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

**206** **FAO-1363-2006 (O&M)**
**Date of Decision: November 06, 2024**

**Parkash Kaur and others** **......Appellant(s)**

**Vs.**

**Punjab State through Secretary and others** **.....Respondent(s)**

**CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Balram Singh, Advocate
for the appellants.

Mr. S.S. Hira, DAG, Punjab

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**SUDEEPTI SHARMA J. (ORAL)**

1. The present appeal has been preferred against the award dated 28.10.2005 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') by the learned Motor Accident Claims Tribunal, Jalandhar (for short, 'the Tribunal') vide which the claim petition filed by the appellants/claimants, who are the family members of the deceased, was dismissed.

**FACTS NOT IN DISPUTE**

2. The brief facts of the case as mentioned in the claim petition are that on 6.8.2004 at about 4:05 p.m., Sarwan Singh (since deceased) alongwith his daughter-in-law namely Ranjit Kaur (the present appellant) was going to Kathar from Adampur on Scooter bearing registration No.PJX-9416 being driven by Sarwan Singh. Ranjit Kaur was the pillion rider thereon. When they

reached near Airport Crossing Gate Adampur, a bus bearing registration No.PB-12-C-9762 (hereinafter referred to as 'offending vehicle') being driven by respondent No.2 in a rash and negligent manner at a very high speed struck the right side of the bus against the scooter straightway by going wrong side of the road. As a result of the accident, both the riders of the scooter fell down and received multiple injuries upon their persons. They were taken to Sant Sarwan Dass Charitable Hospital, Adda Kathar for medical treatment. Sarwan Singh died on reaching the hospital owing to injuries sustained by him in accident. Ranjit Kaur (Pillion rider) daughter-in-law of the deceased also got multiple injuries. The Post Mortem of the deceased Sarwan Singh was conducted at Civil Hospital, Jalandhar on 7.8.2004. FIR No.121 dated 6.8.2004 against the respondent No.2 was registered on the statement of Ranjit Kaur.

3. Notice of the claim petition was sent to the respondents. Respondents have appeared. Respondents No.1 & 3 (owners of the offending vehicle) filed their written statement and submitted that the averments made in the petition are false and denied the factum of accident.

4. Respondent No.2 (driver of the offending vehicle) filed written statement, wherein it was pleaded that no such incident involving offending vehicle, has ever taken place.

5. From the pleadings of the parties, the Tribunal framed the following issues:-

> *1. Whether the applicant received injuries in the motor vehicle accident involving Bus No.PB-12-C-9762 being driven by respondent No.2, due to rash and negligent driving of the said vehicle? OPP*
>
> *2. Whether the applicant is entitled to compensation, if so to what extent and from which of the respondents? OPP*

*3. Relief.*

6. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim-petition. Hence the claimants/appellants filed the present appeal for grant of compensation.

**SUBMISSIONS OF THE LEARNED COUNSELS FOR THE PARTIES**

7. Learned counsel for the appellants contends that the claim petition was dismissed only on the ground that there is discrepancy in the statement of the PW-2-Ranjit Kaur. He further contends that FIR was lodged against respondent No.2 but still the claim petition was dismissed. Therefore, he prays that present appeal be allowed and compensation be granted to the appellants/claimants.

8. Per contra, learned counsel for the respondent has vehemently argued that claim petition has rightly been dismissed since story in the claim petition is concocted and statement of the eye witness is contradictory. Therefore, he prays for dismissal of the appeal.

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

10. The relevant portion of the award is reproduced as under:-

> *"10. In order to prove this issue, PW-1 Ranjit Kaur in her affidavit Ext.PW- 1/A sworn to the effect that on 6.8.2005 at about 1.05 PM, she was pillion rider of the scooter No.PIX-9416 which was being driven by her father-in-law namely Sarwan Singh in a very normal and controlled speed on the left side of the road and when they reached near Airport Crossing Adampur, a bus bearing No.PB-12- C-9762 being driven by respondent No.2 in a rash and negligent manner at a very high speed came and dashed into the scooter. Resultantly, they both fell down on the road and received*

