IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

213 **FAO-2674-2006 (O&M)**
Date of Decision: September 02, 2024

Amandeep Kaur and others **......Appellant(s)**

Vs.

Ranjit Singh and another **......Respondent(s)**

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Naveen Sharma, Advocate
for the appellants.

Mr. Pardeep Goyal, Advocate and
Ms. Simran, Advocate for
for respondent No.3-Ins. Co.

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 21.10.2005 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1989 by the learned Motor Accident Claims Tribunal, Rupnagar (for short, 'the Tribunal') for enhancement of compensation granted to the claimants/appellants, who are the family members of the injured.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 10.10.1995 at about 7:00 p.m., Amarjit Singh was going towards village Mundi Kharar on motor cycle No.PB R-1346 and when he reached near Bansawali Octroi Post in the area of Kharar, one Swaraj Mazda No. CH-01-B-8759 driven by respondent No. 1 in rash and negligent manner, came from Chandigarh side. Immediately, the said Swaraj Mazda struck against the motor-cycle of Amarjit Singh. Due to this accident Amarjit Singh suffered serious injuries including fracture of both legs and

immediately he was taken to Civil Hospital, Kharar from where he was shifted to P.G.I Chandigarh, where he remained admitted upto 2.11.1995. Thereafter, Amarjit Singh remained under regular medical treatment from different Hospitals, including CMC Ludhiana, DMC Ludhiana and Dhillon Hospital, Chandigarh. But he never fully recovered and finally died on 29.8.2003. The report regarding above said accident was also lodged with the police against respondent No. 1.

It is pertinent to mention here that Amarjit Singh s/o Kuldip Singh filed claim petition under Section 166 of the Act for grant of compensation on account of injuries sustained by him in a motor vehicle accident. During the pendency of the claim petition, Amarjit Singh died and his legal representatives were substituted in his place.

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

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

> *1. Whether Amarjit Singh died due to the injuries sustained by him in the accident caused by respondent No.1 Ranjit Singh while driving the Swaraj Mazda No CH-01-B-8759 rashly and negligently? OPP*
>
> *2. Whether claimants are entitled for compensation? If so to what extent and from whom? OPP*
>
> *3. Whether the claimants are entitled for interest, If so at what rate and on what amount? OPP.*
>
> *4. Whether the respondent driver was not holding a valid and effective driving licence at the time of alleged accident? OPR*
>
> *5. Whether claim petition does not disclose any cause of action as alleged? OPR*

6. Whether claim petition is bad for non-joinder and mis-joinder of necessary parties? OPR.

7. Relief.

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the tune of Rs.1,63,000/- alongwith interest @ 6% per annum. Hence, the claimants/appellants filed the present appeal for enhancement of compensation awarded by the Tribunal.

SUBMISSIONS OF THE COUNSELS

6. The learned counsel for the claimants-appellants contends that the compensation awarded by the learned Tribunal is on the lower side.

i) Further, the deceased had suffered 45% of permanent disability.

ii) He remained admitted in the hospital from 10.10.1995 to 02.11.1995 and no compensation was granted for pain and suffering, special diet, attendant charges, loss of future prospects.

iii) Learned counsel for the appellants relied upon the judgment passed by Hon'ble the Supreme Court in "***The Oriental Insurance Company Limited Vs. Kahlon @ Jasmail Singh Kahlon (deceased) through his Legal Representatives Narinder Kahlon Gosakan and another, 2021(4) RCR(Civil) 1***", wherein it was held that motor accident claim does not abates on death of injured claimant.

iv) The Tribunal had applied a multiplier of 8 instead of 18.

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, vehemently argues that the deceased died on 29.08.2003 and the alleged accident took place on 10.10.1995 so the claimants had suffered the loss

of income from the date when the Amarjit Singh had died. Hence, the claimants are entitled for the compensation of 8 years only.

i) He further contends that the Ld. Tribunal has assessed the income of deceased Rs 3000/- per month as labourer which is on higher side. Further, the Ld. Tribunal should have assessed the income of deceased as per minimum wages applicable in Punjab in 1995, therefore, the claimants are not entitled for any further compensation.

ii) The Ld. Tribunal has rightly applied the reduction of 50% from the income of the deceased as he suffered physical disability of right lower limb to the extent of 45%. He further submits that the Ld. Tribunal has rightly applied the multiplier of 8 i.e., from the date of occurrence of alleged accident to when the deceased died.

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

9. A perusal of the award indicates that the Tribunal has assessed the permanent disability of 45% and has rightly taken Rs.3000/- per month as the income of the deceased.

i) Further the Tribunal applied a multiplier of 8, however, according to the law settled by Hon'ble Apex Court in ***Sarla Verma Vs. Delhi Transport Corporation and Another***, the appropriate multiplier should be 18.

ii) Furthermore, no amount was calculated for future prospects and no amount was granted for pain and sufferings, special diet, attendant charges, transportation charges, future medical expenses.

