



FAO-2324 of 2007 (O&M)

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO-2324 of 2007 (O&M)

Date of Decision: November 05, 2024

Mrs. Vijay Kaushik and ors.

.....Appellants

Vs.

Kailash Kundalik Mahajn & ors

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Ashwani Arora & Mr. Vipul Sharma, Advocates
for the appellants

Mr. Lalit Garg, Advocate, for respondent No. 3 and 4.

Mr. R.C. Gupta, Advocate, for respondent No. 6

SUDEEPTI SHARMA J.

1. The present appeal has been preferred against the award dated 28.02.2007 passed in the claim petitions filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Chandigarh (for short, 'the Tribunal') for enhancement of compensation granted to the claimants/appellants, who are family members of the deceased-Dr. Rakesh Kaushik.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on the intervening night of 27/28.12.2001, Dr. Rakesh Kaushik (since deceased) was going from Pune to Aurangabad in a jeep bearing registration No. MH-20-U-5549 being driven by Sheikh Gayas. After they reached near Sodala Tehsil Niwasa District Ahmednagar, in the meantime, a truck bearing registration No. MH-18-A-7069 came from the opposite side in a rash and negligent manner, driven by respondent No. 1 and struck into the jeep in which Dr. Rakesh Kaushik (since deceased) was travelling.

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As a result of this accident, the driver of the jeep Sheikh Gayas and other occupant Parshant Narinder Tiwari died at the spot and Dr. Rakesh Kaushik received serious and multiple injuries on his person. He was rushed to a hospital to begin with and remained admitted in various hospitals for his treatment and ultimately he expired on 13.01.2003 in PGI, Chandigarh due to the injuries suffered by him in the said accident.

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

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

“1. Whether Dr. Rakesh Kaushik died on the intervening night of 27/28.12.2001 at about 1 A.M. in the area of Sodala Tehsil Niwasa District Ahmednagar on account of rash and negligent driving of Truck No. MH-18-A-7069 by respondent No. 1? OPP

2. Whether the claimants are entitled to compensation being Lrs of Rakesh Kaushik? If so how much and from whom? OPP

3. Whether the driver of the offending vehicle was not holding a valid and effective driving licence at the time of accident? OPR

4. Relief.”

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the claimants to the tune of Rs.34.51 lakhs by both sets of respondent Nos. 1 to 4 and respondent Nos. 5 and 6 in the ratio of 50:50 jointly as well as severally. Further Insurance Company-

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respondent Nos. 3 and 4 was granted liberty to proceed against the insured i.e owner of offending truck bearing registration No. MH-18-A-7069.

SUBMISSIONS OF LEARNED COUNSELS FOR THE PARTIES

6. Learned counsel for the appellants/claimants contends that the income of the deceased assessed by the Tribunal is on the lower side, as all the documents relating to his income which were placed on record before the Tribunal, showed his income as Rs.49795/-. Further no future prospects were granted to the claimants. The appellants were entitled to future prospects of 30%. He further contends that nothing has been granted towards pain and suffering, suffered by the deceased, while he was on bed.

7. Learned counsel for the appellant has further relied upon a judgment of Hon'ble the Supreme Court in a case of ***New India Assurance Co. Ltd vs. Ashish Ravinder Kulkarni and others, 2023 ACJ 1997*** to contend that since the deceased was a regular employee, 30% addition should be made towards future prospects instead of 25%.

8. Per contra, learned counsel for the respondent-Insurance Company has vehemently argued that the learned Tribunal has erred in law in taking the income of the deceased at Rs.25000/- per month, as the claimants could not prove the alleged income from the World Bank. He has relied upon Form No. 16 produced by the claimants and contends that as per Form No. 16, the learned Tribunal ought to have taken the income of the deceased as Rs.12000/- per month. Further No Income Tax return of the deceased was produced by the claimants to prove the factum of other source of income of the deceased. The claimants have not even produced any witness with respect to salary certificate of the deceased. The learned Tribunal has wrongly assessed the income of the deceased by taking into consideration all the earnings of the deceased from other institutions.



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8. Further, learned counsel for the Insurance Company has vehemently argued that the learned Tribunal has erred in law while applying the multiplier of 15, as the date of birth of the deceased was 16/04/1954 and thus, the multiplier of 14 should have been applied instead of 15.

