

**FAO-1017-2006 (O&M)****IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH****FAO-1017-2006 (O&M)****Date of Decision: November 19, 2024**

Kaushayala Devi and others

.....Appellant(s)

Vs.

Mehtar Singh and others

.....Respondent(s)

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMAPresent: Mr. Rishabh Gupta, Advocate
for the appellants.Ms. Hargun Sandhu, Advocate
for respondent Nos. 2 and 3.

SUDEEPTI SHARMA J.

1. The present appeal has been preferred against the award dated 14.01.2003 passed in the claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Bathinda (for short, 'the Tribunal') for enhancement of compensation granted to the claimants to the tune of Rs.2,30,500/- along with interest @ 9% per annum, on account of death of Ganga Ram in a Motor Vehicular Accident, occurred on 25.10.1997.

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 is not reproduced and is skipped herein for the sake of brevity.

SUBMISSIONS OF LEARNED COUNSELS FOR THE PARTIES

3. The learned counsel for the claimants-appellants contends that the compensation assessed by the learned Tribunal is on the lower side and deserves to be enhanced. He submits that the deceased was only 35 years old at the time of alleged accident and was the sole bread earner of the family. He was earning Rs.40000/- per annum by selling ice creams. Learned counsel for the appellants

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contends that the learned Tribunal has erred in law in taking the monthly income of the deceased as Rs.2000/-. Further the learned Tribunal has wrongly deducted Rs.50,000/- from the total compensation on the ground that the appellants have already received this amount under Section 140 of the Motor Vehicles Act, 1988. The amount awarded under the conventional heads 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 respondent Nos. 2 and 3, 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. A perusal of the record indicates that the Tribunal has rightly assessed the income of the deceased as Rs.2000/- per month. Moreover, no amount was awarded towards future prospect, loss of estate, loss of consortium and for funeral expenses. Therefore, the award requires indulgence of this Court.

7. Now coming to the argument of learned counsel for the appellants that the Tribunal has erred in law in deducting Rs.50,000/- from the total compensation on the ground that the appellants have already received this amount under Section 140 of the Motor Vehicles Act, 1988, the said argument is liable to be rejected, in view of Section 140 of the Motor Vehicles Act, 1988, which is reproduced as under:-

“140. Liability to pay compensation in certain cases on the principle of no fault.

“1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or

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motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of 1 [fifty thousand rupees] and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of 2 [twenty-five thousand rupees].

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement

[(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:



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Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163A.]

Therefore, in view of the above, the compensation of Rs.50,000/- is liable to be deducted while awarding enhanced compensation to the appellants under Section 163-A of the Motor Vehicles Act, 1988.

SETTLED LAW ON COMPENSATION

8. Reference at this stage can be made to a judgment of Hon'ble the Supreme Court in a case of “***Kishan Gopal Vs. Lala and others 2013 AIR SC (Civil) 2465***” wherein in a case of death of child aged 10 years, Hon'ble the Supreme Court took the notional income of the deceased at Rs.30,000/- and applied the multiplier of 15 and the compensation came to Rs.4.50 lacs, Rs,50,000/- was given towards loss of love and affection, funeral expenses, last rites etc. Hon'ble the Supreme Court while dealing with a case filed under Section 163-A of the Motor Vehicles Act laid criteria for awarding the compensation in a case filed under Section 163-A of the Motor Vehicle Act. Hon'ble the Supreme Court in para 18 of the judgment has held as under:-

“18. For this purpose, it would be necessary for us to refer to Second Schedule under Section 163-A of the M.V. Act, at clause No.6 which refers to notional income for compensation to those persons who had no income prior to accident. The relevant portion of clause No.6 states as under:

“6. Notional income for compensation to those who had no income prior to accident: (a) Non-earning persons – Rs.15,000/- p.a.” The aforesaid clause of the Second Schedule to Section 163-A of the M.V. Act, is considered by this Court in

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*the case of **Lata Wadhwa & Ors. v. State of Bihar & Ors. 2001***

*(4) **RCR (Civil) 673**, while examining the tortuous liability of the tort-feasor has examined the criteria for awarding compensation for death of children in accident between age group of 10 to 15 years and held in the above case that the compensation shall be awarded taking the contribution of the children to the family at Rs.12,000/- p.a. and multiplier 11 has been applied taking the age of the father and then under the conventional heads the compensation of Rs.25,000/- was awarded. Thus, a total sum of Rs.1,57,000/- was awarded in that case. After noting the submission made on behalf of TISCO in the said case that the compensation determined for the children of all age groups could be double as in its view the determination made was grossly inadequate and the observation was further made that loss of children is irrecusable and no amount of money could compensate the parents. Having regard to the environment from which the children referred to in that case were brought up, their parents being reasonably well-placed officials of TISCO, it was directed that the compensation amount for the children between the age group of 5 to 10 years should be three times. In other words, it should be Rs.1.5 lakhs to which under the conventional heads a sum of Rs.50,000/- should be added and thus total amount in each case would be Rs.2 lakhs. Further, in the case referred to supra it has observed that in so far as the children of age group between 10 to 15 years are concerned, they are all students of Class VI to Class X*