10. So far as compensation for future prospects, pain and sufferings, special diet, attendant charges, transportation charges, future medical expenses to LRs of the deceased (injured in accident) is concerned, the same has been

settled by Hon'ble the Apex Court in judgment ***The Oriental Insurance Company*** (supra). The relevant para of the same are as under:-

> *"9. The Act is a beneficial and welfare legislation. Section 166(1) (a) of the Act provides for a statutory claim for compensation arising out of an accident by the person who has sustained the injury. Under Clause (b), compensation is payable to the owner of the property. In case of death, the legal representatives of the deceased can pursue the claim. Property, under the Act, will have a much wider connotation than the conventional definition. If the legal heirs can pursue claims in case of death, we see no reason why the legal representatives cannot pursue claims for loss of property akin to estate of the injured if he is deceased subsequently for reasons other than attributable to the accident or injuries under Clause 1(c) of Section 166. Such a claim would be completely distinct from personal injuries to the claimant and which may not be the cause of death. Such claims of personal injuries would undoubtedly abate with the death of the injured. What would the loss of estate mean and what items would be covered by it are issues which has to engage our attention. The appellant has a statutory obligation to pay compensation in motor accident claim cases. This obligation cannot be evaded behind the defence that it was available only for personal injuries and abates on his death irrespective of the loss caused to the estate of the deceased because of the injuries.*
>
> *10. In Umed Chand (supra), giving a broad liberal interpretation to the provisions of the Act so that legal representatives do not suffer injustice, it was observed that the claim for personal injuries will not survive on death of the injured unrelated to the accident but the legal representatives could pursue the claim for enhancement of the claim for loss of the estate which would include expenditure on medical expenses, travelling, attendant, diet, doctor's fee and reasonable monthly annual accretion to the estate for a certain period. It is trite that the income which a person derives compositely forms part of the expenditure on himself, his family and the savings go to the estate. The unforeseen expenses as aforesaid naturally have to be met from the estate causing pecuniary loss to the estate.*
>
> *x x x x x*

19. In Parminder Singh (supra) compensation on the basis of complete loss of income, the percentage of disability, future prospects were granted applying the relevant multiplier. Again, in Kajal (supra) the injured was assessed as 100 per cent disabled, considering all of which compensation was awarded on the notional future prospects along with relevant multiplier. The loss of income to the injured in the facts of the present case has to be assessed at 75%. In view of Raj Kumar (supra) there shall be no deduction towards personal expenses.

20. We see no reason to deviate from the consistent judicial view taken by more than one High Court that loss of estate would include expenditure on medicines, treatment, diet, attendant, Doctor's fee, etc. including income and future prospects which would have caused reasonable accretion to the estate but for the sudden expenditure which had to be met from and depleted the estate of the injured, subsequently deceased.

21. However, the compensation under the head pain and suffering being personal injuries is held to be unsustainable and is disallowed............"

10. In view of the above referred to judgment, the LRs of the deceased-Amarjit Singh are entitled to grant of compensation.

SETTLED LAW ON COMPENSATION

11. 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.*

13. 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."

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

"21. A Constitution Bench of this Court in Pranay Sethi[2] dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium. In legal parlance, "consortium" is a compendious term which encompasses "spousal consortium", "parental consortium", and "filial consortium". The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a

loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.

21.1. ***Spousal consortium*** *is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation".*

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

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

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

***23**. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. Parental consortium is awarded to children who lose their parents in motor vehicle accidents under the Act. A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of filial consortium.*

***24**. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under "loss of consortium" as laid down in Pranay Sethi[2]. In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs 40,000 each for loss of filial consortium.*

CONCLUSION

15. As per award passed by Ld. Tribunal dated 21.10.2005, the Ld. Tribunal decided the claim petition in favour of the claimant and against respondents No.1 and 2 i.e. driver and owner of the vehicle respectively. Respondents No.1 and 2 were held jointly and severely liable to pay the compensation. Respondent No.3-Insurance Company was directed to pay the

compensation in the first instance and liberty was granted to respondent No.3 to recover the same from respondents No.1 and 2.

16. 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 21.10.2005 is modified accordingly. The appellants-claimants are entitled to enhanced compensation as per the calculations made here-under:-

Sr. No.	Heads	Compensation Awarded
1	Income	Rs.3000/-
2	Future Prospects 40%	Rs.1200/- (40% of 3000)
3	Annual Income	Rs.50,400/- (3000+1200 x 12)
4	Loss of future earning per annum	Rs.22,680/- (50,400 x 45%)
5	Multiplier (18)	Rs.4,08,240/- (22,680 x 18)
6	Medical	Rs.17,000/-
7	Attendant Charges	Rs.20,000/-
8	Special diet	Rs.20,000/-
9	Transportation	Rs.20,000/-
10	Loss of Amenities of life	Rs.30,000/-
	Total Compensation	**Rs.5,15,240/-**
	Amount Awarded by the Tribunal	**Rs.1,63,000/-**
	Enhanced amount	**Rs.3,52,240/-**

17. 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 appellant-claimant is granted the interest @ 9% per annum on the enhanced amount from the date of filing of claim petition till the date of its realization.

18. The Insurance Company is directed to deposit the enhanced amount of compensation alongwith interest with the Tribunal within a period of two months from today. The Tribunal is further directed to disburse the enhanced amount of compensation alongwith interest in the accounts of all the claimants/appellants as per ratio settled in the award dated 21.10.2005. The claimants/appellants are directed to furnish their bank account details to the Tribunal.

19. However, respondent No.3-Insurance Company is entitled to recover the enhanced amount of compensation from respondent No. 1 and 2 i.e. driver and owner of the offending vehicle as per award dated 21.10.2005.

20. Disposed off accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

September 02, 2024
G.Arora/sonia arora

Whether speaking/non-speaking : Speaking
Whether reportable : Yes