



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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FAO-2730-2007 (O&M)

Date of Decision: 30.08.2024

Kamla and others

..... Appellants

vs.

Sunder alias Surender and others

..... Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

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

Mr. Neeraj Khanna, Advocate
for the Insurance Company.

SUDEEPTI SHARMA, J.

1. The present appeal has been filed against the award dated 09.10.2006 passed by the Motor Accident Claims Tribunal, Bhiwani, whereby the claim petition bearing No. 116 of 2004/2006 filed under Section 166 of the Motor Vehicles Act, 1988 by the claimants-appellants was dismissed.

BRIEF FACTS OF THE CASE

2. Brief facts of the case are that on 16.02.2004 at about 9.15/9.30 P.M. Jatinder since deceased was going to his crops in the fields as wild animals and cattle used to destroy the crops in the night hours. He was on his scooter along with his friend Vikas son of Bhoop Singh resident of same village. When they covered a distance of about one and half kilometer from Ranila towards Sanjarwas, then a Four Wheeler/ Tempo bearing No. HR-39-9129 driven by respondent No.2 in a rash and negligent manner and at a very high speed came from the back side/ Ranila side and struck into the scooter.



Both the occupants of the scooter namely Jatinder and Vikas fell on the road and suffered injuries. They were taken to General Hospital, Charkhi Dadri where Jatinder was declared as dead and injured Vikas was referred to PGIMS, Rohtak. The police lodged FIR bearing No. 17 dated 17.02.2004 against unknown person in collusion with respondents No. 1 and 2. However, the claimants have pleaded that accident was caused by vehicle bearing No. HR-39-9129 and the same was witnessed by Sarwar Singh, father of deceased, Kapoor Soni, Mahavir son of Dina and Surjit Rajput of village Ranila. The vehicle was caught at the spot and the driver of the vehicle was witnessed by eye witnesses but he managed to escape from the spot. It is also pleaded that Police has taken signatures of Sarwar on some blank papers in General Hospital, Charkhi Dadri while he was under shock and depression due to death of his son. The Police of police station Bound Kalan did not take any action against the driver and owner of the offending vehicle. Thereafter, complaint in this regard was made to Senior Superintendent of Police, Bhiwani disclosing the number of the vehicle and village of the offending driver and owner. The claimants have specifically pleaded that the accident had taken place due to rash and negligent driving of Four Wheeler bearing No. HR-39-9139.

3. The claimants pleaded that there are not the legal heirs of deceased Jatinder, who was 24 years of age at the time of his death; he was expert cook/ Halwai and was an agriculturist; deceased was employed in Aadi Nath Nain Temple situated in village Ranila and was earning Rs. 5500/- per month. The claimants submitted in the claim petition that they were dependent upon the income of the deceased, hence, they approached



for acceptance of the petition.

4. Upon notice, written statement was filed by respondents, who denied the claim, on the ground that claimants have no locus standi or cause of action to file claim petition.

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

1. Whether the accident took place in the night of 16.02.2004 at about 9.15/9.30 p.m. was because of negligence of respondent No.2 while driving the Tempo No. HR-39-9129, if so its effect ?OPP
2. Whether the petitioners are entitled to receive compensation. If so, how much and from whom ?OPP
3. Whether the present petition is not maintainable in the present form ?OPR
4. Whether the respondent No.2 was not holding the valid and effective driving license on the date of alleged accident, if so, its effect ?OPR
5. Relief.

6. After hearing the learned counsel for the parties, the claim petition was dismissed by the learned Tribunal. The relevant portion of the same is reproduced as under :-

