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

**CM-21903-CII-2023 IN/AND**
**XOBJC-50-2023 IN/AND**
**XOBJC-126-2023 IN/AND**
**FAO-3208-2007 (O&M)**
**Date of Decision: 19.11.2024**

Manu Puri and another ......Appellants

Vs.

Bikkar Singh and others ......Respondents

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

Present: Mr. Rishav Jain, Advocate, and
Mr. Shivay Singla, Advocate,
for the appellants.

Mr. Puneet Sharma, Advocate,
for respondent No.1/Cross-Objector.

Mr. Karminder Singh, Advocate,
for respondent No.3-Insurance Company.

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**SUDEEPTI SHARMA J.**

1. The present appeal has been preferred against the award dated 18.04.2007 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Nawanshahar (for short, 'the Tribunal') for enhancement of compensation, granted to the claimants/appellants.

**FACTS NOT IN DISPUTE**

2. The brief facts of the case are that on 12.09.2003, both the claimants/appellants accompanied by deceased-Anu Puri and deceased-Kamla Puri set out from Jalandhar to Nawanshahar in Maruti Zen Car bearing registration No.PB-08-AK-5311, which was being driven by claimant/appellant No.2 at a moderate speed and on the correct side of the road. When the car reached in the area of Village Mazari at about 8:00 P.M., it rammed into a stationary truck bearing registration No.PB-10-U-9897, which was lying stationed in the middle of the road by respondent No.1 (driver) covered with tarpoline and without turning on its lights/parking lights or indicators and without taking any precautions and safeguards. As a result of this impact, Anu Puri and Kamla Puri (both deceased) sustained multiple and serious injuries and their bodies got entangled in the mangled remains of the car. After extricating their bodies from the car, they were rushed to Guru Nanak Mission Hospital, Dhahan Kaleran, where both were declared brought dead. In this regard, F.I.R (Ex.PA) under Sections 283/337/ 304-/427 of IPC was registered against respondent No.1 at Police Station Banga, District Nawashahar.

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

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

> *"1) Whether respondent No.1 while driving truck No.PB-10-U-9897 so rashly and negligently on 12.09.2003, at 8:00 PM, caused the accident as a result of which, Anu Puri died? OPP.*
>
> *2) If issue No.1 is proved to what amount of compensation, claimants are entitled to and from whom? OPP.*
>
> *3) Whether respondent No.1 was not holding a legal and valid driving licence? OPR.*
>
> *4) Relief."*

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the tune of Rs.8,35,600/- alongwith interest @ 8% per annum. Hence the claimants/appellants filed the present appeal for enhancement of compensation awarded by the Tribunal.

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

6. The learned counsel for the claimants-appellants contends that the compensation assessed by the learned Tribunal is on the lower side, as Anu Puri (since deceased) was about 29 years of age at the time of accident and was working as an Assistant Manager in Bank of Punjab. She was drawing a salary of about Rs.20,000/- per month, which is depicted from her salary certificate Ex.PD. However, the learned Tribunal has erred in assessing the monthly income of the deceased Anu Puri as Rs.6,400/- per

month by taking into consideration the salary certificate (Ex.PD/Ex.R2). He further contends that the learned Tribunal has wrongly applied multiplier of 16 instead of 17 as per settled law. Moreover, the learned Tribunal failed to include compensation towards future prospects, loss of consortium and loss of estate in its calculation. He further contends that the amount awarded for funeral expenses is also on the lower side. Therefore, he prays that the present appeal be allowed and compensation should be enhanced, as per latest law.

7. *Per contra*, learned counsel for respondent No.3-Insurance Company contends that this is a case of contributory/composite negligence but the learned Tribunal failed to appreciate this fact. He further contends that the driver of the truck was not at fault as the car hit from behind when it was lying stationed. He further contends that the learned Tribunal has wrongly assessed the income of the deceased while wrong multiplier. Therefore, he prays for dismissal of the present appeal.

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

9. A perusal of the record reveals that although the accident in question took place when PW-1 Manmohan Puri was driving the car which rammed into a stationary truck yet it was obligatory for the respondent No.1 to make statement on oath that the offending vehicle was lying parked on katcha berm of the road with parking lights. However, no such evidence

has been adduced by the respondents. Further, F.I.R. was registered immediately after the accident against driver of the offending truck i.e. respondent No.1 regarding the accident which rules out the possibility of false implication of the respondent. It is proved on record that the accident is result of wrong parking of offending truck by respondent No.1 and not by the driver of the ill fated car in which death of two innocent persons has taken place. So, the contentions raised by the learned counsel for the insurance company are not sustainable in the eyes of law and the same are discarded.

