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

FAO-1457-2006 (O&M)
Date of Decision: November 08, 2024

Anupama and others ......Appellant(s)

Vs.

Anil Kumar and others ......Respondent(s)

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Ms. Ekta Thakur, Advocate
for the appellants.

Mr. Ravinder Arora, Advocate and
Mr. Neeraj Khanna, Advocate
for respondent-Ins. Company

SUDEEPTI SHARMA J.

1. The present appeal has been preferred against the award dated 25.03.2005 passed by the learned Motor Accident Claims Tribunal, Chandigarh (for short, 'the Tribunal') vide which the claim petition filed by the claimants-appellants under Section 166 of the Motor Vehicles Act, 1988 on account of death of Sanjeev Kumar in a road accident, was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 22.01.2005, Sanjeev Kumar (since deceased) was pillion rider on scooter bearing registration No. DL-35-G-8470, being driven by respondent No. 1-Anil Kumar rashly and negligently. When they reached near Silver City on Chandigarh-Ambala road, a stray cow appeared in front of the above said scooter, whereupon respondent No. 1 applied brakes in order to save the above said cow but he could not control the scooter. As a result of which, they fell down along with said scooter and Sanjeev Kumar

received serious injuries. He was taken to Sector 16, General Hospital, Chandigarh, from where, he was referred to PGI, Chandigarh. Sanjeev Kumar succumbed to his injuries in PGI, Chandigarh on 24.01.2005.

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

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

1. Whether respondent No. 1 by driving scooter bearing No. DL-35-G-8470 rashly and negligently caused the accident on 22.01.2005 resulting into the death of Sanjeev Kumar ? OPP

2. If issue No. 1 is proved, to what amount of compensation claimants are entitled, if so from whom? OPP

3. Whether respondent No. 1 was not holding valid and effective driving licence at the time of the accident, if so, its effect? OPR

4. Relief.

5. 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 COUNSELS FOR THE PART IES

6. The learned counsel for the appellants-claimants contends that the claim petition was dismissed on the sole ground that Anupama (appellant No. 1) i.e wife of Sanjeev Kumar (since deceased) was not present at the time of the accident, as the same has not been pleaded in the claim petition. Further it has been held by the learned Tribunal that Anupama (appellant No. 1) could not be expected to be a pillion rider of the scooter of other person than her husband or real brother. Learned counsel for the appellants has further submitted that the

accident is not being even denied by respondent-Insurance Company due to rash and negligent driving of respondent No. 1. There was no suggestion to Anupama by any of the respondents suggesting that this witness was not present at the time of the accident.

7. *Per contra*, learned counsel for the respondent-Insurance Company, however, vehemently argues that the claim petition had rightly been dismissed by the learned Tribunal. He prays for dismissal of the appeal.

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

9. The relevant portion of the award dated 25.03.2005 is reproduced as under:-

> *"In this case, evidence of respondent, no.2 was closed by the learned counsel for respondent no.2. on 22.11.2005. Thereafter on the application moved by respondent no. 1 for permission to lead additional evidence, permission was granted to respondent no.1 Anil Kumar to lead his evidence and thereafter affidavit Ex.RW2/A which was affirmed by him on 28.11.2005 was tendered by him in his evidence. During his cross examination by the learned counsel for the petitioners, it was stated by him that at at the time of accident, he was driving his scooter at the speed of 80-90 kms. per hour. It was also stated by him that petitioner no.1 Anupama was also following her on another scooter at the time of accident though in the claim petition which was filed by the petitioners on 15.2.2005 not even a single word was pleaded regarding the presence of Anupama at the place of accident. In this case, petitioner Anupama has examined herself as PW1 on 7.9.2005. At time, she had tendered*