“20 The law cited by learned counsel for the claimants is not disputed. It is settled preposition of law registration of FIR is not required for determination of negligence of offending vehicle. The claimants have to prove the negligence, rashness



of the offending vehicle by leading cogent and reliable evidence on the file. It is pertinent to mention over here that as per claimants own version as available in the pleading that accident in question was seen by four persons namely Kapoor Soni, Mahabir, Surjit Rajput apart from Vikas, who was traveling on the scooter of deceased. It is pertinent to mention over here that none of these persons has been examined by the claimants to prove rashness and negligence of respondent no.2 while driving the vehicle in question in this accident. It is worthwhile to mention over here that PW1 is an interested witness who is father of deceased as well as one of the claimant in the instant case and no doubt in the affidavit he has narrated the version of accident on oath in the Court but during cross - examination he has totally shattered his own version by stating that Mahender and Mahabir called him after the accident to the place of accident. It is also admitted by him that accident took place at 9.15 p.m. whereas they reached the spot at 10.15 p.m. So, obviously PW1 in cross examination has admitted that he was not present at the time of accident and he reached at the place of accident after one hour of the incident. The claimants version as available in their own documents Ex. P1 confirms that there is no mention of number of four wheeler or the name of the driver of four wheeler which was against unknown person. It is pertinent to mention here that PW1 has admitted



that police has procured his signatures and the initially FIR was written at his instance, and the said FIR nowhere depicts the name of the driver respondent no.2 or the number of vehicle. It is admitted by PW1 Police has no enmity with them nor the Police has demanded any illegal money from them for registration of the case. In his cross-examination, PW1 has admitted that they met to the Police for re-investigation of the case and even after re-investigation, police has not challenged the respondent no.2 and they did not agree with the version of the claimants. All these facts show that there is nothing in the testimony of PW1 in order to prove the rashness or negligence of respondent no.2, more so, during cross-examination testimony of PW1 has been totally shattered and it established that PW1 itself has admitted that he reached the spot after one hour of the accident. The claimants have not examined Vikas, one of the claimant in these claim petition, who was best witness in this case to report about the accident in question being injured and eye witness of the accident. So, non-examining of Vikas in this certainly casts clouds on the veracity of PW1 who is none else but one of the claimant and father of deceased Jitender. The other alleged eye witnesses are Kapoor Soni, Mahavir and Surjit Rajput and no reason has been assigned why these witnesses have not been summoned and by withholding the best evidence raises adverse inference against the claimants. The law cited by learned counsel for the



petitioner is not disputed but in the instant case claimants have to prove its own case by leading cogent and reliable evidence. The statement of PWI Sarwar Singh itself is wavering and has been totally shattered in the Court. Merely, if the respondent no. 2 has not appeared in the witness box it may be adverse against him but it was duty of the claimants to prove their own case by leading co-gent and reliable evidence on the file because onus to prove this issue was upon the claimants. So, I am of the view that claimants have led insufficient, inadequate, vague and not proper evidence on the file to prove issue no.1. The fact mentioned in Ex. P2 nowhere helps the claimants as the same seems to be an after thought act of the claimants with legal assistance. Even otherwise, the said version has not been proven by an eyewitness who were admittedly present on the spot. I would like to mention over here that oral version of PWI is rebutted and contracted by owner Sunder @ Surender, respondent no.1, who has filed affidavit Ex. RW1/A and it is specifically stated by him in his affidavit that vehicle bearing No. HR-39-9129 never met with an accident and the said vehicle is insured with United India Insurance Company The oral version of PWI is rebutted by testimony of RW1. Thus, I am of the view that claimant has miserably failed to prove on the file that the accident had taken place in the night of 16-02-2004 at 9.15/9.30 p.m. was because of negligence of respondent no.1 while driving the Tempo No. HR-39-9129. So, issue no. 1



accordingly answered against the claimants.”

CONTENTIONS OF PARTIES

7. Learned counsel for the appellants contends that the learned Tribunal has committed a gross error in dismissing the claim petition on the basis of conjectures and surmises. He, therefore, prays for allowing the present appeal.

8. Per contra, learned counsel for the Insurance Company argues on the lines of the award and contends that the claim petition has been rightly dismissed.