*grievous injuries on their bodies. She has further sworn to the effect that on her statement, case was registered at P.S. Adampur and FIR No.121 dated 6.8.2004 was registered against the respondent No.2. The accident took place due to rash and negligent driving by respondent No.2.*

*11. On the other hand, the respondent No.2 Malkiat Rai in his affidavit Ext.RW-1/A sworn to the effect that he left Jalandhar Bus Stand at 3.20 PM on 6.8.2004 and was to reach Hoshiarpur Bus Stand at 4.30 PM by covering about 45 KMs distance and when he reached the alleged place of accident at about 4 PM, in between Adampur and Adda Kathar, he found a scooter lying on road side and an old man was injured in some accident and a woman was standing by his side. He further sworn to the effect that on humanitarian grounds he took them to Sant Sarwan Dass Charitable Hospital, Adda Kathar and in the meantime, policeman from P.S Adampur reached the said hospital and took the said bus in custody. His vehicle met with no accident on 6.8.2004 and the question of rash and negligent driving on his part does not arise. He was no way at fault.*

*12. The applicant in her pleadings has alleged that the she alongwith her father in-law Sarwan Singh were going to Kathar from Adampur and she was pillion rider of her father-in-law on Scooter No.PJX-9416. However, in the FIR Mark-A, which was lodged by Ranjil Kaur herself it is mentioned that they were going to Adampur from Kathar. But in her affidavit tendered in court as Ext.PW- 1/A, applicant Ranjit Kaur (PW-1) is silent about this fact. Similarly, in her pleadings, the applicant has alleged that the offending bus being driven by respondent No.2 in a rash and negligent manner struck right side of the bus against the scooter straightway by going wrong side of the road while in her affidavit Ext.PW-1/A she has sworn to the effect that the bus being driven by respondent No.2 dashed into the scooter. In the FIR, Mark-A it* *has been mentioned that right side of the bus struck against the scooter. From the perusal of the pleadings of the applicant, FIR Mark-A and the statement of applicant Ranjit Kaur (PW-1) in the shape of affidavit Ext.PW-1/A, it is found that the same are contradictory to each other So, what has been alleged in the pleadings that has not been proved on record and what has been proved on record that has not been alleged in the pleadings. Ranjit Kaur (PW-1) who is claiming herself as an eye witness and also alleging that she received injuries alongwith deceased Sarwan Singh is not sure as to whether she was going from Kathar to Adampur or from Adampur to Kathar. She is silent in that respect for the reasons best known to her. Non-disclosure of the route goes a long way to show that she has concealed something from the court and it is well settled law that if anything is concealed from the court and when a person does not come to the court with clean hands, he/she is not entitled to get any relief from the court. Why Ranjit Kaur (PW-1) did not state the route in her affidavit Ext.PW-1/A? No explanation is forth coming on the file. So, in view of the contradictory stand taken by the applicant it has to be held that she has failed to establish that she received injuries in the motor vehicle accident due to rash and negligent driving of bus bearing registration No.PR-12-C-9762 being driven by respondent No.2. Since the applicant has failed to establish her version, so there is no need to go into the details of the version put forth by the respondent No.2 Malkiat Rai. Accordingly, issue No.1 is decided against the applicant and in favour of the respondents."*

11. A perusal of the record shows that respondents No.1 and 3 did not produce any evidence to prove their case.

12. A perusal of the above shows that the Ld. Tribunal has totally ignored the oral as well as documentary evidence on record and dismissed the claim petition.

13. Parkash Kaur, claimant was examined as PW-1 who tendered her affidavit as Ex.P-1/A. There is no major discrepancy in the cross-examination of PW-1-Parkash Kaur (claimant). The FIR is marked as 'A' which was lodged by Ranjit Kaur (PW-2) who was injured as well as eye witness. There is no major discrepancy in the statement by way of affidavit and FIR Mark 'A' lodged by Ranjit Kaur (PW-2).

14. The reasoning given by the Ld. Tribunal that Parkash Kaur PW-1 did not state route in her affidavit Ex.PW-1/A, is not acceptable to this Court and only on this ground, the claim petition was dismissed. Once the factum of accident is stated by the injured eye witness herself which is proved by lodging of FIR Mark-A, it is not required that word to word narration of accident should be there in each and every document stated by the injured eye witness.