9. Learned counsel for the Insurance Company has further submitted that there is a typographical error in the award, as the recovery rights should be given to respondent Nos. 3 and 4-United India Insurance Co against respondent No. 2 (Owner of offending truck MH-18-A-7069)

10. Learned counsel for the Insurance Company has vehemently argued that the learned Tribunal has erred in law in awarding the amount of Rs.2000/- and Rs.5000/- for funeral expenses as well as for loss of consortium, twice.

11. Learned counsel for the Insurance Company has further argued that the claimants are not entitled for pain and suffering, in view of judgment of Hon'ble the Supreme Court of India in a case of ***The Oriental Insurance Co. Ltd vs. Kahlon @ Jasmail Singh Kahlon (deceased) through his LR Narinder Kahlon Gosakan and another, 2021 (4) RCR (Civil), 1***

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

12. A bare perusal of the record shows that Dr. Rakesh Kaushik (since deceased) was veterinary doctor and was highly qualified and competent scientist. He was working with World Bank and was also employed with Grass Roots Action for Social Participation Grasp Aurangabad. He was drawing total salary of Rs.49670/- per month (i.e Rs.20,500/- from World Bank and Rs.29,170/- from Grasp). Further as per Mark C, the salary from World Bank was tax free. Further, as per Annexure P-8, Dr. Rakesh Kaushik (since deceased) received a sum of Rs.2,47,500/- as consultant fee from the International Bank for Reconstruction and

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amount was also tax free. As per Annexure P-9, Dr. Rakesh Kaushik (since deceased) received a sum of Rs.6,65,500/- as consultant fee for the period mentioned below:-

October 6, 1999 to June 30, 2000- 82 days @ INR 4000/- day

August 14, 2000 to May 31, 2001- 25 days @ INR 4500/- day

July 11, 2001 to December 31, 2001- 50 days @ INR 4500/- day

In view of the above, the argument raised by learned counsel for the Insurance Company that the income of the deceased @ Rs.25,000/- per month taken by the learned Tribunal is on the higher side, is liable to be dismissed. Therefore, the learned Tribunal has rightly assessed the income of the deceased as Rs.25,000/-. However, the multiplier of 15 has wrongly been taken by the Tribunal and the same needs to be corrected, as per settled law. The Tribunal has further erred in law in awarding the amount of Rs.2000/- and Rs.5000/- for funeral expenses as well as for loss of consortium, twice.

With respect to argument of learned counsel for the Insurance Company that the recovery rights be given to respondent Nos. 3 and 4-United India Insurance Co against respondent No. 2 (Owner of offending truck MH-18-A-7069), the same is liable to be accepted, as it was a typographical error in the order.

Further the learned Tribunal has failed to include future prospects in its calculation. Moreover, less amount was awarded for loss of consortium and for funeral expenses. However, no amount was awarded towards loss of estate.

So far as the contention of learned counsel for the appellant that the claimants are entitled for pain and suffering is concerned, reference at this stage can be made to judgment of Hon'ble the Apex Court in a case of ***Divisional Manager, Oriental Insurance Co. Ltd vs. Maran Chandra Das and others, 2023***

ACJ 864 wherein it has been held as under:-

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Having heard learned counsel for the petitioner at a considerable length, we do not find any ground to interfere with the impugned judgment dated 7.1.2021 passed by the High Court of Tripura.

2. The question of law sought to be raised on behalf of the petitioner does not arise for consideration for the reason that the deceased son of the respondent(s) met with an accident on 20.10.2015 and he remained hospitalised at Kolkata where multiple surgeries were performed on him. However, he could not survive and succumbed to injuries on 13.9.2016.

3. In the peculiar facts and circumstances of this case, where the parents witnessed the pain, agony and suffering of their son for almost one year, the compensation awarded by the High Court, under the head of pain and suffering, cannot be said to be without any basis. The parents themselves also suffered unbearable pain every moment during this entire period”

In view of the above referred to judgment (supra), the claimants are held entitled under for grant of compensation under the head of pain and suffering.

Further Hon’ble the Supreme Court in ***Ashish Ravinder Kulkarni’s case (supra)***, has held that in case of a person who is in regular service, a percentage higher than the one stated in **National Insurance Company Ltd. Vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]**, can also be awarded. The relevant extract of the same is reproduced as under:-

“7. It is also his case that the future prospects as reckoned at 30% is not justified and the same should have been at 25% since the job of the deceased cannot be onsidered as permanent

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employment. Lastly, it is contended the interest as fixed by the High Court at 7.5% per annum is excessive and is without appropriate reason being assigned.

