanelled with the Insurance Companies, who is present in the Court to assist in the matters. Further, the concerned Insurance Companies were directed to disburse the current scheduled fees to the counsel engaged by this Court for assisting in the matters.
3. On the asking of the Court, Mr. D.K. Dogra, Advocate accepts notice on behalf of the respondent-Insurance Company.



4. Learned counsel for the appellant has handed over copy of the paper-book alongwith relevant record to the learned counsel for respondent- Insurance Company.

FAO No. 1810-2007

1. The present appeal has been preferred against the award dated 03.01.2007 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Bhiwani (for short, 'the Tribunal') for enhancement of compensation granted to the claimants to the tune of Rs.2,40,000/- along with interest @ 9% per annum, on account of death of their son namely Niraj in a Motor Vehicular Accident, occurred on 06.06.2005.

2. As sole issue for determination in the present appeal is confined to quantum of compensation awarded by the learned Tribunal, a detailed narration of the facts of the case are not reproduced for the sake of brevity.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES

3. The learned counsel for the claimants-appellants contends that the amount assessed by the learned Tribunal is on the lower side and deserves to be enhanced. Therefore, he prays that the present appeal be allowed and compensation should be enhanced as per latest law.

4. Per contra, learned counsel for the respondent-Insurance Company, however, vehemently argues that the award has rightly been passed and the amount of compensation, as assessed by the learned Tribunal has rightly been granted. Therefore, he prays for dismissal of the appeal.

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



6. The facts of the case are undisputed. The deceased was 16 years of age at the time of accident and was stated to be a brilliant student. This Court is of the considered view that the learned Tribunal has gravely erred in law by applying the 2nd Schedule of Section 163-A of the Motor Vehicle Act, 1988 to assess the notional income of the deceased at Rs.15000/- per annum in the absence of any evidence of income of the deceased. Given that the claim was instituted under Section 166 of the Motor Vehicle Act, 1988, the Tribunal ought to have assessed the notional income in the light of the specific facts and circumstances of the case, particularly, keeping in mind that the deceased was 16 years old and a brilliant student.

7. In such cases, there is no fixed or uniform formula for determining the income of a student where no tangible proof of earning is available on record. Consequently, while calculating the notional income, the Tribunal should have taken into account that the deceased was a young student of 16 years.

8. The Hon'ble Supreme Court in ***V. Mekala Vs. M. Malathi and another (2014) 11 SCC 178*** has considered the notional income of a student studying in 11th standard, who was injured in a road accident that took place in the year 2005 as Rs. 10,000/- per month. In the said case, the Hon'ble Supreme Court while taking the notional income of the injured as Rs. 10,000/- per month had considered the fact that the injured was a brilliant student as she had secured first rank in the 10th standard and was likely to have a better future in terms of educational career by acquiring a basic or master's degree in professional courses which could have gotten her a suitable public or private employment but on account of the permanent disablement she suffered due to injuries sustained by her in the accident, that opportunity is lost to her.



9. A two Judge Bench of the Hon'ble Supreme Court in **Arvind Kumar Mishra v. New India Assurance Co. Ltd. (2010) 10 SCC 254**, speaking through Justice R.M. Lodha, has held as under:-

“14. On completion of Bachelor of Engineering (Mechanical) from the prestigious institute like BIT, it can be reasonably assumed that he would have got a good job. The appellant has stated in his evidence that in the campus interview he was selected by Tata as well as Reliance Industries and was offered pay package of Rs.3,50,000 per annum. Even if that is not accepted for want of any evidence in support thereof, there would not have been any difficulty for him in getting some decent job in the private sector. Had he decided to join government service and got selected, he would have been put in the pay scale for Assistant Engineer and would have at least earned Rs. 60,000 per annum. Wherever he joined, he had a fair chance of some promotion and remote chance of some high position. But uncertainties of life cannot be ignored taking relevant factors into consideration. In our opinion, it is fair and reasonable to assess his future earnings at Rs. 60,000 per annum taking the salary and allowances payable to an Assistant Engineer in public employment as the basis. Since he suffered 70% permanent disability, the future earnings may be discounted by 30% and, accordingly, we estimate upon the facts that the multiplicand should be Rs.42,000 per annum.”