9. I have heard learned counsel for the parties and have gone through the whole record with their able assistance.

10. A perusal of the record shows that the learned Tribunal has dismissed the claim petition on the ground that as per the pleadings, the accident in question was seen by four persons, namely Kapoor Soni, Mahavir, Surjit Rajput apart from Vikas, who were traveling on the scooter of the deceased and none of these persons have been examined by the claimants to prove the negligence and rashness by respondent No.2, while driving the vehicle in question involved in the accident. Further, the learned Tribunal has dismissed the claim petition on the ground that PW-1 is an interested witness, who is a father of deceased, as well as one of the claimants. Though, on the one hand, the learned Tribunal is accepting his narration on affidavit regarding the factum of accident on oath, but while observing that his cross-examination has shaken, the claim petition has been dismissed. Whereas, a perusal of the record shows that there is no discrepancy in the statement of PW-1, (who is the father of the deceased),



and in his cross-examination. The another reasoning given by the learned Tribunal for dismissing the claim petition is that the claimants have not examined Vikas, one of the claimants in the claim petition, who was the best witness in this case to report about the accident being injured and eye witness of the accident. It is further mentioned in the award that the alleged eye witnesses are Kapoor Soni, Mahavir and Surjit Rajput and no reasons have been assigned why these witnesses have not been summoned and by withholding the best evidence, raises adverse inference against the claimants, by holding that the claimants have led insufficient, inadequate and vague and not proper evidence on the file to prove issue No.1. The claim petition has been rejected.

11. Though the learned Tribunal has observed the fact on file that Jitender son of Sarwar Singh, died in a road side accident, which took place on 16.02.2004 at about 9.15. p.m.. This fact has been proved on file as well. Since the negligence of the driver (respondent No.2) while driving Tempo No. HR-39-9139 (offending vehicle) was not proved, therefore, the claim petition was dismissed.

12. FIR which has been placed on record, shows the factum of accident. As per the post mortem report, in the column of remarks by Medical Officer, it is stated that the cause of death is due to shock or by hemorrhage due to injuries to vital organs on liver and brain, which is sufficient to cause death in ordinary course of nature. Sarwar Singh was examined as PW-1, his statement proves the factum of accident and there is no discrepancy in his cross-examination.

13. Reference at this stage can be made to a judgment of Hon'ble



the Supreme Court of India in a case of Sunita and others **vs. Rajasthan State Road Transport Corporation and another, 2019 AIR SC 994**, wherein Hon'ble the Supreme Court has held that non-examination of witness is not fatal in accident claim cases, as approach in examining evidence in accident claim cases is not to find fault with non examination of some "best" eye witness in case but to analyse evidence already on record as ascertain whether that is sufficient to answer matters in issue on touchstone of preponderance of probability. The relevant portion of the judgment reads as under:-

"31. Similarly, the issue of non-examination of the pillion rider, Rajulal Khateek, would not be fatal to the case of the appellants. The approach in examining the evidence in accident claim cases is not to find fault with non examination of some "best" eye witness in the case but to analyse the evidence already on record to ascertain whether that is sufficient to answer the matters in issue on the touchstone of preponderance of probability. This court, in [Dulcina Fernandes](#) (supra), faced a similar situation where the evidence of claimant's eyewitness was discarded by the Tribunal and the respondent was acquitted in the criminal case concerning the accident. This Court, however, took the view that the material on record was prima facie sufficient to establish that the respondent was negligent. In the present case, therefore, the Tribunal was right in accepting the claim of the appellants even without the deposition of the pillion rider, Rajulal Khateek, since the other evidence on record was good enough to prima facie



establish the manner in which the accident had occurred and the identity of the parties involved in the accident.

14. Further Hon'ble the Supreme Court of India in a case of ***Anita Sharma vs. New India Assurance Co. Ltd and others, 2021 AIR SC 302*** has held that the Court's while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eye witnesses, as may happen in criminal trial. The standard of proof in motor accident matters is one of preponderance of probabilities rather than beyond reasonable doubt. The relevant portion of the judgment reads as under:-

“23. The observation of the High Court that the author of the FIR (as per its judgment, the owner-cum-driver) had not been examined as a witness, and hence adverse inference ought to be drawn against the appellant-claimants, is wholly misconceived and misdirected. Not only is the owner-cum-driver not the author of the FIR, but instead he is one of the contesting respondents in the Claim Petition who, along with insurance company, is an interested party with a pecuniary stake in the result of the case. If the owner-cum-driver of the car were setting up a defence plea that the accident was a result of not his but the truck driver's carelessness or rashness, then the onus was on him to step into the witness box and explain as to how the accident had taken place. The fact that Sanjeev Kapoor chose not to depose in support of what he has pleaded in his written statement, further suggests that he was himself at fault. The High Court, therefore, ought not to have shifted the burden of proof.”