15. Ld. Tribunal totally ignored the statement of Dr.Prem Parkash-PW-3, Medical Officer, Ranjit Hospital, Bhogpur wherein he stated that on 16.12.2004 Smt. Ranjit Kaur wife of Amarjit Singh was admitted in their hospital for injuries on right shoulder and left wrist joint and she remained admitted upto 24.12.2004. Treatment was done for fracture. He brought the record also. In his cross-examination, his testimony could not be impeached.

16. Malikat Singh-respondent No.2 (driver) was examined as RW-1, in his cross-examination he admitted that FIR No.121 dated 06.08.2004 was registered against him. He further admitted that in that case, he and the bus were enlarged on bail and superdari respectively. He further admitted that the case against him was pending in the Court of Shri Tejinderbir Singh, JMIC, Jalandhar. Further, he did not move any application either to SSP, Jalandhar or

to Illaqa Magistrate or any other authority regrading his false implication in the FIR.

17. In view of the above, the award dated 28.10.2005 is totally against the evidence on record and has been passed without application of judicial mind. Therefore, the same is liable to set aside.

18 With respect to determination of compensation, the record contains evidence of hospital admission, the claimant's earning and his age etc. Consequently, this Court shall adjudicate the compensation in accordance with the documentary evidence on the record.

19. A perusal of the record shows that the deceased was doing business of Lohara Implements at Adda Kathar and earning Rs.12,000/- per month but no evidence was on record to prove his income. Therefore, under the prevailing facts of the present case, his income is to be assessed as Rs. 2900/- per month in accordance with the minimum wages prescribed for skilled worker in the State of Punjab.

20. A perusal of the record shows that the multiplier of 7 should be applied. A perusal of the record further shows that the deceased was 65 years of age according to the post mortem report Ex.P-2. Since the age of the deceased is more than 60 years, he is not being entitled grant of future prospects, therefore, no deduction on account of personal expenditure should be made.

**SETTLED LAW ON COMPENSATION**

21. 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.*

*　　*　　*　　*　　*　　*

***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 Thomas[3], 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.*

22. 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 Rajesh[2]. 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.*

*  *  *  *  *

***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 Verma[4] which we have reproduced hereinbefore.*

***59.6.** The selection of multiplier shall be as indicated in the Table in Sarla Verma[1] 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."*

23. 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 Sethi[2] 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 Sethi[2]. 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.*

**RELIEF**

24. 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 28.10.2005 is hereby set aside. The appellants-claimants are entitled to compensation as per the calculations made here-under:-

| Sr. No. | Heads | Compensation Awarded |
|---|---|---|
| 1 | Monthly Income | Rs.2900/- |
| 2. | Annual Income | Rs.34,800 (2900X12) |

| | | |
|---|---|---|
| 3 | Multiplier 7 | Rs2,43,600/-<br>(34,800 X 7) |
| 4 | Loss of Estate | Rs.18,000/- |
| 5 | Funeral Expenses | Rs.18,000/- |
| 6 | Loss of Consortium<br>Parental : Rs.48,000/- X 2<br>Spousal : Rs. 48,000/- X 1<br>Filial : Rs. 48,000/- X | Rs.1,44,000/- |
| | **Total Compensation** | **Rs.4,.23,600/-** |

25. 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 Nadu State Transport Corporation*** **(2022) 5 Supreme Court Cases 107,** the appellants-claimants are granted the interest @ 9% per annum on the compensation amount from the date of filing of claim petition till the date of its realization.

26. Respondent No.3 directed to deposit the awarded amount of compensation alongwith interest with the Tribunal within a period of two months from today. The Tribunal is further directed to disburse the amount of compensation alongwith interest in the accounts of the claimants/appellants. The claimants/appellants are directed to furnish their bank account details to the Tribunal.

27. Disposed off accordingly.

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

**(SUDEEPTI SHARMA)**
**JUDGE**

**November 06, 2024**
sonia arora Whether speaking/non-speaking : Speaking
Whether reportable : Yes