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*and are children of employees of TISCO and one of the children was employed in the Company in the said case having regard to the fact the contribution of the deceased child was taken Rs.12,000/- p.a. appears to be on the lower side and held that the contribution of such children should be Rs.24,000/- p.a. In our considered view, the aforesaid legal principle laid down in Lata Wadhwa's case with all fours is applicable to the facts and circumstances of the case in hand having regard to the fact that the deceased was 10 years' old, who was assisting the appellants in their agricultural occupation which is an undisputed fact. We have also considered the fact that the rupee value has come down drastically from the year 1994, when the notional income of the non-earning member prior to the date of accident was fixed at Rs.15,000/-. Further, the deceased boy, had he been alive would have certainly contributed substantially to the family of the appellants by working hard. In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs.30,000/- and further taking the young age of the parents, namely the mother who was about 36 years old, at the time of accident, by applying the legal principles laid down in the case of Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) Page 77, the multiplier of 15 can be applied to the multiplicand. Thus, $30,000 \times 15 = 4,50,000$ and 50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites as held in **Kerala SRTC v. Susamma Thomas 1994(2) SCC 176**, which is*

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*referred to in **Lata Wadhwa's case** and the said amount under the conventional heads is awarded even in relation to the death of children between 10 to 15 years old. In this case also we award Rs.50,000/- under conventional heads. In our view, for the aforesaid reasons the said amount would be fair, just and reasonable compensation to be awarded in favour of the appellants."*

9. Further Hon'ble Supreme Court in the case of **R.K. Malik vs. Kiran Pal, 2009 (14) SCC 1** has granted the future prospects in a claim petition filed under Section 163-A of the Motor Vehicles Act, 1988. The relevant portion of the judgment reads as under:-

"32. In view of discussion made hereinbefore, it is quite clear the claim with regard to future prospect should have been be addressed by the courts below. While considering such claims, child's performance in school, the reputation of the school etc. might be taken into consideration. In the present case, records shows that the children were good in studies and studying in a reasonably good school. Naturally, their future prospect would be presumed to be good and bright. Since they were children, there is no yardstick to measure the loss of future prospects of these children. But as already noted, they were performing well in studies, natural consequence supposed to be a bright future. In the case of Lata Wadhwa (supra) and M. S. Grewal (supra), the Supreme Court recognised such future prospect as basis and factor to be considered. Therefore, denying compensation towards future prospects seems to be unjustified. Keeping this in background, facts and circumstances of the present case, and following the decision in Lata Wadhwa (supra) and M. S. Grewal (supra), we deem it appropriate to grant compensation of Rs. 75,000/-

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(which is roughly half of the amount given on account of pecuniary damages) as compensation for the future prospects of the children, to be paid to each claimant within one month of the date of this decision. We would like to clarify that this amount i.e. Rs. 75,000/- is over and above what has been awarded by the High Court.

34. So far as the pecuniary damage is concerned we are of the considered view both the Tribunal as well as the High Court has awarded the compensation on the basis of Second Schedule and relevant multiplier under the Act. However, we may notice here that as far as non-pecuniary damages are concerned, the Tribunal does not award any compensation under the head of non-pecuniary damages. However, in appeal the High Court has elaborately discussed this aspect of the matter and has awarded non-pecuniary damages of Rs. 75,000. Needless to say, pecuniary damages seeks to compensate those losses which can be translated into money terms like loss of earnings, actual and prospective earning and other out of pocket expenses. In contrast, non-pecuniary damages include such immeasurable elements as pain and suffering and loss of amenity and enjoyment of life. In this context, it becomes duty of the court to award just compensation for non-pecuniary loss. As already noted it is difficult to quantify the non-pecuniary compensation, nevertheless, the endeavour of the Court must be to provide a just, fair and reasonable amount as compensation keeping in view all relevant facts and circumstances into consideration. We have noticed that the High Court in present case has enhanced the compensation in this category by Rs. 75, 000/- in all connected appeals. We do not find any infirmity in that regard.”

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10. 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.



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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.

* * * * *

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.

11. 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;

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- (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*

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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.*

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*


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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.”

12. 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

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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.

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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

13. 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 14.01.2003 is modified accordingly. The appellants-claimants are entitled to enhanced compensation as per the calculations made here-under:-



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<i>Sr. No.</i>	<i>Heads</i>	<i>Compensation Awarded</i>
1	Monthly Income	Rs.2000
2	Future prospects @40	Rs.800 (200X40%)
3	Deduction towards personal expenditure 1/4th	Rs.700 (2800X1/4th)
4.	Total Income	Rs.2100 (2800-700)
5	Multiplier	16
6	Annual Dependency	Rs.4,03,200 (2100X16X12)
7	Loss of Estate	Rs.18,000/-
8	Funeral Expenses	Rs.18,000/-
	Loss of Consortium Spousal: Rs. 48,000/-x1 Parental: Rs. 48,000/-x4	Rs.2,40,000/-
	Total Compensation awarded	Rs.6,79,200/-
	Deductions:- 1.Amount Awarded by the Tribunal 2.Amount awarded under Section 140 of the Motor Vehicles Act	Rs.2,30,500/- Rs.50,000/-
	Enhanced amount of compensation	Rs.3,98,700/- (679200-230500-50000)

14. 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.

15. 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 appellants, as per ratio settled

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in the award dated 14.01.2003. The claimants/appellants are directed to furnish their their bank account details to the Tribunal.

16. Disposed of accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

November 19, 2024

Gaurav Arora

Whether speaking/non-speaking : Yes

Whether reportable : Yes