15. On the touchstone of here-in-above discussed findings and judicial precedent, the award dated 09.10.2006 passed by learned Tribunal, Bhiwani, stands vitiated by a complete absence of judicial application of mind.

SETTLED LAW ON COMPENSATION

16. Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation and Another** [(2009) 6 Supreme Court Cases 121], laid down the law on assessment of compensation and the relevant paras of the same are as under:-

“30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardised deductions. Having a considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will

not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only d the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

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42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas³, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.

17. Hon’ble Supreme Court in the case of National Insurance Company Ltd. Vs. Pranay Sethi & Ors. [(2017) 16 SCC 680] has clarified the law under Sections 166, 163-A and 168 of the Motor Vehicles Act, 1988,



on the following aspects:-

- (A) Deduction of personal and living expenses to determine multiplicand;
- (B) Selection of multiplier depending on age of deceased;
- (C) Age of deceased on basis for applying multiplier;
- (D) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses, with escalation;
- (E) Future prospects for all categories of persons and for different ages: with permanent job; self-employed or fixed salary.

The relevant portion of the judgment is reproduced as under:-

*“52. As far as the **conventional heads** are concerned, we find it difficult to agree with the view expressed in Rajesh². It has granted Rs.25,000 towards funeral expenses, Rs 1,00,000 towards loss of consortium and Rs 1,00,000 towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders*



passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000, Rs.40,000 and Rs.15,000 respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.

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59.3. *While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.*

59.4. *In case the deceased was self-employed (or) on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income*



minus the tax component.

59.5. For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paras 30 to 32 of Sarla Verma⁴ which we have reproduced hereinbefore.

59.6. The selection of multiplier shall be as indicated in the Table in Sarla Verma¹ read with para 42 of that judgment.

59.7. The age of the deceased should be the basis for applying the multiplier.

59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.”

18. Hon’ble Supreme Court in the case of **Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram & Others [2018(18) SCC 130]** after considering **Sarla Verma (supra)** and **Pranay Sethi (Supra)** has settled the law regarding consortium. Relevant paras of the same are reproduced as under:-

“21. A Constitution Bench of this Court in Pranay Sethi² dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium. In legal parlance, "consortium" is a compendious term which encompasses "spousal consortium", "parental consortium", and "filial consortium". The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.

*21.1. **Spousal consortium** is generally defined as rights*



pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation".

*21.2. **Parental consortium** is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training".*

*21.3. **Filial consortium** is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.*

22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognised that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

23. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. Parental consortium is awarded to children who lose their parents in motor

vehicle accidents under the Act. A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of filial consortium.

24. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under "loss of consortium" as laid down in Pranay Sethi². In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs 40,000 each for loss of filial consortium.

CONCLUSION

19. 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 09.10.2006 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	5500/-
2	Future prospects @ 40%	2200 (5500X40%)
3	Deduction towards personal expenditure 1/4th	1925 (1/4th of 7700)
4.	Total Income	Rs. 5775/- (7700-1925)
4	Multiplier	18
5	Annual Dependency	Rs.12,47,400/- (5775X12X18)
6	Loss of Estate	Rs.18,000/-
7	Funeral Expenses	Rs.18,000/-
8	Loss of Consortium Filial : Rs.96,000/-	Rs.96,000/-
	Total Compensation	Rs.13,79,400/-



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

21. The Insurance Company is directed to deposit the 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 Nos.1 and 2 are entitled to receive the amount of compensation to the extent of 40% each whereas claimant No.3 and 4 are entitled to receive amount of compensation to the extent of 10% each. The claimants/appellants are directed to furnish their bank account details to the Tribunal.

22. Disposed off accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

30.08.2024
Satyawar/G Arora

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No