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

FAO-2511-2006 (O&M)
Date of Decision: November 5, 2024

SOMWATI AND ORS. ......Appellants

Vs.

ARVIND KUMAR YADAV AND ORS. ......Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Ms. Richa Sharma, Advocate for
Mr. Shailendra Jain, Advocate for the appellants.

Ms. Farheen Bajwa, Advocate for
Mr. Harsh Aggarwal, Advocate
for respondents No. 3 and 6.

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SUDEEPTI SHARMA J.

1. The present appeal has been preferred against the award dated 02.06.2005, passed in the claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 by the learned Motor Accidents Claims Tribunal, Gurgaon (for short 'the Tribunal), whereby the claim petition filed by the claimants/appellants was dismissed.

FACTS NOT IN DISPUTE

2. Brief facts of the case are that on 02.11.2000, at about 6:00 P.M, Bhup Singh (since deceased) loaded a truck bearing registration No. RJ-02-J-5672 from Behror (Rajasthan). When the truck reached near Shamla Ji, it collided with another truck bearing registration No. KA-03-A-4272. Due to this accident, Bhup Singh sustained multiple grievous injuries and was admitted in General

Hospital, Modasa where he succumbed to the injuries. The accident took place in the presence of Maliappa, Chander Shekhar, Shivappa Gowda, Kumar Gowda, who were cleaners and drivers of truck bearing registration No. KA-03-A-4272. F.I.R No. 113/2000 with respect to above accident was also registered under Sections 279/337/304-A of IPC and under Section 177/184 of Motor Vehicles Act, 1988 at P.S. Podasa, Gujarat on 03.11.2000 against respondent No. 2.

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

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

> *1) Whether accident in question was caused by respondent No.2 and 5 by driving vehicle Nos.RJ-02G-5672 and KA03-A-4272 in a rash and negligent manner?OPP*
>
> *2) If issue No.1 is proved, whether claimants are entitled to any compensation and if so, to what extent and from whom? OPP*
>
> *3)Whether respondents No.2 and 5 were not having valid and effective driving licences on the date of accident?OPR 3 & 6.*
>
> *4) Whether terms and conditions of the Insurance Policy have been violated?OPR3 and 6*
>
> *5) Whether petition is bad for misjoinder and non-joinder of necessary parties?OPR 3&6.*
>
> *6)Relief".*

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim petition of the

claimants/appellants. Hence the claimants/appellants filed the present appeal for awarding of compensation to them on account of death of Bhup Singh.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES

6. The learned counsel for the appellants-claimants contends that the claim petition was dismissed on the ground that in the claim petition, the income of Bhup Singh (since deceased) was stated to be Rs.15,000/- per month. He further contends that initially the claim petition was filed under Section 166 of the Motor Vehicles Act, 1988, however, the claimants/appellants moved an application to treat the claim petition under Section 163-A of Motor Vehicles Act, 1988 and the Tribunal vide order dated 02.12.2003, allowed the said application for amendment of the claim petition. Subsequently, the claim petition was converted into Section 163-A of Motor Vehicles Act, 1988.

7. Learned counsel for the appellants contends that by moving application under Section 163-A of Motor Vehicles Act, 1988, the claimants restricted their claim under a structured formula as per statute and the Tribunal ought to have assessed the compensation payable to the claimants/appellants. Therefore, he prays that present appeal be allowed.

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

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

10. Before proceeding further, it is relevant to reproduce the relevant portion of the award dated 02.06.2005, which reads as under:-

"ISSUE NO.2:-

10. In the claim petition pleas has been taken that monthly income of the deceased was Rs.15,000/-. It mentioned that the claiming his annual income is 45 40,000/- per annum keeping in view of the previsions of Section 163-A of the M.V.Act. The claimants adduced evidence to prove monthly income of the deceased. PW1 Somwati stated that her husband was having 50% partnership in truck bearing registration No.RJ032G-1188 and the income of her husband from this truck Rs.15,000/- per month. From the circumstances mentioned above, it is clear that annual income of the deceased was more than Rs.40,000/-, Learned counsel for the respondents argued that the compensation amount can not be awarded in favour of the claimants and the claim petition is not maintainable under Section 163-A of the M.V.Act as monthly income of the deceased was more than Rs.40,000/-. Under Section 163-A only those persons can claim compensation amount if the annual income of the deceased on the injured was less than Rs.40.000/-. This contention of learned counsel for the respondents finds support from a full bench decision of the Hon'ble Supreme Court in case law PLR 2004 (1) page 271 in case Deepal Girishbai Soni United India Insurance Co. Ltd.