in evidence her affidavit Ex. PA. In this affidavit, it was no where affirmed by her that she, on another scooter, was following the scooter which was being driven by Anil Kumar and on the pillion of which her husband Sanjeev Kumar was riding. PW3 Ajay Kumar was also produced by the petitioners on 1.12.2005. In his affidavit, Ex. PB, it was affirmed by him that on 22.1.2005 at about 10.30 p.m. when he was on his way from Zirakpur to Lalru and was near Silver City, two scooters with pillion riders were seen by him. On one scooter Anupama petitioner was riding as pillion rider whereas on the pillion of another scooter, her husband Sanjeev Kumar was riding, which was being driven by Anil Kumar. In his affidavit Ex. PB, he has also affirmed that Anil Kumar who was driving his scooter at a high speed had lost control of his scooter when a stray cow, came running on the road. In the claim petition which was filed by the petitioners on 15.2.2005 not even a single word was pleaded to the effect that at the time of accident, PW3 Ajay Kumar was also riding on his scooter and the accident in question was also seen by him. Regarding the accident in question which had taken place on 22.1.2005, DDR no.16 dated 22.1.2005 Ex. P1 was registered at Police Post Lohgarh District Patiala. This DDR was got recorded by respondent No.1-Anil Kumar. In this document, it was stated by him in so many words that his sister Anupama was married with Sanjeev Kumar since deceased and that on 22.1.2005 around 9.00 p.m. after the office hours of Sanjeev Kumar, he and Sanjeev Kumar had left the office of Sanjeev Kumar. Around 10.30 p.m. they were near the Silver City. At that time, a stray cow all of a *sudden had appeared before the scooter. He had applied full brakes in order to save the said cow as a result of which he and Sanjeev Kumar had fallen down alongwith the scooter on the road. In this document, it was also stated by him that this occurrence had taken place in natural course after a stray cow had appeared in front of the scooter. No one was responsible for this occurrence and that he did not want any police action in this matter. DDR (Ex. P1) was produced on the file by petitioner no.1- Anupama. In this document, it was no where mentioned by respondent no.1 Anil Kumar that at the time of accident, Anupama was following them on another scooter. During his statement as RW1 Anil Kumar and in his affidavit Ex. RW2/A, it was not stated by him that above said DDR EX.P1 was not got recorded by him or the facts in the said DDR were not correctly mentioned. In the above said DDR, it was nowhere stated that at the time of accident, Anil Kumar was driving the scooter rashly and negligently. It was also not stated in the DDR Ex. P1 that at the time of accident, Anupama going on a separate scooter. Even if for the sake of argument, it was taken that Anupama was going on a separate scooter. At that time, it has not come on the file as to on whose scooter she was sitting as a pillion rider. She could be a pillion rider either on the scooter driven by her husband or brother Anil Kumar. She could not be expected to be a pillion rider of the scooter of a person other than her husband or real brother. It has already come on the file that Sanjeev Kumar since deceased had passed a Diploma and was working with a construction company. In light of the above facts, the presence of* *petitioner no.1 Anupama and Ajay Kumar PW3 appears to be highly doubtful. It could not be said that petitioner no.1 Anupama and Ajay Kumar PW3 who have been examined as eye witnesses of the accident, were present at the time of accident. In view of the facts mentioned in DDR dated 22.1.2005 Ex. PI which was lodged by none-else but real brother of petitioner no. 1-Anupama and brother-in-law (sala) of Sanjeev Kumar since deceased, it could not be said that the accident in question had taken place because of the rash and negligent driving of scooter no. DL-35-G-8470 by respondent no.1 Anil Kumar."*

10. A perusal of the award dated 25.03.2005 shows that Ld. Tribunal has wrongly dismissed the claim petition on the sole ground that Anupama (appellant No. 1) was not present at the time of the accident. Her version was not accepted on the ground that it could not be expected that Anupama to be a pillion rider of the scooter of other person than her husband or real brother. However, it has been duly proved on record that the accident took place due to rash and negligent driving of respondent No. 1.

11. With respect to determination of compensation, the record contains evidence of salary certificate of the deceased, as per which the deceased was getting salary of Rs.10,000/- per month. Consequently, this Court shall adjudicate the compensation in accordance with the documented evidence on record.

12. After deducting the tax payable which is Rs.19,600/-, the net annual income of the deceased comes out to be Rs.1,00,400/- per annum.

13. In view of the above, this Court is not satisfied by the reasoning given by the Ld. Tribunal in dismissing the present claim petition filed by the appellants-claimants.

14. On the touchstone of hearinabove discussed findings and judicial precedent, the judgment dated 25.03.2005 passed by Ld. Tribunal, Patiala stands vitiated by a complete absence of application of judicial mind.

SETTLED LAW ON COMPENSATION

15. 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.*

16. 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."*

17. 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.*

CONCLUSION

18. 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 25.03.2005 is modified accordingly. The appellants-claimants are entitled to compensation as per the calculations made here-under:-

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.8366/-
2.	Future Prospects @40%	3346 (Rs.8366X40%)
2	Deduction towards personal expenditure	Rs.2928/- [1/4th of (11712)]
4.	Total Income	Rs.8784/-(11712-2928)
4	Multiplier	16
5	Annual Dependency	Rs.16,86,528/-(8784 x 12 x 16)
6	Loss of Estate	Rs.18,000/-
7	Funeral Expenses	Rs.18,000/-
8	Loss of Consortium Parental : Rs. 48,000/- x 2 Spousal : Rs. 48,000/-x 1 Filial : Rs. 48,000/-x 2	Rs.2,40,000/-
	Total Compensation	**Rs.19,62,528/-**

19. 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 amount from the date of filing of claim petition till the date of its realization.

20. The Insurance Company-respondent is directed to deposit the awarded 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 awarded amount of compensation along with interest in the accounts of the claimants/appellants, in the ratio of 60% to appellant No. 1 and 10% each to appellant Nos. 2 to 5. The claimants/appellants are directed to furnish their bank accounts details to the Tribunal.

21. Disposed off accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

November 08, 2024
G Arora

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