So far as contentions raised by the learned counsel for the appellants are concerned, a perusal of the award indicates that the Tribunal has rightly assessed the income of deceased Anu Puri by taking into consideration salary certificate, Ex.PD/Ex.R2. A perusal of the record further reveals that the learned Tribunal has erred in applying multiplier of 16 instead of 17 as per settled law. Moreover, no amount was awarded for future prospect, loss of estate, consortium and amount granted for last rite is also on lower side. Therefore, the award requires indulgence of 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 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.*

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 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."*

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 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. 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.*

**<u>CONCLUSION</u>**

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 18.04.2007 is modified accordingly. The appellants-claimants are entitled to enhanced compensation as per the calculations made here-under:-

| ***Sr. No.*** | ***Heads*** | ***Compensation Awarded*** |
|---|---|---|
| 1 | Monthly Income | Rs. 6,400/- |
| 2 | Future prospects @ 50% | Rs.3,200/- (50% of Rs.6,400/-) |
| 3 | Deduction towards personal expenditure 1/3rd | Rs.3,200/- (1/3 of Rs.9,600/-) |
| 4. | Total Income | Rs.6,400/- (Rs.9600 - Rs.3200/-) |
| 5 | Multiplier | 17 |
| 6 | Annual Dependency | Rs.13,05,600/- (Rs. 6,400/- X 12 X 17) |
| 7 | Loss of Estate | Rs.18,000/- |
| 8 | Funeral Expenses | Rs.18,000/- |
| 9 | Loss of Consortium<br>Parental : Rs. 48,000/- x 1<br>Spousal : Rs. 48,000/- x 1 | Rs.96,000/- |
| | **Total Compensation** | **Rs.14,37,600/-** |
| | **Amount Awarded by the Tribunal** | **Rs.8,35,600/-** |
| | **Enhanced amount** | **Rs.6,02,000/-** |

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*** **2019ACJ 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. As per award passed by learned Tribunal dated 18.04.2007, the learned Tribunal has decided the claim petition in favour of the claimants and against respondents No.1 and 2 i.e. driver and owner of the offending

vehicle, respectively. Respondent No.3-Insurance Company was directed to pay the compensation in the first instance and liberty was granted to respondent No.3-Insurance Company to recover the same from respondents No.1 and 2.

16. 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, in equal share. The claimants/appellants are directed to furnish their bank account details to the Tribunal.

17. However, respondent No.3-Insurance Company is entitled to recover the enhanced amount of compensation from respondents No.1 and 2 i.e. driver and owner of the offending vehicle, as per award dated 18.04.2007.

**CM-21903-2023 IN/AND XOBJC-50-2023 AND XOBJC-126-2023**

18. This is an application filed under Section 151 CPC for condonation of delay of 3019 days in re-filing the cross-objections.

19. A perusal of the record shows that the present cross-objections were filed in the present appeal i.e. FAO-3208-2007 by respondent No.1 (driver) on 06.02.2023, after a delay of 15 years, 09 months and 28 days. A

perusal of the record further shows that in the award, applicant/cross objector was impleaded as respondent No.1 and he filed his reply to the claim petition and the claim petition was decided after hearing him. Thereafter, he did not prefer any appeal against the aforesaid award, nor did he file any cross-objection when the present appeal was filed in the year 2007. Hon'ble the Supreme Court in **Civil Appeal No.8343 of 2024** titled as '**The Ahmednagar District Central Cooperative Bank Ltd. Vs. The State of Maharashtra and Ors.'** held that law is well-settled that a writ court does not encourage petitions from indolent, tardy and lethargic litigants; the writ court comes to the aid of a litigant who approaches it with promptitude and before accrual of third-party rights. Hon'ble the Supreme Court in **Civil Appeal Nos.8435-8436 OF 2024** titled as '**Mool Chandra Vs. Union of India and Ors.'** held that it is not the length of delay that would be required to be considered while examining the plea for condonation of delay, it is the cause for delay which has been propounded will have to be examined. If the cause for delay would fall within the four corners of "sufficient cause", irrespective of the length of delay same deserves to be condoned. However, if the cause shown is insufficient, irrespective of the period of delay, same would not be condoned.

20. In view of the law laid down by the Hon'ble Supreme Court in the above referred to judgments, the present cross-objections are hereby dismissed.

21. Respondent No.3-Insurance Company is hereby directed to disburse the current scheduled fees to Mr. Karminder Singh, Advocate, within a period of ten days from the date of receipt of the copy of this judgment.

22. Disposed off accordingly.

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

**(SUDEEPTI SHARMA)
JUDGE**

**19.11.2024**
Virrendra

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