IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

216 **FAO-397-2007 (O&M)**
Date of Decision: December 03, 2024

Bhagwanti and others **......Appellant(s)**

Vs.

Jeevan Singh and others **......Respondent(s)**

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Ritvik Garg, Advocate
for the appellants-claimants

Ms. Yashika Walia, Advocate
for respondents No.1 and 2

Ms. Puneeta Sethi, Advocate and
Mr. Yashoodev Singh Thakur, Advocate
for respondent No.3-New India Ins. Co.

Mr. Ajit Singh, Advocate for
Mr. Balkar Singh, Advocate
for respondents No.4 and 5.

Mr. Ravinder Arora, Advocate
for respondent No.6.

Mr. Mohit Punia, Advocate for
Mr. Jainainder Saini, Advocate for respondent No.7.

<u>SUDEEPTI SHARMA J. (ORAL)</u>

The present appeal has been preferred against the award dated 12.01.2006 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') by the learned Motor Accident Claims Tribunal, Hisar (for short, 'the Tribunal') vide which the claim petition filed by the appellants/claimants, who are the legal heirs of the deceased, was dismissed.

2. The brief facts of the case as mentioned in the claim petition are that on 28.8.2002, Ram Chander (since deceased) was traveling in jeep No. HR-56-1963 and was going to Hansi for the personal work. When the jeep was near the power house, a car bearing registration No. DL-9CA-6085 came from the opposite side at a high speed and struck against the jeep. The jeep fell in the left side of the road and the occupants thereof sustained multiple injuries, whereas Ram Chander died on 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 took place due to rash and negligent driving of Car No. DL-9CA/6058 or by jeep No. HR56/1963 or by both the vehicles? OPP*
> *2. Whether the applicants and proforma respondent No. 7 Smt. Kanta are entitled to compensation on account of death of Ram Chander, if so, how much and from whom? OPP*
> *3. Whether the Insurance Company is not liable to make the payment of compensation, if awarded, or not ? OPR*
> *4. Relief*

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim-petition. Hence the claimants/appellants filed the present appeal for grant of compensation.

SUBMISSIONS OF THE COUNSELS FOR THE PARTIES

6. The learned counsel for the claimants-appellants contend that the claim petition of the appellants was dismissed only on the ground that neither the author of the FIR nor any eye-witness of occurrence was examined.

7. *Per contra,* Ld. Counsel for respondents argue on the lines of the award and contends that the award has rightly been dismissed by the Ld. Tribunal. Therefore, they pray for dismissal of the appeal.

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

9. The relevant portion of the award is reproduced as under:-

> *"8.The onus of the issue was placed upon the claimants and they have produced HC Ram Phal as PW1 who brought the FIR register and produced the photo copy of the FIR Ex. P1. He stated that the challan had been filed against Jiwan Singh. PW2 Dheeraj Jain proved the report under Section 173 Cr.P.C. The claimants also examined Bhagwanti widow of Ram Chander as PW3. She is not the eye witness and Kailash Goyal PW4 is the proprietor of Unique firm Mirzapur road, Hisar. He stepped into the witness box in order to prove the salary certificate.*
>
> *9. The counsel for the petitioners has urged that the accident had occurred on account of the negligence of the car driver and a case was registered and they have produced the copy of the FIR and the Ahlmad was summoned from the Court who had deposed that the driver was facing trial and the registration of the case and the pendency of the trial was sufficient to prove the negligence and they had discharged the onus.*
>
> *10. On the other hand, it was urged that production of document alone was not sufficient and no eye witness has come forward and mere registration of the FIR was not enough and some witnesses should have been produced. It was urged that the claimant could have summoned the author of the FIR and the claimants were to lead independent evidence to show that the car driver was*

negligent and in the absence of any evidence on the filed, the issue should be answered against the claimants.

11. A perusal of the evidence shows that not a single eye witness has been examined. The claimant had only brought documents on record to show that a case was registered and that the accused was facing trial but that alone is not sufficient. The claimant was required to independently prove the negligence of the respondent. They had to lead evidence to show that on the fateful day the vehicle was being driven by Jiwan and that by his negligent act the accident occurred. There are number of authorities where the Courts have held that even if conviction/acquittal is recorded that would not weigh with the Tribunal and the negligence has to be proved independently. In this case, the author of the FIR has not been examined. No pleadings are not enough. The driver in his written statement denied the accident and we have only the pleadings on record which are not sufficient to record a finding in favour of the claimants. Therefore, the issue is answered against the claimants."

10. A bare reading of the above shows that the Ld. Tribunal has decided issue No.1 against the claimants without application of judicial mind and without appreciation of evidence on record.

11. FIR No.234 under Section 279, 337, 304-A IPC was registered against respondent No.1-driver of the offending vehicle No.DL-9CA-6085 at Police Station Sadar Hansi on 28.08.2002.

12. HC Ram Phal, Police Station Sadar Hansi was examined as PW-1 who brought the FIR register relating to FIR No.234 dated 28.08.2002 under Sections 279, 337, 304-A IPC and submitted that challan was presented against Jeevan Singh i.e. respondent No.1.

13. Claimant Bhagwanti, wife of Ram Chander, who was examined as PW-3, stated the factum of accident.

14. A perusal of the record shows that the accident is proved by lodging of the FIR against respondent No.1, who was facing trial. The finding of the Ld. Tribunal that the author of the FIR was not summoned and examined as well as no eye-witness was examined, is not correct.

15. After perusing record, this Court holds that the factum of accident is proved and decides Issue No.1 in favour of the appellants/claimants and they are entitled to compensation.

16. A perusal of the record shows that deceased was getting a salary of Rs.5000/- per month alongwith TA/DA. The salary certificate Ex.P9 is also proved on record. Therefore, this Court deems it appropriate to assess the income of the deceased to the tune of Rs.5000/- per month. He is 32 years of age and multiplier of 16 is to be applied in this case.

SETTLED LAW ON COMPENSATION

17. 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.

18. 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* ***<u>conventional heads</u>*** *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."*

19. 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.*

<u>RELIEF</u>

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 and the award dated 12.01.2006 is set aside 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.5000/-

2	Future Prospects @ 40%	Rs.2000/-(40% of 5000)
2	Deduction towards personal expenditure 1/3rd	Rs.2333/- (1/3rd of 7000)
3.	Total Income	Rs.4667/- (7000-2333)
4	Multiplier	16
5	Annual Dependency	Rs.8,96,064/- (4667X16X12)
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	Rs.1,44,000/-
	Total Compensation	Rs.10,76,064/-

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 Nadu 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. So far as the issue No. 3 i.e. on whom the liability to pay the compensation is concerned, the matter is remanded back to the Ld. Tribunal to decide the claim petition on Issue No.3 on day to day basis within a period of one month from the date of receipt of copy of this judgment.

23. The parties are directed to appear before the Tribunal on 17.12.2024.

24. The Insurance Company is hereby directed to disburse the current scheduled fees to Ms. Puneeta Sethi, Advocate, for respondent No.3-New India

Insurance Company and Mr. Ravinder Arora, Advocate for Insurance Company respondent No.6., within a period of ten days from the date of receipt of the copy of this judgment.

25. Registry is directed to send a copy of this order to the Ld. Tribunal.

26. Disposed of accordingly.

27. All the pending applications also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

December 03, 2024
sonia arora

Whether speaking/reasoned: Speaking
Whether reportable Yes