IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

424 **FAO-2822-2006 (O&M)**
Date of Decision: October 15, 2024

Tripta Rani and others **......Appellants**

Vs.

Rajesh Kumar and another **......Respondents**

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

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

Mr. Gopal Mittal, Advocate
for respondent No.2 /Insurance Company

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 4.1.2006 passed in the claim petition filed under Sections 166 of the Motor Vehicles Act, 1988, by the learned Motor Accident Claims Tribunal, Ambala (for short, 'the Tribunal') for enhancement of compensation granted to the appellants/claimants, who are the family members of the deceased.

FACTS NOT IN DISPUTE

2. The brief facts of the case as mentioned in the claim petition are that on 4.11.2004, Rajesh Kumar (deceased) was going from Shahzadpur to Baroli by driving his motorcycle bearing registration No. HR-04A-6093. He was followed by his brother Parveeen Kumar and one Raj Kumar, who were on separate scooter. The motorcycle was being driven on correct left hand side of the road at

a moderate speed. At about 6.45 P.M. when they reached near culvert of 'Barsot Nala' in between Naraingarh to Village Baroli within the area of Village Baroli in the meantime, a Maruti Car No. HR-01E-7778, being driven by Rajesh Kumar-respondent no.1 in a very rash and negligent manner, came from the opposite direction. After observing the coming car, Rajesh Kumar had taken his motorcycle on his extreme left hand side of the road and however, the driver of the car could not control and hit against the motorcycle by bringing the car on wrong side of the road, as a result of which Rajesh Kumar fell down alongwith the motorcycle and sustained injuries. He succumbed to the injuries at the spot.

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

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

> *1) Whether the accident was caused due to rash and negligent driving of maruti Car No. HR-01E-7778 by Rajesh Kumar respondent No.1 causing injuries to Rajesh Kumar and resulting into his death? OPP.*
>
> *2) If issue No.1 is proved in the affirmative, whether the claimants are entitled to compensation on account of the death of Rajesh Kumar in the accident? OPP*
>
> *3) Whether insurance company is not liable to pay any compensation in view of the preliminary objections taken in the written statement? OPR-2.*
>
> *4) Relief.*

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the tune of Rs.3,95,000/- to appellants/claimants alongwith interest @ 7.5% per annum. Hence the claimants/appellants filed the present appeal for grant of enhancement of compensation awarded by the Tribunal to them.

SUBMISSIONS OF THE COUNSELS FOR THE PARTIES

6. The learned counsel for the claimants-appellants contends that the Ld. Tribunal has wrongly assessed the income of the deceased. He further contends that though cogent and convincing evidence was led by the claimants while examining Tripta Rani (wife of the deceased) as PW-1 and Parveen Kumar as PW-2 to the effect that the deceased was earning Rs.8000/- per month as he used to run a printing press in the name and style of '786 Printing Press', yet the Ld. Tribunal has taken the income of the deceased as Rs.3000/- per month. He further contends :-

i) that no amount was granted for future prospects and loss of estate.

ii). that the amount awarded for funeral expenses and loss of consortium is also on 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 the respondent, however, vehemently argues on the lines of the award and contend that the amount of compensation as assessed by the learned Tribunal has rightly been granted.

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

9. A perusal of the record shows that the Ld. Tribunal has overlooked the testimony of PW-1 Tripta Rani (wife of the deceased) and PW-2 Parveen

Kumar, wherein, both of them have deposed that the deceased used to run a printing press in the name and style of '786 Printing Press' and used to earn Rs.8000/- per month. The relevant extract of award is reproduced as under:-

> *"14. In order to prove these issues, one of the claimants Smt. Tripta Rani widow of Rajesh Kumar (deceased) appeared as PW-1 and deposed that Rajesh Kumar was her husband who died on account of the injuries sustained in the accident on 4.11.2004 at the age of 31/32 years. She has given her age as 29 years. She further deposed that Himanshu is her son aged six years and Nilahasu is her son aged four years. She further deposed that Smt. Trishla Rani is her mother-in-law aged 52 years and that Ishwar Chand is her father-in-law aged 58 years. She further deposed that her husband used to run a printing press in village Shahzadpur and used to earn Rs.8,000/- per month and that all of them were dependent upon the income of her deceased husband and after his death they are left with no source of income. She further deposed that her husband was hale and hearty and having no vices. She again deposed that they spent Rs.10,000/- on last rites and 'kirya' of her husband. She further deposed that she has studied upto 8th class and that her husband had also studied upto 8th class. She further deposed that her husband had obtained permission to run 786 printing press. She has produced permission letter in this regard as Ex.PA. She further deposed that the shop in which her husband was running the printing press was taken on rent from Tarsem Lal resident of Patehri.*

In the cross-examination she deposed that her husband was income tax payee. However, she has not produced the said record.

15. Parveen Kumar PW-2, who is also brother of the deceased, also deposed that his brother used to run a printing press and used to earn about Rs.8,000/- per month. In the cross-examination he deposed that his brother used to maintain accounts of printing press and that he had also employed three workers.

10. Though no documentary evidence was submitted by the claimants, still it is pertinent to note that the deceased was working in an unorganised sector, therefore, the formal documentation of earning is not always maintained, in view of this, the Ld. Tribunal erred in assessing the income of the deceased as Rs.3000/- per month. Support for this conclusion can also be drawn from the judgment rendered by Hon'ble Apex Court in the case of ***Chandra @ Chanda @ Chandraram Vs. Mukesh Kumar Yadav, 2021 ACJ 2554,*** wherein it has been held as under:-

> *"Merely because claimants were unable to produce documentary evidence to show monthly income of deceased, same does not justify adoption of lowest tier of minimum wage while computing income. No reason to discard oral evidence of wife of deceased who deposed that deceased was earning around Rs.15000/- per month Deceased aged about 32 years on date of accident and…"*

11. In view of the facts and legal principles outlined hereinabove, the income of Rs.3000/- as determined by the Ld. Tribunal appears to be understated. Consequently, upon due consideration of the oral evidence on recod, it would be just and proper to assess the income of the deceased as Rs.8000/- per month. This assessment in my view, would better serve the ends of justice.

12. A perusal of the award further shows that the amount awarded for funeral expenses and loss of consortium is also on lower side. Therefore, it requires indulgence of this Court.

SETTLED LAW ON COMPENSATION

13. 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.*

14. 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."*

15. 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

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 and the award dated 04.01.2006 is modified accordingly. The appellants-claimants are entitled to the enhanced compensation as per the calculations made here-under:-

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.8000/-
2	Future prospects @ 40%	Rs.3200 (40% of 8000)
3	Deduction towards personal expenditure 1/4th	Rs.2800/- (1/4th of 8000+3200)
4.	Total Income	Rs.8400/- (11,200-2800)
4	Multiplier	16
5	Annual Dependency	Rs.16,12,800/- (8400 X 16 X 12)
6	Loss of Estate	Rs.18,000/-
7	Funeral Expenses	Rs.18,000/-
8	Loss of Consortium Parental : Rs. 48,000/- x 2 Spousal : Rs. 48,000/- x 1 Filial : Rs. 48,000/- x 2	Rs.2,40,000/-
	Total Compensation	**Rs.18,88,800/-**
	Amount Awarded by the Tribunal	**Rs.3,95,000/-**
	Enhanced amount	**Rs.14,93,800/-**

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 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.

18. The respondent No.2 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 account of the claimants/appellants as per the ratio settled in the award dated 4.1.2006. The claimants/appellants are directed to furnish their bank account details to the Tribunal.

19. Disposed off accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

October 15, 2024
sonia arora

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