8. The learned counsel for the respondents/claimants would however seek to sustain the judgment passed by the High Court. On all the aspects which have been urged by the learned counsel for the appellant, it is contended that the MACT as well as the High Court have looked into the evidence which was available before it and has thereafter arrived at its conclusion, which does not call for interference.

9. In the light of the contentions put forth, insofar as the salary, we take note that by way of clarification, we had required the learned counsel for the respondents/claimants to point out that the amount paid was after deduction of the tax or proof for payment of tax, since the learned counsel for the appellant had contended that the same has not been done. Along with an application, in addition to the documents that were relied on before the MACT, the notice of assessment of the Inland Revenue Authority of Singapore is produced. From the same, it would indicate that from the salary paid to the deceased, tax has been assessed in Singapore. Hence, there is no scope for double taxation on the same income. Therefore, deducting any amount towards tax once over again would not arise. Hence, his salary as reckoned by the High Court is justified and the same does not call for interference.

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10. On the aspect relating to the future prospects, having noted the salary that was being drawn by the deceased, we have also taken into consideration that the deceased was employed in TATA Precision Industries. Another employee who was working as the Assistant Manager in Human Resources had been examined as PW-2 before the MACT to prove the same. In that regard, taking note of the evidence tendered by PW-2 to indicate the nature of employment of the deceased as also his prospects, we are of the opinion that the future prospects as reckoned in the instant case is also justified. This is for the reason that though the learned counsel for the appellant seeks to point to the portion of the cross- examination of the said witness to indicate that he had earlier been terminated from TATA Holset Private Limited and had thereafter been appointed in TATA Precision Industries, it would not lead to a conclusion that the job was not of permanent nature. In fact, even if the employment letter indicated that the job could be terminated with 30 days notice as insisted by the learned counsel, that cannot be the basis in as much as the said provision for termination notice would be available to both the parties, namely the employer and the employee and that by itself cannot indicate that the employment was of a temporary nature. Right of the employer to terminate does not suggest it is temporary employment. Such right if exercised has to be in terms of law. Further, from the cross-examination, the suggestion put to PW-2, would only indicate that the deceased who was earlier employed in TATA Holset Private Limited was thereafter

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taken in another sister concern of the same group providing him better prospects. Therefore even if that aspect of the matter is kept in view, the future prospects as reckoned by the High Court is justified.”

Consequently, in view of the law laid down by Hon’ble the Supreme Court in **Ashish Ravinder Kulkarni’s case (supra)**, 30% addition is made under the head of future prospects. Therefore, the award requires indulgence by this Court.

SETTLED LAW ON COMPENSATION

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 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 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

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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;
- (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*

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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*

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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

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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 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



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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 28.02.2007 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.25000/-
2	Future prospects @ 30%	Rs.7500/- (30% of 25000)
3	Deduction towards personal expenditure 1/3	Rs.10833/- (32500 X 1/3)
4.	Total Income	Rs.21,667/- (32500-10833)
5	Multiplier	14
6	Annual Dependency	Rs.36,40,056/- (21667X12X14)
7.	Medical expenses	Rs.7,22,599/- (as awarded by the Tribunal)
8.	Pain and sufferings	Rs.7,00,000/-
9	Air Tickets	Rs.20,899/- (as awarded by the Tribunal)
10	Loss of Estate	Rs.18,000/-
7	Funeral Expenses	Rs.18,000/-



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8	Loss of Consortium Parental : Rs. 48,000/-x2 Spousal : Rs.48000X1	Rs.1,44,000/-
	Total Compensation	Rs.52,63,554/-
	Amount Awarded by the Tribunal	Rs.34,51,000/-
	Enhanced amount	Rs.18,12,554/-

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. 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, as per ratio settled in the award dated 28.02.2007. The claimants/appellants are directed to furnish the bank account details to the Tribunal.

16. However, respondent No.3-Insurance Company is entitled to recover the enhanced amount of compensation from owner of offending truck bearing registration No. MH-18-A-7069.

17. Disposed of accordingly.

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

November 05, 2024

G Arora

Gaurav Arora
2024.11.25 12:40
I attest to the accuracy and
integrity of this document

(SUDEEPTI SHARMA)

JUDGE

Whether speaking/non-speaking : Speaking



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Whether reportable : Yes