10. A two Judge Bench of the Hon'ble Supreme Court in **Ashvinbhai Jayantilal Modi Vs. Ramkaran Ramchandra Sharma and another (2015) 2 SCC 180** speaking through Justice V. Gopala Gowda J., while assessing the



compensation in the case of a 19 years old medical student, who was pursuing his MBBS course but lost his life in a motor vehicular accident, has held as under:-

“11. The deceased was a diligent and outstanding student of medicine who could have pursued his MD after his graduation and reached greater heights. Today, medical practice is one of the most sought after and rewarding professions. With the tremendous increase in demand for medical professionals, their salaries are also on the rise. Therefore, we have no doubt in ascertaining the future income of the deceased at Rs 25,000 p.m. i.e. Rs 3,00,000 p.a. Further, deducting 1/3rd of the annual income towards personal expenses as per Oriental Insurance Co. Ltd. v. Deo Patodi [(2009) 13 SCC 123 : (2009) 5 SCC (Civ) 29 : (2010) 1 SCC (Cri) 963] and applying the appropriate multiplier of 13, keeping in mind the age of the parents of the deceased, as per the guidelines laid down in Sarla Verma case [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] , we arrive at a total loss of dependency at Rs 26,00,000 [(Rs 3,00,000 minus $1/3 \times$ Rs 3,00,000) $\times$ 13].”

11. A similar issue came up for consideration before this Court in a case of **Savitri Devi and others vs. Balwan Singh and others, decided on 19.09.2024**, wherein also the deceased was 16 years of age at the time of accident and this Court took the notional income @ Rs.10,000/- per month while awarding compensation.

In view of the judgments referred to above, since in the instant case, the deceased was 16 years old student at the time of death and the accident took place in the year 2005, this Court assess the notional income

of the deceased as Rs.10,000/- per month. Further the multiplier of 18 is to



be applied. The claimants are to be awarded future prospects @ 40%. The claimants are to be awarded the compensation under the conventional heads as well i.e loss of estate, loss of consortium etc. Therefore, the impugned award requires interference of this Court.

SETTLED LAW ON COMPENSATION

12. 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:-

“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.

32. Thus even if the deceased is survived by parents and siblings, only d 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.

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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.

13. 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:-

- (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 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.

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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 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.”



14. 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 **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. 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 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

15. 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 03.01.2007 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.10000/-
2	Future prospects @ 40%	Rs.4000/- (40% of 10000)
3	Deduction towards personal expenditure 1/2	Rs.7000/- (14000 X ½)
4.	Total Income	Rs.7000 (14000-7000)
4	Multiplier	18
5	Annual Dependency	Rs.15,12,000/- (7000X12X18)
6	Loss of Estate	Rs.18,000/-
7	Funeral Expenses	Rs.18,000/-
8	Loss of Consortium	Rs.96000/-
	Filial : Rs. 48,000/-x2	
	Total Compensation	Rs.16,44,000/-
	Deduction Amount Awarded by the Tribunal	Rs.2,40,000/-
	Enhanced amount	Rs.14,04,000/-



16. 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.

17. The Insurance Company-respondent No. 3 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 the claimants/appellants. The claimants/appellants are directed to furnish their bank account details to the Tribunal.

18. Further Insurance Company is directed to disburse the current scheduled fees to Mr. D.K. Dogra, Advocate, in view of the order dated 18.07.2024 passed in FAO No.1682 of 2007, within a period of ten days from the date of receipt of copy of this judgment.

19. Before parting with the judgment, this Court extends its appreciation to Mr. D.K. Dogra, Advocate, for his able assistance to the Court in the present matter.

19. Disposed off accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

December 3, 2024
Gaurav Arora

Whether speaking/non-speaking : Yes/No
Whether reportable : Yes