11. I have closely perused the above cited case law. In the case law referred to above, it was held that only those whose annual income is upto Rs.40,000/- can take the benefit of the provisions of Section 163-A of the M.V.Act. Other claimants are *determined required to be in terms of Section XII of the Act. Cited case law fully supports the version of the respondents. On the the ather side, on this point learned counsel for claimants placed his reliance upon case law 2005 ACJ, 705 A.Lakshmi and others v Arjun Associated Pvt. Ltd. I have closed perused the above cited case law. The case law referred above is of not much help to the claimants. In case law referred above, it was held that section 163-A would be applicable if the annual Income of the deceased is more than Rs.40,000/- also. Keeping in view the latest decision of a Full Bench of Hon'ble Supreme Court referred above, the case referred above 2005 ADJ, 704 can not Resultantly, deceased it is be held that as the income the law fallowed. of the WAS more than Rs.40,000/- per annum at the time of accident, the claimants are not entitled to receive the compensation as claimed in this case under Section 163-A of the M.V.Act. The claim petition under Section 163-A of the M.V.Act is not maintainable. There is no need to give findings regarding entitlement of the amount in favour of the claimants as findings have been given that the claim petition under Section 163-A of the M.V.Act is not maintainable. With these findings issue No.2 is decided against the claimants."*

11. A perusal of the award indicates that initially the claim petition was filed under Section 166 of Motor Vehicles Act, 1988, however, subsequently, the claimants moved an application before the learned Tribunal to convert the claim petition under Section 163-A of Motor Vehicles Act, 1988 by restricting their claim under a structured formula as per statute.

12. A perusal of the award further reveals that the Tribunal has dismissed the claim petition only on the ground that the income of the deceased was Rs.40000/- per annum and held that if the income exceeds Rs.40,000/- per annum, the present claim petition is not maintainable under Section 163-A of Motor Vehicles Act, 1988.

13. This Court already dealt with the similar issue in FAO-407-2006, titled as ***Satpal Vs. Daljit Singh and others, decided on 17.05.2024,*** wherein this Court held as under:-

> *"13 The claim petitions are drafted by the Advocates and it is standard practice to state the maximum earnings and amount of compensation in the pleadings. The Court/Tribunal should appreciate the evidence led on oath, rather than strictly adhering to the pleadings. The present claim petition was dismissed solely on the stated earning of Rs.6,000/- in the pleadings, completely discarding the evidence presented. This indicates a manifest failure to apply judicial mind. Therefore, the present appeal is allowed. The appellant/claimant is granted compensation under Section 163-A by taking his income to be Rs.3,000/- per month."*

14. 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 and therefore, the present appeal filed by claimants/appellants is liable to be allowed.

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

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.*

*　　*　　*　　*　　*　　*

***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.*

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 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."*

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 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.*

19. Reference at this stage can further be made to judgment of Hon'ble the Apex Court in a case of ***Kurvan Ansari alias Kurvan Ali & Anr. vs. Shyam Kishore Murmu & Anr., (Arising out of Special Leave Petition (C) No.5311 of 2019), decided on 16.11.2021*** wherein it has been held that if under Section 163-A of the Motor Vehicles Act, 1988, the compensation can also be granted under the conventional heads to the claimants. The relevant portion of the judgment reads as under:-

> *"16. In view of the above, we deem it appropriate to take notional income of the deceased at Rs.25,000/- (Rupees twenty five thousand only) per annum. Accordingly, when the notional income is multiplied with applicable multiplier '15', as prescribed in Schedule-II for the claims under* **Section 163-A** *of the Motor Vehicles Act 1988, it comes to Rs.3,75,000/- (Rs.25,000/- x Multiplier 15) towards loss of dependency. The appellants are also entitled to a sum of Rs.40,000/- each towards filial consortium and Rs.15,000/- towards funeral expenses.*

CONCLUSION

20. 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 02.06.2005 is set aside. The appellants-claimants are entitled to compensation as per the calculations made here-under:-

Sr. No.	*Heads*	*Compensation Awarded*
1	Monthly Income	Rs.3000
2	Deduction towards personal expenditure 1/3	Rs.1000 (3000-2000)
3.	Total Income	Rs.2000
4	Multiplier	18
5	Annual Dependency	4,32,000/- (2000X12X18)
6	Loss of Estate	Rs.18,000/-
7	Funeral Expenses	Rs.18,000/-
8	Parental :Rs.48,000X3 Filial : Rs.48,000X1 Spousal : Rs.48,000X1	Rs.2,40,000/-
	Compensation to be awarded to the claimants/appellants	**Rs.7,08,000/-**

21. 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.

22. As per award passed by Ld. Tribunal dated 02.06.2005, the learned Tribunal dismissed the claim petition. However, it was held that since the deceased was a gratuitous passenger, there is violation in the terms and conditions of the Insurance Policy, therefore, the recovery rights against driver and owner of the offending vehicles were granted to the Insurance Company.

23. The Insurance Company-respondent No. 3 and 6 are directed to deposit the awarded amount of compensation along with interest @ 9% per annum with the Tribunal within a period of two months from today. The Tribunal

is further directed to disburse the amount of compensation along with interest in the accounts of the claimants/appellants. The claimants/appellants are directed to furnish their bank account details to the Tribunal.

24. However, respondent No.3 and 6-Insurance Company is entitled to recover the amount of compensation from respondent No. 1 and 4 i.e. owners of the offending vehicles, as per award dated 02.06.2005.

25. Further Insurance Company is directed to disburse the current schedule fees to Ms. Farheen Bajwa, Advocate appearing for Mr. Harsh Aggarwal, Advocate within a period of ten days from the date of receipt of certified copy of this order.

26. Disposed of accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

November 5, 2024
Gaurav Arora

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